

IN THE COURT OF APPEAL OF THE DEMOCRATIC SOCIALIST REPUBLIC OF
SRI LANKA

The Democratic Socialist Republic of Sri Lanka

Complainant

V.

Court of Appeal Case No.
CA (PHC) APN 08/2020

Kadadora Withanage Sanjana Pathum Wijerathna

High Court of Colombo Case
No. HC 254/2018

Accused

AND NOW BETWEEN

Kadadora Withanage Sanjana Pathum Wijerathna

Accused Petitioner

V.

Hon. Attorney General,
Attorney General's Department,
Colombo 12.

Complainant Respondent

BEFORE

: **ACHALA WENGAPPULI, J**
 K. PRIYANTHA FERNANDO, J

COUNSEL

: Selvaraja Dushyanthan for the Accused
 Petitioner.
 Panchali Witharana SC for the Respondent.

ARGUED ON : 26.06.2020

JUDGMENT ON : 10.07.2020

K. PRIYANTHA FERNANDO, J.

01. The Accused-Petitioner (Petitioner) by this application seeks to get the orders of the learned High Court Judge dated 03.05.19 and 09.08.19 remanding the Petitioner revised.
02. Learned counsel for the Petitioner submitted that the orders of remand made by the learned High Court Judge are wrong, illegal, irregular, malicious, capricious, arbitrary and bad in law. Further, it was submitted that the Petitioner is suffering from recurrent depressive disorder and being in remand could be detrimental to him and the family.
03. Objecting to the application, learned State Counsel for the Respondent submitted that the Petitioner has failed to appear in the High Court on two occasions and had also made several threatening calls to the aggrieved party and his family threatening them to abstain from coming to the Court.
04. The Petitioner is indicted on two counts of being cruelty to a child punishable in terms of section 308(a)2 of the Penal Code. Upon serving indictment the learned High Court Judge had released the Petitioner on bail.
05. On 17.01.2019 when the case was called in the High Court for trial, the Petitioner had been absent. Victim child had been present. Learned High Court Judge had issued warrant on the Petitioner. On 21.01.2019, the Petitioner had surrendered to the Court stating that he by mistake had been in some other Court room. The learned High Court Judge had recalled the warrant and had released the Petitioner on same bail.

06. On 03.05.2019 when the case was called in the morning the Petitioner had been present in the Court, however, when the case was called later for trial, the Petitioner had left the Court. Aggrieved party had complained to the Court that the Petitioner had threatened the victim child not to attend Court. Petitioner is the step-father of the victim child. Again, the learned High Court Judge had issued warrant on him. On 21.05.2019, the Petitioner had again surrendered. No valid excuse had been tendered by the Petitioner for avoiding Court the previous day. Hence, the learned High Court Judge remanded the Petitioner.

07. On 09.08 2019, counsel for the Petitioner made another application for bail in the High Court on medical grounds, which was also refused by the learned High Court Judge for given reasons.

08. Section 14(1) of the Bail Act provides for cancellation of a subsisting bail order.

“ (1) Notwithstanding anything to the contrary in the preceding provisions of this Act, whenever a person suspected or accused of being concerned in committing or having committed a bailable or non-bailable offence, appears, is brought before or surrenders to the court having jurisdiction, the court may refuse to release such person on bail or upon application being made in that behalf by a police officer, and after issuing notice on the person concerned and hearing him personally or through his attorney-at-law, cancel a subsisting order releasing such person on bail if the court has reason to believe:-

(a) that such person would-

(i) not appear to stand his inquiry or trial;

(ii) interfere with the witnesses or the evidence against him or otherwise obstruct the course of justice; or

(iii) commit an offence while on bail; or

(b) that the particular gravity of, and public reaction to, the alleged offence may give rise to public disquiet. ”

09. Petitioner for no good reason had been absent on two occasions when the Court was ready to take up the trial. Victim child had been present in the Court. In the circumstances, it is clear that the Petitioner was obstructing the course of justice by being absent to avoid the trial. The chances of the Petitioner not appearing to stand trial are high. There is also an allegation that he had threatened the child not to attend Court. Petitioner is the step-father of the victim child and therefore, the alleged offence is one of domestic violence. Chances of the Petitioner interfering with the victim and the other witnesses are also high. Therefore, the learned High Court Judge has rightly cancelled the previous bail order and remanded the Petitioner.
10. Petitioner has submitted that he is suffering from mental depression. However, the medical report submitted as 'X7' is dated 31.05.2010, which is 10 years old. No recent medical evidence is submitted to substantiate any medical condition that warrants intervention of this Court. The reasons given by the learned High Court Judge for cancellation of the previous bail order and remanding the Petitioner, override the circumstances urged by the Petitioner for relief. I see no reason to interfere with the orders of the learned High Court Judge dated 03.05.2019 and 09.08.2019.

Application is dismissed.

JUDGE OF THE COURT OF APPEAL

ACHALA WENGAPPULI, J

I agree.

JUDGE OF THE COURT OF APPEAL