

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

In the matter of an Application for revision in terms
of Article 138 of the Constitution of the Democratic
Socialist Republic of Sri Lanka.

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

Complainant

V.

Court of Appeal Case No.
CPA/PHC/APN 36/2020

Wellambage Chamila Rangana Perera

High Court of Negombo Case
No. HC 172/15

Accused

Magistrate's Court of
Negombo Case No. B 970/12

AND NOW BETWEEN

Wellambage Chamila Rangana Perera
(Presently in remand custody)

Accused - Petitioner

V.

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

Complainant – Respondent

BEFORE

: ACHALA WENGAPPULI, J
K. PRIYANTHA FERNANDO, J

COUNSEL:

Shanaka Ranasinghe, PC with S. Peiris for
the Accused-Petitioner.

Panchali Witharana SC for the Complainant-
Respondent.

ARGUED ON

: 24.09.2020

OBJECTIONS

FILED ON

: 16.09.2020 by the Respondent

JUDGMENT ON

: 20.10.2020

K. PRIYANTHA FERNANDO, J.

01. The Accused-Petitioner (hereinafter referred to as the Petitioner) by this application seeks to revise the order made by the High Court of Negombo on 24.10.2019 refusing to enlarge him on bail.
02. The Petitioner was indicted in the High Court of Negombo on three counts in case No. HC 172/2015. The 1st and the 2nd counts were for possessing and trafficking 27.72

grams of heroin, offences punishable in terms of the Poisons Opium and Dangerous Drugs Ordinance respectively, and the 3rd count was for possessing a pistol without a valid license, an offence punishable in terms of the Fire Arms Ordinance. By his order dated 14.12.2017, the learned High Court Judge of Negombo granted bail to the Petitioner after considering the application made before him.

03. Whilst the trial was being continued in the High Court of Negombo, the Petitioner had been remanded by the Magistrate's Court of Nugegoda in another case (case No. B3171/2018) on 14.03.2019, where he was suspected of conspiracy and aiding and abetting to commit an offence of robbery using fire arms. Upon this being brought to the notice of the High Court of Negombo, the learned High Court Judge cancelled the previous order of granting bail and remanded the Petitioner on 08.07.2019. The reason given by the learned High Court Judge for cancelling the previous bail order was that the Petitioner had been suspected of a case of robbery whilst on bail and that there is a possibility that he would commit further offences.
04. Further application for bail had been made on behalf of the Petitioner on 24.10.2019 which was refused by the learned High Court Judge of Negombo for the same reasons.
05. Learned President's Counsel for the Petitioner submitted that the Petitioner, who is a suspect in the robbery case in the Magistrates Court of Nugegoda, had been enlarged on bail by the High Court of Colombo, and that the Attorney General had consented to such release. It was submitted further, that the Petitioner had not violated any of the bail conditions imposed on him by the High Court, and that he was present in Court every day since he was released on bail.
06. Learned State Counsel for the respondent submitted that although the Respondent had not objected to bail being granted in the Nugegoda Magistrate's Court case (Application for bail in Colombo High Court), it had been on the basis that the Petitioner was not identified at the identification parade. However, there is other evidence, including circumstantial evidence, to proceed against the Petitioner and

further the Attorney General had not decided to refrain from proceeding against the Petitioner.

07. According to the facts reported to the Nugegoda Magistrate's Court in case No. B3171/2018 by the OIC Special Crimes Branch Nugegoda dated 14.03.2019, upon arrest of the Petitioner on 13.03.2019, based on the statement and the guidance of the Petitioner, police found the vehicle that was used to commit the crime, which was hidden at *Kudamaduwa, Siddamulla, Piliyandala*. Police further found two mobile phones, and two sim cards that were hidden under a statue. It was reported that further investigations were being carried out.
08. Although it was submitted on behalf of the Petitioner that the Petitioner was present in Court every day since he was released on bail, on 01.07.2019, the day the case was fixed for further trial, the Petitioner could not attend Court as he was in remand for the other case by the Nugegoda Magistrate's court where he was alleged to have committed another grave offence.
09. Learned President's Counsel submitted further, that the Petitioner had not violated any bail condition. The fact remains that the High Court of Negombo had not expressly ordered the Petitioner not to reoffend, as a bail condition. That does not mean that the Petitioner was given a license to reoffend whilst on bail. If bail conditions are violated it becomes a good reason to rescind the bail order. However, it is not necessary to confine this to violation of bail conditions to rescind an existing bail order. Other circumstances may warrant cancelling of an existing bail order. An example would be circumstances like in the instant case where the accused is alleged to have reoffended.
10. Application for revision is a discretionary remedy. In the case of *Sudharman de Silva V. Attorney General [1986] 1 Sri LR 6* at page 14 the Supreme Court held;

"... Contumacious conduct on the part of the applicant is a relevant consideration when the exercise of a discretion in his favour is involved."

11. Hence, this Court will not use the discretion in his favour, when the Petitioner is alleged to have been involved with another grave crime whilst he was on bail. The other circumstances urged by the Petitioner are of personal nature, common to all suspects who are in remand and cannot be considered as exceptional circumstances.
12. Therefore, I see no reason to interfere with the order of the learned High Court Judge of Negombo dated 24.10.2019, refusing to release the Petitioner on bail.

Application is dismissed.

JUDGE OF THE COURT OF APPEAL

ACHALA WENGAPPULI, J

I agree.

JUDGE OF THE COURT OF APPEAL