

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

*In the matter of a Revision Application under  
Article 138 of the Constitution of the Democratic  
Socialist Republic of Sri Lanka.*

Court of Appeal Case No. CA (PHC) APN  
53/2019

Democratic Socialist Republic of Sri Lanka.

High Court of Panadura Case No.  
2248/2006

Complainant

Vs.

1. Mawathage Ravi Wasantha
2. Sebbakuttige Chamila Pushpa Kumara
3. Kalthunga Archchige Nishantha Chandana  
Kumara
4. Mallawachchi Kankanamlage Ravindra Pushpa  
Kumara

Accused

AND BETWEEN

4. Mallawachchi Kankanamlage Ravindra Pushpa  
Kumara,  
Mangalasiripura, Ballapitiya,  
Horana.  
(Presently at Kaluthara Prison)

4<sup>th</sup> Accused-Appellant

Vs. .

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

Complainant-Respondent

AND BETWEEN

4. Mallawachchi Kankanamlage Ravindra Pushpa  
Kumara,  
Mangalasiripura, Ballapitiya,  
Horana.  
(Presently at Kaluthara Prison)

4<sup>th</sup> Accused-Appellant-Petitioner

Vs.

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

Complainant-Respondent-Respondent

AND NOW BETWEEN

4. Mallawachchi Kankanamlage Ravindra Pushpa  
Kumara,  
Mangalasiripura, Ballapitiya,  
Horana.  
(Presently at Kaluthara Prison)

4<sup>th</sup> Accused-Appellant-Petitioner-Petitioner

Vs.

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

Complainant-Respondent-Respondent-  
Respondent

BEFORE

: K.K. Wickremasinghe, J.

K. Priyantha Fernando, J.

COUNSEL

: AAL Amila Palliyage instructed by AAL  
Duminda Prasath De Alwis for the 4<sup>th</sup> Accused-  
Appellant-Petitioner-Petitioner

Avindra Jayasinghe, SC for the Complainant-  
Respondent-Respondent-Respondent

ARGUED ON

: 15.10.2019

WRITTEN SUBMISSIONS

: The Complainant-Respondent-Respondent-  
Respondent - On 19.11.2019

The 4<sup>th</sup> Accused-Appellant-Petitioner-Petitioner –  
Not Filed

DECIDED ON

: 25.02.2020

**K.K. WICKREMASINGHE, J.**

The 4<sup>th</sup> Accused-Appellant-Petitioner-Petitioner has filed a revision application in this court seeking to set aside the order made on 29.03.2019, by the Learned High Court Judge of Panadura, refusing to enlarge the 4<sup>th</sup> Accused- Appellant-Petitioner-Petitioner on Bail Pending Appeal.

### **Facts of the Case**

The 4<sup>th</sup> Accused-Appellant-Petitioner-Petitioner (hereinafter referred to as the Petitioner) was indicted with three other accused under Section 296 read with Section 32 of the Penal Code before the High Court of Panadura. The Petitioner and other accused pleaded not guilty to the charge, and thereafter the trial had commenced. At the conclusion of the trial, after considering submissions of all parties made before the Court, the Learned High Court Judge of Panadura had delivered the Judgment on 14.02.2019, convicting the Petitioner and other three accused under Section 316 of the Penal Code, read with Section 32 of the same. Accordingly, the following sentence had been imposed on the Petitioner and each accused;

- i. A term of 05 years rigorous imprisonment,
- ii. A fine of Rs. 10,000/= with a default sentence of 03 months simple imprisonment.

Being aggrieved by the said judgment, the Petitioner had filed an appeal in this Court on 01.03.2019. Thereafter, the Petitioner had filed a Bail Pending Appeal on 08.03.2019 under Section 20(2) of the Bail Act No.30 of 1997. The Learned High Court Judge of Panadura had refused the said Bail Pending Appeal Application by order dated 14.03.2019 on the ground of previous convictions and jump bail.

On failing to succeed with the 1<sup>st</sup> Bail Pending Appeal Application, the Petitioner made the 2<sup>nd</sup> Bail Pending Appeal application in the High Court on 29.03.2019. The Learned High Court Judge of Panadura had refused the said 2<sup>nd</sup> Bail Pending Appeal Application by order dated 29.03.2019 and thereby the Petitioner has filed the instant case in this Court.

### **Grounds of the Revision Application by Petitioner**

The Petitioner, in his Petition dated 07.06.2019, has averred that the order of the Learned High Court Judge of Panadura refusing to enlarge the Petitioner on Bail Pending Appeal has erred in law on several grounds, as stated by paragraph 9 of the said Petition as follows;

- i. Failed to consider the law relating to Bail Pending Appeal
- ii. Failed to consider the exceptional circumstances averred by the Petitioner
- iii. Failed to consider the substantial miscarriage of justice to the Petitioner

- iv. Failed to consider the actual period of imprisonment to be served by the Petitioner in light of the Prison Regulations made under Section 94(1) of the Prison Ordinance

### **Legal Analysis**

#### **i. Failed to consider the law relating to Bail Pending Appeal.**

The Learned Counsel for the Petitioner in his submission before the High Court of Panadura, on 29.03.2019, has submitted the case of Dachchini Vs. Attorney General (2005) 2 SLR 152, in support of his Bail Pending Appeal Application.

In Dachchini Vs. Attorney General, it was held that,

*“ By the enactment of the Bail Act the policy in granting bail has undergone a major change. The rule is the grant of bail. The rule upholds the values endorsed in human freedom. The exception is the refusal of bail and reasons should be given when refusing the bail...”*

*Per SRISKANDARAJAH, J: By the enactment of the Bail Act there is a major change in the legislative policy and the Courts are bound to give effect to this policy. The High Court Judge in the impugned Order has erred in not taking into consideration the policy changes that has been brought in by the enactment and mechanically applied the principle that the accused have failed to show exceptional circumstances when this requirement is no more a principle governing bail pending appeal...”*

However, the contention that was held in the Court of Appeal by Dachchini Vs. Attorney General was overruled by the Supreme Court judgment of Attorney General Vs. Letchchemi & Another (SC Appeal 13/2006) (2006 BLR 16), where it was held that,

*“ The presumption of innocence that ensures in favour of those suspected or accused or connected with the commission of an offence, cease to operate after conviction by a court of competent jurisdiction.”*

It was further held that,

*“Bail after conviction in the High Court referred to in Section 333(3) of the Code of Criminal Procedure Act No. 15 of 1979 has been incorporated in verbatim in Section 20(2) of the Bail Act*

No. 30 of 1997. The settled law on this is that where a section has been incorporated in verbatim, governing principles applicable are those contained in the principle enactment. The interpretation of the principle enactment has always held that there must be exceptional circumstances.

As section 20 of the Bail Act No. 30 of 1997 is identical to that contained in the Code of Criminal Procedure, in its implementation the earlier restricted view of the convicted person having to disclose exceptional circumstances for grant of bail must prevail..."

Thus, it is a proven fact that exceptional circumstances must prevail to grant bail for a convicted person. Therefore the Petitioner should prove exceptional circumstances.

**ii. Failed to consider the exceptional circumstances averred by the Petitioner.**

As it was stated in Jayanthi Silva and Two Others Vs. Attorney General (1997) 3 SLR 117, by D.P.S.Gunasekera J.,

*"Over the years a principle has evolved through judicial decisions that bail pending appeal from convictions by the Supreme Court would only be granted in exceptional circumstances."*

This fact has been held in many other judicial presidents such as Attorney General Vs. Ediriweera (SC Appeal No. 100/2005) (2006 BLR 12), where it was held that,

*"The norm is that bail after conviction is not a matter of right but would be granted only under exceptional circumstances."*

Further, in the case of Muthuretty Vs. The Queen (54 NLR 493), it was held that,

*"That in bail pending appeal, Court will not grant bail as a rule, bail granted only in exceptional circumstances..."*

As exceptional circumstances the Learned Counsel has submitted that the Petitioner is a married man with children and the Petitioner is unable to support the family.

The grounds submitted by the Learned Counsel for the Petitioner to the fact that his wife and children would be destitute if the Petitioner is not at the matrimonial house, does not amount to an "exceptional circumstance". This aspect was considered by L.T.B.Devideniya J. Ranil Charuka Kulathunga Vs. Attorney General (CA [PHC] APN 134/2015).

*"The Petitioner submits several grounds as exceptional grounds to consider bail. The Petitioner states that he is a married person with two school going children. A person getting married and having children is not an exceptional ground. It is the normal day to day life of the people."*

iii. **Failed to consider the substantial miscarriage of justice to the Petitioner.**

Though it is submitted that there is a miscarriage of justice the counsel is unable to support his version.

In the case of Jayanthi Silva and Two Others Vs. Attorney General (1997) 3 SLR 117,

*"The appellate court would interfere where a Judge has given weight to considerations which are irrelevant or taken into account extraneous considerations in exercising his discretion which would amount to an abuse of the discretion vested to act judicially."*

Therefore it is evident that the law relating to bail pending appeal had been correctly applied by the Learned High Court Judge and it is only at the absence of any exceptional circumstances as it has been established by legal principles over years, that the Learned High Court Judge had refused the Application on bail pending appeal.

In the instant case, the Judge has acted judicially.

Having made a Revision Application to this Court, the Petitioner has to invoke the revisionary jurisdiction of this Court, which is to be exercised only under exceptional circumstances.

In Attorney General Vs. Gunawardena (1996) 2 SLR 149 it was held that,

*"Revision like an appeal is directed towards the correction of errors but it is supervisory in nature and its object is the due administration of justice and not primarily or solely the relieving of grievances of a party..."*

Further in the case of <sup>4</sup>Bank of Ceylon Vs. Kaleel and Others (2004) 1SLR 284, as it was held by Wimalachandra, J.

*"In any event to exercise revisionary jurisdiction the order challenged must have occasioned a failure of justice and be manifestly erroneous which go beyond an error or defect or irregularity that an ordinary person would instantly react to it - the order complained of is of such a nature which would have shocked the conscience of court."*

iv. **Failed to consider the actual period of imprisonment to be served by the Petitioner in light of the Prison Regulations made under Section 94(1) of the Prison Ordinance .**

The Learned High Court Judge has considered the previous conduct and the behavior of the Petitioner himself, where according to his counsel in the High Court submitted (at page 41 of the High Court Brief) that the Petitioner had forgotten to appear in Courts in few occasions.

Though the sentence is not above 5 years, there is a likelihood of the Petitioner to jump bail if granted and therefore there is no failure of justice in the order of the Learned High Court Judge.

I am of the view that the Petitioner had failed to demonstrate exceptional circumstances to the satisfaction of this Court in order to invoke the revisionary jurisdiction. Considering above, I see no reason to revise the Order of the Learned High Court Judge of Panadura.

Therefore this revision application is dismissed without costs.

**JUDGE OF THE COURT OF APPEAL**

**K. Priyantha Fernando, J.**

I agree,

**JUDGE OF THE COURT OF APPEAL**