

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

Mabulage Dinith Melan Mabula,
No. 651, Yashodara Mawatha,
Dedigamuwa.

Suspect- Petitioner

V.

Court of Appeal Case No.
CA (PHC) APN 102/2019

High Court of Homagama
Case No. HC/BA 41/2019

Magistrate's Court of
Homagama Case No. BR
23031/2018

1. Officer-in-Charge,
Police Station,
Hanwella.
2. Officer-in-Charge,
Special Crimes Investigation Bureau,
Office of the Deputy Inspector
General of Police,
Western Province-South,
Miriwana, Nugegoda.
3. Hon. Attorney General,
Attorney General's Department,
Colombo 12.

Respondents

AND NOW BETWEEN

Mabulage Dinith Melan Mabula,
No. 651, Yashodara Mawatha,
Dedigamuwa.

Suspect- Petitioner-Suspect-Petitioner

V.

1. Officer-in-Charge,
Police Station,
Hanwella.
2. Officer-in-Charge,
Special Crimes Investigation Bureau,
Office of the Deputy Inspector
General of Police,
Western Province-South,
Miriwana, Nugegoda.
3. Hon. Attorney General,
Attorney General's Department,
Colombo 12.

Respondent-Respondents

BEFORE

: ACHALA WENGAPPULI, J
K. PRIYANTHA FERNANDO, J

COUNSEL

: Jaliya Samarasinghe for the Petitioner.
Chathurangi Mahawaduge SC for the
Respondents.

ARGUED ON

: 27.08.2020

ORDER ON

: 15.09.2020

K. PRIYANTHA FERNANDO, J.

01. The Petitioner was produced before the Magistrate's Court of Homagama in connection with a case of murder and was remanded on 28.10.2018. An application for bail was preferred in the High Court of Homagama and after inquiry, the learned High Court Judge

on 25.07.2019, refused to release the Petitioner on bail. The learned High Court Judge giving reasons for refusal said that the Petitioner had escaped from the custody of the prison authorities and when considering the number of pending cases against the Petitioner, it is likely that he would not appear in Court.

02. The Petitioner preferred the instant application to get the above order of the learned High Court Judge revised. In his application it is submitted that the Petitioner had been in remand custody for a total period of four and a half years and has not been convicted for any case previously. He is the sole bread winner of the family and looks after his elderly parents.
03. At the inquiry, learned counsel further submitted that a suspect cannot be kept in remand for more than a year in terms of section 16 of the Bail Act. Counsel invited the attention of the Court to the decided case of *Wickramasinghe V. Attorney General [2010] 1 Sri L.R. 141*.
04. Learned State counsel objecting to bail submitted that the Petitioner has 15 pending cases and he is also in remand for the murder case No. 31381/19 in Homagama Magistrate's Court. A list of pending cases was submitted with the objections filed.
05. Section 14(1) of the Bail Act provides for the reasons for which Court may refuse bail or cancel a subsisting order for release;

“ (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."*

06. In the instant case, it had been brought to the notice of the learned High Court Judge that the Petitioner has pending cases including a murder case, and also, he had once escaped from prison. However, it was submitted on behalf of the Petitioner, that he had surrendered back to the authorities and that he was warned and discharged for escaping from prison, after taking into account the circumstances under which he escaped. However, the fact remains that the Petitioner was on bail earlier for another case of murder. He is also suspected of attempting to take ransom by making threatening telephone calls to victims, and such offences are currently being investigated into. It was submitted in the objections by the Respondent State that the Petitioner has more than 20 cases of this nature alleged to have been committed whilst in remand custody. Therefore, when considering the number of cases and the alleged offences the Petitioner is suspected of, the chances of the Petitioner committing further offences whilst on bail, and also not appearing in Court if bail is granted, is high.
07. Hence, the learned High Court Judge has rightly acted upon his discretion to refuse granting of bail to the Petitioner, and this Court has no reason to interfere into that order of refusal of bail.
08. It is the contention of the learned counsel for the Petitioner that the Petitioner is entitled to bail as of right in terms of section 16 of the Bail Act, as he has completed more than 12 months in remand.

09. The instant application is not an application for bail, but a revision application to get the order of the learned High Court Judge dated 25.07.2019 revised. The learned High Court Judge has to decide upon the matter according to the facts that prevailed at the time the order was made. By the time the impugned order was made by the learned High Court Judge, the Petitioner had not been in remand for the instant case for more than 12 months. The Petitioner was initially remanded for this case on 28.10.2018. Therefore, the learned High Court Judge has not acted in contravention of section 16 of the Bail Act when he made the impugned order on 25.07.2019.

Hence, the revision application is dismissed.

JUDGE OF THE COURT OF APPEAL

ACHALA WENGAPPULI, J

I agree.

JUDGE OF THE COURT OF APPEAL