

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 (1) of the Constitution of the Democratic Socialist Republic of Sri Lanka read with the Provisions in the High Court of the Provisions (Special) Provisions Act No.19 of 1990.

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

Court of Appeal Case No:
CA/ PHC/APN
CPA – 0007/20

Complainant

Vs.

HC Kurunegala Case No:
121/2012

Athukorala Udumullage Gunadasa
Athukorala.

Accused

AND BETWEEN

Athukorala Udumullage Gunadasa
Athukorala.

Accused-Appellant

Vs.

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

Complainant-Respondent

AND NOW BETWEEN

Athukorala Udumullage Achini Asha
Athukorala,
Anuradhapura Road,
Gatadiwula,
Abanpola.

Petitioner

Vs.

1. The Hon. Attorney General,
Attorney General's department,
Colombo 12.

**1st Complainant- Respondent – 1st
Respondent**

2. Officer – in Charge,
Police Station,
Abanpola.

2nd Respondent

3. Athukorala Udumullage
Gunadasa Athukorala.

Accused - Appellant - 3rd Respondent

BEFORE : Hon. K. K. Wickremasinghe, J.
Hon. Devika Abeyratne, J.

COUNSEL : AAL C. Sooriyarachchi for the Petitioner
Chathuri Wijesuriya, SC for the 1st Complainant
Respondent

ARGUED ON : 26.06.2020

DECIDED ON : 03.09.2020

K.K.WICKREMASINGHE, J.

This is a Revision Application against the order dated 02.12.2019 by the Learned High Court Judge of Kurunegala. The Petitioner filed an application for bail in the High Court of Kurunegala seeking to enlarge her father (the Accused Appellant 3rd Respondent) on bail. The Learned High Court Judge by her order dated 02.12.2019 refused the application of the Petitioner for bail. Being aggrieved by the said order the same Petitioner (the daughter of the Accused Appellant 3rd Respondent) who filed the bail application has filed the revision application in this Court to set aside the said order.

The Accused Appellant 3rd Respondent (hereinafter referred as the 3rd Respondent) was indicted before the High Court of Kurunegala on five charges for having committed the offences punishable under 344, 324, 323 and 314 of the Penal Code against two forest officers. The 3rd Respondent pleaded guilty and was convicted for all charges. Upon conviction he was sentenced as follows to run sentences consecutively;

Charge No.01; A term of 01 year rigorous imprisonment and fine of Rs. 10,000/- with a default term of 2 months imprisonment

Charge No. 02 ; A term of 01 year rigorous imprisonment and fine of Rs. 10,000/- with a default term of 2 months imprisonment

Charge No. 03 ; A term of 02 year rigorous imprisonment and fine of Rs. 10,000/- with a default term of 2 months imprisonment

Charge No. 04 ; A term of 01 year rigorous imprisonment and fine of Rs. 10,000/- with a default term of 2 months imprisonment

Charge No. 05 ; A term of 06 months rigorous imprisonment and fine of Rs. 1000/- with a default term of 2 months imprisonment

The Learned Counsel for the Petitioner submitted that the 3rd Respondent has not filed an affidavit to support the averments as mentioned in the decided case of **CA No. 657/82 (05.09.1986)**. However when considering the Petition, it is apparent that the Petitioner herself has failed to produce the originals of the documents material to the case. 1st Respondent is the Hon. Attorney General and the arguments taken up by the 1st Respondent are all legal arguments as mentioned in the petition. Therefore, it is not necessary to file an affidavit.

The Petitioner in the instant case is the daughter of the 3rd Respondent. When the matter was taken up for hearing, the Learned State Counsel raised a Preliminary Objection to the effect that the Petitioner had no *locus standi* to maintain the application for revision and the Petitioner has not averred as to what relationship she has with the 3rd Respondent. Further the Learned State Counsel submitted that based on the case of **Senathilake v AG 1998 (3) SLR 290** the application for the revision has to be dismissed *in limine*.

In order to consider above, I would refer to a recently decided case by the Supreme Court of Sri Lanka. In the Case of **Lansage Basil Vs, Hon. Attorney General, SC Appeal 20/2017** decided by the **Hon. Justice Sisira de Abrew** on **03.07.2020** analyzed and interpreted the aforementioned case as follows;

“The head note of the said judgment states as follows. “The father of the accused has no locus standi to maintain the revision application”

In Senathilaka’s case (supra) the accused who was convicted and sentenced did not appeal against the conviction and the sentence. The father of the accused filed a revision application against the conviction and the sentence. His Lordship Justice Jayasuriya observed that it was a belated application. The accused in Senathilaka’s case (supra) who was granted bail did not face the trial and after the inquiry under Section 241 of the Criminal Procedure Code, the Learned trial Judge proceeded

with the trial and convicted the accused. His Lordship Jayasuriya at page 293 observed as follows:

"The present application is an application in revision. This is an extraordinary jurisdiction which is exercised by the Court of Appeal and the grant of relief is entirely depend on the discretion of the Court. Here the accused's father is seeking discretionary relief from the Court of Appeal and in considering the grant of discretionary relief, the court will closely examine the conduct of the accused person. In the exercise of a discretion the court scrupulously looks into the conduct of the ultimate party who is deriving benefit from the orders to be made by the court in revision. Besides this application has been preferred with undue and unreasonable delay. The application is refused.

Therefore, it is seen that in the above case, the Court of Appeal, after considering the conduct of the accused and belatedness of the revision application, refused to exercise the extraordinary jurisdiction and discretion of the Court of Appeal. His Lordship Justice Jayasuriya in the above case has not expressed a general view that the father of an accused in each and every case has no locus standi to maintain a revision application.

In this aforementioned case, the Supreme Court overruled the judgment by the Court of Appeal which dismissed the revision application for the Petitioner Appellant (father of the suspect) on the basis that he had no *locus standi*.

The Learned State Counsel in her objections submitted that the Petitioner has not averred that she is the daughter of the 3rd Respondent. However in her affidavit she has sworn and specifically mentioned that she is the daughter of the 3rd Respondent and further she has annexed her birth certificate as proof. Also in her Petition to the High Court as the Petitioner, she has averred her relationship as the daughter of the 3rd Respondent. Therefore the affidavit supported with the birth certificate can be accepted by this Court. Thus in light of the above analysis I am of the view that the Petitioner in the instant case has *locus standi* to maintain this revision application.

At this juncture I wish to draw my attention to consider whether there are exceptional circumstances. The Petitioner has submitted the following grounds as exceptional circumstances in the Petition and the subsequent Motion;

1. The Learned High Court Judge of Kurunegala has not considered the accused pleading guilty in light of section 303 and 13 of the Code of Criminal Procedure.
2. The wife of the 3rd Respondent is dead and the protection of two unmarried daughters of age 19 years and 27 years respectively are in great danger if the 3rd Respondent is not enlarged on bail.
3. The 3rd Respondent is a heart patient and suffering from a mental condition after the demise of his wife.
4. In virtue of the case ***Kumara vs Attorney General 2003 (1) SLR 176***, the 3rd Respondent is entitled to be enlarged on Bail.
5. In virtue of Section 20 of the Bail Act, the 3rd Respondent is eligible to be enlarged on bail.

In the case of **Attorney General V. Ediriweera [S.C. Appeal No. 100/2005] (2006 B.L.R. 12)**, 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.”

In the case of **R Muthuretty V. 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...”

In the benchmark decision of **Ramu Thamothersampillai V. Attorney General (2004) 3 Sri. L.R 180**, it was held that,

“The decision must in each case depend on its own peculiar facts and circumstances. But in order that like cases may be decided alike and that there will be ensured some uniformity of decisions it is necessary that some guidance should be laid down for the exercise of that discretion...”

In the case of **Attorney General V. Ediriweera** [S.C, Appeal No. 100/2005] (2006 B.L.R. 12) it was held that;

*" The Accused-Respondent who seeks bail must not only show ill-health, but must prove it by medical reports, which reflects his or her current and existing state of health relevant to the time of the application for bail. He must additionally show that the illness was not only a present one but that **continued confinement would imperil life or cause permanent impairment of his physical condition ...**"*

It has been brought to the notice of the Court that the Accused Appellant Respondent is suffering from a medical condition pertaining to his mentality. However, the petitioner has not submitted any documents related to the said medical condition even though the petitioner in his petition has averred that he is suffering from an illness.

It has been brought to the notice of the Court that the 3rd Respondent is suffering from a medical condition pertaining to his mental condition. Even though the petitioner has submitted one document on participation of the 3rd Respondent to a clinical session of a consultant psychiatrist, it doesn't necessarily recommend any requirement of a further treatment or it will be a threat for him to be in remand. Therefore, in the absence of any strong documentary evidence as to the said Mental Condition of the 3rd Respondent, such ground is not considered as an exceptional circumstance.

In the case of **Ramu Thamothersampillai V. Attorney General** (2004) 3 Sri. L.R 180, it was held that,

"...but the illness must be a present illness and that continued incarceration would endanger life or cause permanent impairment of health. Moreover there must be evidence of the nature of the illness and its effect."

In the case of **Attorney General V. Ediriweera** (2006) BLR page 12 it was held that,

"...he must additionally show that the illness was not only a present one but that continued confinement would imperil life or cause permanent impairment of his physical condition..."

Further, the 3rd Respondent is said to be a heart patient and has undergone a Coronary Artery by-pass. The Learned High Court Judge of Kurunegala by refusing to enlarge the accused on bail stated that the treatments from the Prison Hospital are sufficient. Even if, the 3rd Respondent is a heart patient there is no evidence to prove that his life may be at a risk if he is not enlarged on Bail. I am of the view that the Petitioner in the instant case has not placed evidence that the prevailing medical conditions of the 3rd Respondent is an *imperil to his life*.

Therefore we are of the view that the petitioner has failed to establish exceptional circumstances in order to invoke the revisionary jurisdiction of this Court. Accordingly, the order of the Learned High Court Judge was not illegal or unlawful and therefore we see no reason to interfere with the same. For the above reasons, we affirm the order dated 02.12.2019 and refuse to enlarge the 3rd Respondent on bail. Further, Prison authorities are directed to duly continue the prescribed medicine and to let the 3rd Respondent to continue with his clinical sessions as prescribed by the doctor.

This revision application is hereby dismissed subject to the above mentioned conditions.

Judge of the Court of Appeal

Devika Abeyratne J.

I agree

Judge of the Court of Appeal