

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 110/2019

High Court of Homagama
Case No. HC/BA 12/2019

Magistrate's Court of
Kaduwela Case No. B
2349/2017

1. Officer-in-Charge,
Special Crimes Investigation Bureau,
Western Province-South,
Miriwana, Nugegoda.
2. 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,
Special Crimes Investigation Bureau,
Western Province-South,
Miriwana, Nugegoda.
2. 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.
Panchali Witharana 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 Kaduwela as a suspect for committing offences punishable under sections 296, 113(1), 102 of the Penal Code and under the Fire Arms Ordinance. Upon making an application for bail in the High Court of Homagama, after inquiry, the learned High Court Judge ordered the Petitioner to be released on bail on 13.03.2019. The following bail conditions were imposed by the learned High Court Judge;

1. to deposit a sum of Rs. 700,000/- as cash bail and surety bail in a sum of Rs.3,000,000/- with two sureties.
2. to report to the Mirihana Special Crimes Bureau on the specified Sundays.
3. not to interfere or harass the prosecution witnesses in any manner.

02. On 02.09.2019, the Petitioner made an application to get the amount ordered as cash bail reduced on the basis that he could not afford the amount of Rs. 700,000/-. The learned High Court Judge refused the application. The reason given for the refusal by the learned High Court Judge was that the Petitioner had previous convictions, and also, he had taken into consideration the nature of the pending cases the Petitioner had. The instant application is to get the above order of the learned High Court Judge revised and get an order reducing the amount of cash bail.

03. It was submitted by the learned counsel for the Petitioner that the cash bail amount ordered by the learned High Court Judge was excessive and that he had continued to be in remand as he was unable to deposit the cash bail ordered.
04. Learned State counsel objecting to the application submitted that the order of the learned High Court Judge was not illegal or arbitrary and that it was justified when considering the conduct of the Petitioner in pending cases.
05. On perusal of the High Court proceedings dated 13.03.2019, it is observed that the learned State counsel who appeared for the Respondent State had submitted that State had no objection to the granting of bail to the Petitioner on strict conditions considering the period he had been in remand as at that date. Learned State counsel also mentioned to Court about all the pending cases and their nature.
06. Although there was no submission to the learned High Court Judge about any previous convictions as at that date, on 02.09.2019, learned High Court Judge in his order said that he considered the previous convictions as well when he refused to reduce the quantum of cash bail.
07. It is settled law that the quantum of bail should not be excessive. Section 11 of the Bail Act provides;

“(1) Where any court is required to determine the amount of a bond to be executed, the sum of money to be deposited or the certified bail to be furnished by any person under paragraph (c) (d) or (e) of subsection (1) of section 7 as the case may be it shall do so with due regard to the nature of the offence the suspect or accused is alleged to have committed, and the punishment specified therefore by law, and to the means of such suspect or accused and the amount so determined shall not be excessive.

(2) Where a suspect or accused has not been released on the ground that a bond for the amount determined by court has not been executed whether by himself or by a

surety or that the sum of money required to be deposited has not been deposited or that the certified bail required to be furnished has not been furnished, the court may at any time while he is in custody, reduce the amount so determined."

08. In case of ***Sumit Mehta V. State of N.C.T. of Delhi Criminal Appeal No. 1436 of 2013*** [13.09.2013], Supreme Court of India said;

"The words "any condition" used in the provision should not be regarded as conferring absolute power on a Court of law to impose any condition that it chooses to impose. Any condition has to be interpreted as a reasonable condition acceptable in the facts permissible in the circumstance and effective in the pragmatic sense and should not defeat the order of grant of bail. We are of the view that the present facts and circumstances of the case do not warrant such extreme condition to be imposed."

It is clear that a condition which a suspect cannot fulfill or reach, which would defeat the order of granting bail should not be imposed by a Court.

09. In the instant case the Petitioner had made the application to get the quantum of cash bail ordered reduced more than five months after the bail order was made on 13.03.2019. As I stated earlier at paragraph 05, on 13.03.2019, the learned State counsel consented to bail being granted considering the long period in remand. Hence, I am of the view that the learned High Court Judge should have considered reducing the quantum of cash bail previously ordered.

10. Hence, I order that the quantum of cash bail to be reduced to Rs.400,000/- instead of Rs.700,000/-. The rest of the bail conditions imposed by the High Court should remain unchanged.

Revision application is allowed to the above extent.

JUDGE OF THE COURT OF APPEAL

ACHALA WENGAPPULI, J

I agree.

JUDGE OF THE COURT OF APPEAL