

**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.

Court of Appeal Application No.
CA (PHC) APN/0002/24
High Court of Balapitiya
Case No. CR1/2327/20

Democratic Socialist Republic of
Sri Lanka

Complainant

Vs.

1. Thuppahi Mudalige Anilsiri de
Silva
2. Waligamage Sameera Wijeratne
3. Thuppahi Mudalige Ramith

Accused

AND NOW BETWEEN

Thuppahi Mudalige Ramith

3rd Accused- Petitioner

Vs.

The Attorney General

Attorney General's Department
Colombo-12.

Respondent

BEFORE : **Sampath B. Abayakoon, J.**

P. Kumararatnam, J.

COUNSEL : **Asela Serasinghe for the 3rd Accused-Petitioner.**

ARGUED ON : **24/06/2024.**

DECIDED ON : **22/07/2024.**

JUDGMENT

P.Kumararatnam,J.

The 3rd Accused-Petitioner (Hereinafter referred to as the Petitioner) is the 3rd Accused named in the indictment bearing No. CR1 2327/20 pending before the High Court of Balapitiya. The indictment was served on him on 09.09.2019 and was released on the High Court bail twice.

The Petitioner had appeared in Court on all relevant dates but failed to appear on 15.10.2020, 03.12.2020 and 18.02.2021 as he was remanded to other alleged criminal cases.

When the Petitioner appeared on 16.11.2021 the Learned High Court Judge of the Balapitiya had imposed additional bail conditions on him. Although the Petitioner had appeared before the High Court of Balapitiya on several days, but he was again remanded for other cases. When he was brought to Court by the Prison Authority on 28.08.2023, the Learned High Court Judge of Balapitiya had directed the Prison Authority to produce the Petitioner before him on 04.09.2023. On that day the High Court the Learned High Court Judge of Balapitiya cancelled all his previous bail orders and made a fresh order to keep him in remand custody until the conclusion of the trial in the Balapitiya High Court case No. CR1.2327/20.

Due to cancellation of his bail in case No. CR1/2327/20, the Petitioner filed this revision application on following exceptional circumstances.

- a) The said order violates the “presumption of innocence” which is a fundamental principle of criminal law.
- b) The said order is contrary to the provisions of the Bail Act No: 30 of 1997.
- c) The said order amounts to a punishment of an accused pending the conclusion of a criminal trial.
- d) The said order gives rise to an “indefinite incarceration” of an accused, pending the conclusion of a criminal trial.
- e) The said period of incarceration amounts to an “oppressive” period of incarceration.

When this matter was supported for notice, it was revealed that the Petitioner, while on the High Court bail in case No. CR1/2327/20 he had been remanded for three cases pending before the Magistrate Court

of Balapitiya. After considering the submissions of the prosecution and on behalf of the Petitioner the Learned High Court Judge had cancelled his bail and ordered him to be detain in remand until conclusion of the High Court case. The reverent portion of the order dated 04.09.2023 of the Learned High Court Judge of Balapitiya is re-produced below:

විශේෂයෙන්ම මෙම නඩුවේදී මෙම චූදිතට අධිචෝදනා පත්‍ර භාරදීමෙන් පසුව 2019.09.09 වන දින ඇප නියම කර ඇති අතර, එසේ තිබියදී බලපිටිය මහේස්ත්‍රාත් අධිකරණයේ 19732 දරණ නඩුවට අදාලව පොලු වලින් පහර දී තුවාල සිදු කිරීම සම්බන්ධයෙන් මෙම තැනැත්තා අත් අඩංගුවට ගෙන ඉදිරිපත් කර ඔහුට එරෙහිව නඩු විභාගයක් පවත්වනු ලබයි. ඒ අනුව මේ ආකාරයෙන් මිනීමැරුම් නඩු වලට ඇප ලබා දී තිබියදී ඔහු තව තවත් වැරදි සිදු කිරීමට පෙළඹීමෙන් පෙනී යන්නේ ඔහුට ඇප ලබා දීම සම්බන්ධයෙන් ඔහු ඉතා සැහැල්ලුවෙන් සලකන බවත්, එසේ ඇප ලබා දීමෙන් පසුව වෙනත් වැරදි සිදු කිරීමට පෙළඹී ඇති බවයි. මේ අනුව මෙම තැනැත්තාට මෙම නඩුවේ ඇපලබා දී තිබියදී ඔහුව වෙනත් නඩුවක් සම්බන්ධයෙන් අත් අඩංගුවට ගෙන ඇති බැවින්ද, එම නඩුවද අපරාධමය ස්වභාවයේ වරදක් වන බැවින්ද, මෙම තැනැත්තා ඇප මත සිටියදී වෙනත් වැරදි සිදු කරන තැනැත්තෙකු බව පැහැදිලිව පෙනී යයි. එසේම ඔහු සම්බන්ධයෙන් මෙම නඩුවේ ඇප ලබා දීමෙන් පසුව ටී.56 ගිණි අවියක් සහ ජීව අත් බෝම්බයක් ළඟ තබා ගැනීම සම්බන්ධයෙන්ද නඩුවක් පවරා ඇති බව වාර්තා කර සිටී. ඉහත කරුණු සැලකිල්ලට ගැනීමේ දී මෙම 3 වන චූදිත ඇප මත සිටියදී වෙනත් වැරදි සිදු කිරීමට හැකියාව ඇති පුද්ගලයෙකු බවට සැක කිරීමට කරුණු මෙම අධිකරණයට තිබෙන බව පැහැදිලිව පෙනී යන බැවින් 3 වන චූදිතට පෙර නියම කර ඇති ඇප අවලංගු කර 3 වන චූදිත නඩු විභාගය අවසන් වන තුරු රිමාන්ඩ් භාරයට පත් කිරීමට ඇප පනවේ 14 වන වගන්තිය ප්‍රකාරව තීරණය කරමි.

The Learned High Court Judge had correctly considered the Section 14(1) (a) (iii) of the Bail Act and all-relevant circumstances of the case when he cancelled bail to the Petitioner after giving his reasons as per Section 15 of the Bail Act.

Further, as per the Section 14(3) of the Bail Act, the Court may at any time, where it is satisfied that there has been a change in the circumstances pertaining to the case, rescind or vary any order made by it under subsection (1) of the Bail Act.

Considering all the factors into account very carefully, this is not an appropriate case to issue notice to the Respondent at this stage. Hence, this revision application is dismissed.

The Registrar of this Court is directed to send this order to the High Court of Balapitiya for information.

JUDGE OF THE COURT OF APPEAL

SAMPATH B. ABAYAKOON, J.

I agree.

JUDGE OF THE COURT OF APPEAL