

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

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

C.A. Revision Application No:  
CA (PHC) APN 0044/2018

H.C. Panadura Case No: 3262/2015

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

**Complainant**

**Vs.**

Milan Mayuranga Wedamesthri  
(Presently at Kalutara Prison)

**Accused**

**AND BETWEEN**

Milan Mayuranga Wedamesthri  
(Presently at Kalutara Prison)

**Accused-Petitioner**

**Vs.**

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

**Complainant-Respondent**

**AND NOW BETWEEN**

Milan Mayuranga Wedamesthri  
(Presently at Kalutara Prison)

**Accused-Petitioner-Petitioner**

**Vs.**

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

**Complainant-Respondent-  
Respondent**

BEFORE	:	K. K. Wickremasinghe, J. Maninda Samayawardhena, J.
COUNSEL	:	Dr Jayatissa De Costa, PC with AAL Chanuka Ekanayake for the Accused- Petitioner-Petitioner  Nayomi Wickremasekara, SSC for the Complainant-Respondent-Respondent
INQUIRY ON	:	14.01.2019
WRITTEN SUBMISSIONS	:	The Accused- Petitioner-Petitioner – On 21.11.2018 & 29.01.2019  The Complainant-Respondent-Respondent – On 08.11.2018 & 25.01.2019
DECIDED ON	:	12.02.2019

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

The Accused- Petitioner-Petitioner has filed a revision application in this court seeking to set aside the order made by the Learned High Court Judge of Panadura dated 15.12.2017 in case No. 3262/2015, refusing to enlarge the accused-petitioner on bail pending an appeal.

**Facts of the case:**

The accused- petitioner-petitioner (hereinafter referred to as the 'petitioner') was indicted before the Learned High Court Judge of Panadura for committing an offence punishable under section 383 read with section 380 and section 32 of Penal Code. At the conclusion of the case the Learned High Court Judge had convicted the petitioner.

Thereafter an application for bail, pending appeal was made on behalf of the petitioner and the Learned High Court Judge has dismissed the same on 15.12.2017. Being aggrieved by the said refusal, the petitioner preferred a revision application to this Court.

The Learned President's Counsel for the petitioner has submitted following grounds of revision in the petition and written submissions;

1. The sentence imposed by the Learned High Court Judge is excessive since both the alleged deadly weapon and the co-perpetrator of the offence were not produced before Court.
2. The Learned High Court Judge has failed to duly appreciate the burden of proof which is required to convict the petitioner under the present penal laws of the country.
3. The Learned High Court Judge has failed to appreciate the fact that as a result of the force used by the police officers, at the time when he was taken

into custody, the petitioner sustained grave injuries and had to be hospitalized.

4. The complainant-respondent-respondent (hereinafter referred to as the 'respondent') had neither listed the alleged deadly weapon nor the co-perpetrator of the offence during the trial even though the petitioner was indicted under section 32 read with section 383 of Penal Code.
5. Identification parade was held in contrary to the procedure and therefore it caused prejudice to the petitioner.
6. The Learned High Court Judge has failed to appreciate the oral submissions of the petitioner's Counsel regarding the contradictory nature of the evidence led in the High Court trial.
7. The Learned High Court Judge has failed to appreciate the exceptional circumstances brought to the notice of Court by the Learned Counsel in his oral submissions while supporting the petitioner's bail application.
8. The Learned High Court Judge failed to consider the fact that the accused has previously not been convicted of any offence.
9. Though the petitioner has filed an appeal against the judgement of the Learned High Court dated 15.11.2017, by the time of the determination of the said appeal, the petitioner would have served a considerable part of the sentence imposed by the Learned High Court Judge.

The Learned President's Counsel for the petitioner submitted that the petitioner was sentenced for a term of 10 years rigorous imprisonment and a fine of Rs. 10,000/= with a default term of 06 months simple imprisonment.

However it is imperative to note that the petitioner has not submitted the conviction and the sentencing order dated 15.11.2017. The Learned High Court Judge in his order dated 15.12.2017 has mentioned about another order dated

23.11.2017. Therefore we are unable to find the exact date on which the conviction and the sentence were imposed on the petitioner.

In the case of **Dahanayake and others V. Sri Lanka Insurance Corporation Ltd. and others (2005) 1 Sri L.R. 67**, it was held that,

*"If there is no full and truthful disclosure of material facts, the Court would not go into the merits of the application but will dismiss it without further examination..."*

In the case of **Lokugalappaththige Cyril & Others V. Attorney General [S.C (Spl.) L.A. No. 272/2013]** it was held that,

*"In a brief manner a fair and full disclosure of all material facts would be essential and should be pleaded in applications to Superior Courts by parties aggrieved of orders and judgments of the lower courts. In the same manner a "plain and concise statements of all facts and material" would be mandatory for special leave to Appeal Applications to the Supreme Court..."*

The Rule 3(1) (a) and (b) of the Court of Appeal (Appellate Procedure) Rules 1990 require a petitioner to tender all the documents material to an application and in an event a petitioner fails to comply with such provisions, the Court may *ex mero motu* or at the instance of any party, dismiss such application.

In the case of **Shanmugavadivu V. Kulathilake (2003) 1 Sri L.R. 215**, it was held that,

*"According to Rule 3(1) (a) it is necessary for an application to be made by way of petition together with an affidavit in support of the averments and these should be accompanied by the originals of documents material to such application. Rule 3(b) specifically refers to the application made by way of revision or restitution in integrum and states that those too should be made*

*in like manner referred to in Rule 3(1)(a) with copies of relevant proceedings including pleadings and documents produced in the Court of First Instance, tribunal or other institution to which such application relates..."* (Emphasis added)

These decisions amply demonstrate that it is mandatory to submit all the relevant documents to Court when making an application and failure to do so will result in dismissal of the application. The order containing the conviction and sentence is indeed a material document for an application for bail pending an appeal. Failure to submit the conviction order is fatal to a revision application that seeks to revise the order of bail pending an appeal.

Further we observe that the grounds submitted by the Learned Counsel for the petitioner do not specify any illegality or irregularity in the bail order but in the conviction. Those questions of law and facts need to be addressed in a separate appeal filed against the conviction. A Judge is not required to consider the merits of a case in an application for bail pending an appeal. We too are not inclined to consider the merits of the High Court trial in this revision application that was filed against the bail order.

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,

*"...I would say that the improbability of absconding would be a relevant consideration in an application for bail pending trial and not in an application for bail pending appeal."*

*A Court will not grant bail as a rule. Bail is granted only in exceptional circumstances...”*

Accordingly it is well settled law that bail, pending an appeal, will be granted only upon the demonstration of exceptional circumstances. We observe that the Learned High Court Judge in the order dated 15.12.2017 held that,

“...සුවිශේෂ කරුණු ලෙස සැලකිය හැකි කිසිදු කරුණක් ඉදිරිපත් කර නොමැති බව තීරණය කරමි. ඕනෑම පුද්ගලයෙකු සිරගත වීමේදී ඔහුගේ පවුලේ ඇතිවන අර්බුදකාරී තත්ත්වයට අමතර යමක් ඔහු විසින් දැක්වීමට ඔහු අපොහොසත් වී ඇත...” (Page 06 in document marked as ‘X3’ in the brief)

Therefore the Learned High Court Judge was correct in refusing to enlarge the petitioner on bail pending an appeal due to lack of exceptional circumstances. For these reasons, this revision application should stand dismissed.

We affirm the order of the Learned High Court Judge of Panadura dated 15.12.2017.

Accordingly the revision application is hereby dismissed without costs.

JUDGE OF THE COURT OF APPEAL

**Mahinda Samayawardhena, J.**

I agree,

JUDGE OF THE COURT OF APPEAL