

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

In the matter of an Application for bail in
terms of Section 404 of the Code of
Criminal Procedure Act No. 15 of 1979

C.A. Case No: **CA (Bail) 19/2018**

H.C. Bail Application No:

HCBA 208/2018

MC Colombo Case No:

B 6540/2/2012

Lama Hewage Emil Ranjan,
No. 142, Baseline Road,
Colombo 09.

Accused-Petitioner-Petitioner

-Vs-

1. Officer-in-Charge,
Special Investigation Division - Unit 01,
Criminal Investigation Department,
Colombo 01.

Complainant-Respondent-Respondent

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

Respondent-Respondent

Before : A.L. Shiran Gooneratne J.

&

K. Priyantha Fernando J.

Counsel : Kalinga Indatissa, PC with Sandeepani Wijesooriya
and Rashmini Indatissa for the Petitioner.

Madhawa Tennakoon, SSC for the Respondents.

Written Submissions: By the Petitioner on 10/12/2018

Argued on : 05/03/2019

Judgment on : 04/04/2019

A.L. Shiran Gooneratne J.

The Petitioner has invoked the jurisdiction of this Court, *inter-alia*, to set aside and reverse the order made by the Learned High Court Judge of Colombo in case HCBA 208/2018, dated 19/07/2018, refusing to enlarge the Petitioner on bail.

Briefly setting out the chronology of events that led to this application, the Petitioner states, that;

- He held the post of Commissioner of Prisons (Rehabilitation and Southern Province) and was attached as the Superintendent of Prisons to the Magazine prison at all times material to this incident
- An incident took place on 09/11/2012, inside the Welikada prison due to a riot created by the inmates of the said prison during a special operation carried out by the Special Task Force of the Sri Lanka Police
- In an attempt to control the situation 27 inmates were killed and 20 inmates were injured
- The initial B report regarding this incident was filed in the Magistrate's Court of Colombo case No. B 6540/2/12 on 10/11/2012, produced marked X9
- The Petitioner was arrested on 28/03/2018, naming him a suspect in the aforesaid case for committing offences punishable under Sections 102, 111, 113(a), 189, 198, 296 and 355 read with Section 32 of the Penal Code

The Petitioner by this application for bail has invoked the jurisdiction of this Court to "set aside and reverse the order made by the Learned High

Court Judge of Colombo”, in terms of Section 404 of the Code of Criminal Procedure Act No. 15 of 1979. (CCPA)

In *Attorney-General and others Vs. Sumathipala (2006) 2 SLR 126*, the Court held that;

“considering the aforementioned sections [previous and present of 402 and 403], along with Section 404 of the Code of Criminal Procedure Act, it is apparent that for the Court of Appeal to consider making a direction under Section 404, there should be an order from the Judge of the High Court or a Magistrate”.

It was further held that;

“Accordingly, it is apparent that in terms of the Section 404 of the Code of Criminal Procedure Act, the Court of Appeal has only the Appellate jurisdiction and revisionary jurisdiction”.

The instant Petition is referred to as HC Bail Application. The Petition has been listed as CA (Bail) 19/2018 Revision, and the relief sought is to set aside and reverse the order of the learned High Court Judge of Colombo. When this case was taken up for argument, the counsel for the State had no objection to treat this application as an application for revision and to proceed accordingly.

The learned President's Counsel for the Petitioner submits that the order made by the learned High Court Judge is canvassed on the basis that the said order is manifestly wrong and irregular and therefore, contrary to law. The learned High Court Judge has refused to grant bail to the Petitioner mainly for the reason that, if bail is granted, there is a possibility of public disquiet. The interest shown by the international community and the possibility of the Petitioner interfering with the witnesses were also reasons given for refusing bail.

It is observed that this incident took place on 09/11/2012. The Petitioner was arrested on 28/03/2018, and was named a suspect in the Magistrate's Court of Colombo, Case No. 6540/2/2012. On 18/07/2018, the Criminal Investigation Department commenced a fresh investigation to this incident. It is also observed that prior to this investigation, there were several other inquiries held by law enforcement agencies and other authorities, regarding the incident, which also consists of a magisterial inquiry held in 2012.

In paragraph 22 to 25, the Petitioner states that there are no material available for the rejection of bail, as required under Section 14 of the Bail Act. The Petitioner submits that there is an imminent threat to his life since he is remanded with certain inmates against whom he has taken disciplinary

action during his tenure in office. He further states that at all times he has fully cooperated with the investigations and has no reason not to appear to stand inquiry.

The Respondent has objected to this application mainly on the basis that given the magnitude of the crime, enlarging the Petitioner on bail at this stage can give rise to public disquiet. A mere statement by an investigating officer that there is a possibility of public disquiet would not be sufficient to satisfy the requirement to have the Petitioner remanded. The purpose of investigation too, cannot be a ground for continued detention taking into consideration the long delay in the investigation process.

The Petitioner is in pre-trial detention. In terms of Section 16 of the Bail Act,

“subject to the provisions of Section 17, unless a person has been convicted and sentenced by a Court, no person shall be detained in custody for a period exceeding twelve months from the date of his arrest”.

In *Wickramasinghe Vs. Attorney General, CA (PHC) APN 39/2009, decided on 04/03/2010, Sisira De Abrew J.* held that, Section 16 and

Section 17 of the Bail Act are not subject to the provisions of Section 14 of the Bail Act, and further held that,

“When Section 16 of the Bail Act is considered any suspect/accused to whom the Bail Act applies cannot be kept in remand for a period exceeding 24 months. The period of 24 months is considered only if the Attorney General Acts under Section 17, and if there is no such application the maximum period that a suspect/accused to whom the Bail Act applies can be kept in remand is one year.”

The Petitioner was arrested on 28/03/2018, and since then has been in detention for over 12 months. In the pleadings, or at the time of argument, the counsel for the Respondent has not brought to the notice of Court that in terms of Section 17 of the said Act, the Hon. Attorney General has made or would make an application to the relevant Court to have the period of detention of the suspect extended beyond 1 year. Since there is no application by the Hon. Attorney General for an extension of detention of the suspect, in terms of Section 16, of the Bail Act, the Petitioner cannot be held in detention for a period exceeding 12 months.

For the aforesaid reasons we make order to enlarge the Petitioner on bail subject to the following conditions.

The Petitioner is directed to enter into a cash bond of Rupees one hundred thousand. (Rs. 100,000) and shall execute a surety bond to the value of Rupees five million. (Rs.5,000,000) with two sureties acceptable to the Magistrate. The Petitioner shall surrender his passport to the Registrar of the Magistrate's Court of Colombo. The Petitioner is also directed not to interfere with witnesses or with the progression of the investigation.

Subject to the above conditions, the application for bail is allowed.

JUDGE OF THE COURT OF APPEAL

K. Priyantha Fernando, J.

I agree.

JUDGE OF THE COURT OF APPEAL