

**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

Revision Application No:

CA (PHC) APN/0120/2023

The Democratic Socialist Republic
of Sri Lanka.

High Court of Embilipitiya

BA 37/2023

High Court of Embilipitiya

Case No. HCE 28/2021

Vs

Welhenage Wimalasiri

No.676/5,

Ranaviru Mahinda Mawatha,

Malabotuara, Udawalawa.

COMPLAINANT

ACCUSED

AND

Welhenage Wimalasiri

No.676/5,

Ranaviru Mahinda Mawatha,

Malabotuara, Udawalawa.

ACCUSED-APPELLANT

Vs

Hon. Attorney General

Attorney General's Department

Colombo-12

COMPLAINANT-RESPONDENT

AND NOW

Welhenage Wimalasiri
No.676/5,
Ranaviru Mahinda Mawatha,
Malabotuara,Udawalawa.

**ACCUSED-APPELLANT-
PETITIONER**

Vs

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

**COMPLAINANT-RESPONDENT-
RESPONDENT**

AND NOW BETWEEN

Welhenage Wimalasiri
No.676/5,
Ranaviru Mahinda Mawatha,
Malabotuara,Udawalawa.

**ACCUSED-APPELLANT-
PETITIONER-PETITIONER**

Vs

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

**COMPLAINANT-RESPONDENT-
RESPONDENT-RESPONDENT**

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

P. Kumararatnam, J.

COUNSEL : **Anil Silva, PC with Amaan Bandara for
the Petitioner.**

SUPPORTED ON : **30/10/2023.**

DECIDED ON : **08/12/2023.**

ORDER

P.Kumararatnam,J.

The Accused-Appellant-Petitioner-Petitioner (hereinafter referred to as the Petitioner) had filed this Revision Application to revise the order of Learned High Court Judge of Embilipitiya delivered in HCB 37/2023.

The Petitioner was the Accused in the High Court of Embilipitiya Case No.HCE 28/2021.In the said case the Petitioner was indicted for committing offence (two counts) under Section 365(b)2(b) of the Penal Code.

After trial the Petitioner was convicted for both charges and sentenced on 11.05.2023 as follows:

1st Count

10 years RI and a fine of Rs.10,000/-. In default 12 months simple imprisonment.

2nd Count

10 years RI and a fine of Rs.10,000/-. In default 12 months simple imprisonment.

A compensation of Rs.100, 000/- is to be paid to PW1. In default 6 months RI. Also ordered the both jail sentence to concurrent to each other.

The Petitioner states that upon being aggrieved by the said conviction and the sentence he had preferred an appeal to this case.

In the meantime, filling the Petition of Appeal, the Petitioner made an application for bail pending appeal to the High Court of Embilipitiya by way of a Petition and supportive affidavit dated 05.06.2023 in terms of Section 20(2) of the Bail Act No.30 of 1997.

The Learned High Court Judge of Embilipitiya delivering his bail order dated 14.09.2023 has refused to enlarge the Petitioner on bail on the sole reason that the Petitioner has failed prove any exceptional circumstances which warrant granting of bail to the Petitioner.

The Petitioner states that due to following reasons the findings of the Learned High Court Judge are illegal, wrongful and contrary to law.

- a) The said order is contrary to law.
- b) The Learned High Court Judge misdirected himself when he held that there were no exceptional circumstances averred by the Petitioner whereas the matters set out in the Petition amounted to exceptional circumstances within the law.
- c) The Learned High Court Judge erred in law when he refused to enlarge the Petitioner on bail pending appeal in as much as the continuous incarceration of the Petitioner in the circumstances of this case would endanger his life and that would amount to exceptional circumstances.

It is a settled principle that release on bail pending appeal to the Court of Appeal will only be granted in exceptional circumstances.

In **King vs. Keerala** 48 N.L.R. 202, Wijewardana J. held,

“the Court of Criminal Appeal does not grant applications for bail in the absence of exceptional circumstances”.

In **The Queen vs. B. Rupasingha Perera** 62 N.L.R.238, Basnayake C.J. with Sansoni J. held,

“bail is not granted by the Court of Appeal unless there are exceptional circumstances”.

In, **The Queen vs. Koranelis Silva** 74 N.L.R. 113, Weeramanthri J. held,

“release on bail pending appeal to the Court of Criminal Appeal will only be granted in exceptional circumstances”.

In an application of this nature, the bail only be granted upon successful submission that the Accused has an exceptional ground. Further the bail should not be granted as a right for a person who was convicted by a competent court.

As per the letter issued by the Consultant Cardiologist Dr. M.Niraj, the Petitioner has been diagnosed with Myocardial Infarction in the past. For this illness the Petitioner is under Cardiology Clinic follow up at District Hospital Embilipitiya since 26.08.2020 and his last clinic date was on 10.03.2023.

The Learned High Court Judge in his well-considered order considered the health condition of the Petitioner very extensively and given reasons as to why he refused the application for bail pending appeal of the Petitioner. Further, the Learned High Court Judge had directed the Registrar of Embilipitiya High Court to inform that the Petitioner should be sent for necessary treatments and if the doctor recommends, the Petitioner should be taken to the recommended hospital/s for necessary clinics.

Hence, considering the seriousness of the offence and the punishment imposed on the Petitioner by the Learned High Court Judge, I consider this is not an appropriate case to issue notice to the Respondents. The only remedy available to the Petitioner would be to make an application before the Court to fix the main appeal to an early date considering the circumstances of this case.

Hence, we refuse notice in this case.

The Registrar of this Court is directed to send a copy of this order to the High Court of Embilipitiya for information.

JUDGE OF THE COURT OF APPEAL

SAMPATH B. ABAYAKOON, J.

I agree.

JUDGE OF THE COURT OF APPEAL