

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/0003/24
High Court of Balapitiya
Case No. CR1/2459/19

Democratic Socialist Republic of
Sri Lanka

Complainant

Vs.

1. Wijemuni Mahesh Chamara de
Silva alias Sukiri
2. Theththuwahandi Kasun
Sampath de Silva alias Kasun
3. Warshawitharana Chamod
Malsara alias Raju
4. Pulun Hasitha Sandamal de
Silva
5. Lekamwasam Hikkaduwa
Liyanage Ashan Tharuka
6. Tukka Waduge Shehan
Widuranga
7. Thuppahi Mudalige Ramith de
Silva alias Ranga
8. Thuppahi Mudalige Anilsiri de
Silva alias Sanda
9. Waligama Samith Suranga
Wijerathne alias Samith alias
Ranmalli

10. Thuppahi Mudali Anura
Santha de Silva alias Anura
alias Chuty

11. Handunneththi Vijith Kumara
alisa Wijepala

Accused

AND NOW BETWEEN

Thuppahi Mudalige Ramith De
Silva alias Ranga

7th 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 7th Accused-Petitioner (Hereinafter referred to as the Petitioner) is the 7th Accused named in the indictment bearing No. CR1 2459/19 pending before the High Court of Balapitiya. The indictment was served on him on 18.02.2020 and was released on the High Court bail twice.

The Petitioner had appeared in Court on all relevant dates but failed to appear on the occasions where he was remanded pertaining to other alleged criminal offences.

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 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. CR1.2459/19.

Due to cancellation of his bail in case No. CR1/2459/19, 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. CR1/2459/19 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:

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කෙසේ වුවද මෙම 7 වන වූදිනට ඇප නියම කිරීමෙන් පසුව 7 වන වූදින වෙනත් වැරදි සිදුකර ඇති බවද, ඔහු අත් අඩංගුවට ගෙන අධිකරණයට ඉදිරිපත් කර ඇති බැවින්ද, ඒ අනුව ඔහු ඇප මත සිටියදී වෙනත් වැරදි සිදු කිරීමට පෙළඹෙන පුද්ගලයෙකු බවට පෙනී යන බැවින් 7 වන වූදිනගේ පෙර ඇප අවලංගු කර 7 වන වූදින නඩු විභාගය අවසන් වන තුරු රිමාන්ඩ් භාරයට පත් කිරීමට ඇප පනතේ 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 in to 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