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

In the matter of an application for Revision made under and in terms of Article 138 of Constitution of the Democratic Socialist Republic of Sri Lanka.

Court of Appeal
Revision Application No:
CA(PHC)APN/0102/2024

The Attorney General
Attorney General's Department
Colombo-12

COMPLAINANT

Vs.

High Court of Colombo
Case No. HC/7259/14

1. Udakumbare Sadara Susantha Gunaratne
2. Chamara Chaminda Liyanage

ACCUSED

AND BETWEEN

In the matter of an application for Bail pending appeal made under and in terms of section 20(2) of the Bail Act No. 30 of 1997 as amended.

Udakumbare Sadara Susantha Gunaratne

(Presently in Welikada Prison)

ACCUSED-PETITIONER

Vs.

The Attorney General

Attorney General's Department,

Colombo-12.

COMPLAINANT-RESPONDENT

AND NOW BETWEEN

Udakumbare Sadara Susantha Gunaratne

(Presently in Welikada Prison)

ACCUSED-PETITIONER-PETITIONER

Vs.

The Attorney General

Attorney General's Department, Colombo-12.

COMPLAINANT-RESPONDENT-RESPONDENT

BEFORE : **P. Kumararatnam, J.**

Damith Thotawatta, J.

Amal Ranaraja, J.

COUNSEL : **Hejaaz Hisbulla with Maharoof instructed by Dinika Dias for the Petitioner.**
Malik Azees, SC for the Respondent.

ARGUED ON : **1/11/2025.**

DECIDED ON : **19/12/2025.**

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JUDGMENT

P. Kumararatnam, J.

The Accused-Petitioner-Petitioner (Hereinafter referred to as the Petitioner) had applied for bail pending appeal for him in the High Court of Colombo in the case bearing the number No. HC 7259/2014. After an inquiry, the Learned High Court Judge had refused bail on 22.05.2024. Aggrieved by the said order, the Petitioner had filed this Revision Application to revise the said order.

The Petitioner was indicted in the High Court of Colombo on charges of having committed offences under Sections 328, 329 and 298 of the Penal Code arising out of a motor traffic accident. The indictment contained ten counts, upon which the learned High Court Judge had convicted the Petitioner for count numbers 01,02,04, and 09. He was acquitted from counts 03,05,06,07, 08, and 10. After considering the submissions of the

prosecution and the defence, the learned High Court Judge had sentenced the Petitioner as follows;

> Count 01- Rs.10,000/- fine with a default sentence of 06 months simple imprisonment and 5 years rigorous imprisonment. Additionally, he was ordered to pay a compensation of Rs.100,000/- payable to PW2. This carries a default sentence of 18 months simple imprisonment.
>
> Count 02- Rs.10,000/- fine with a default sentence of 06 months simple imprisonment and 5 years rigorous imprisonment.
>
> Count 04- Rs.100/- fine with a default sentence of 01-week rigorous imprisonment.
>
> Count 09- Rs. 1000/- fine with a default sentence of 03 months simple imprisonment and 02 years rigorous imprisonment. Additionally, he was ordered to pay a compensation of Rs.50,000/- payable to PW8. This carries a default sentence of 09 months simple imprisonment.

In respect of Count number 01 and 02, a payment of Rs. 100,000/- with a default sentence of 18 months simple imprisonment was ordered to be made to the Fund established under Section 29 of the Assistance to and Protection of Victims and Witnesses of Crime Act No. 27 of 2017.

Aggrieved by the conviction and the sentence, the Petitioner had preferred an appeal to the Court of Appeal on 14.12.2023.

In respect of this application, by a direction of His Lordship the President of Court of Appeal, a Divisional Bench was nominated to hear the instant application as supported by the Petitioner.

Upon perusal of the Petition dated 18.07.2024, the Petitioner had preferred to present the following exceptional circumstances in support of this revision application:

I. The learned High Court Judge has erred in law disguising the judgment in the **Dachchaini v The Attorney General** [2005] 2 SLR 152 case on the grounds that the sentence imposed in the said case was 1/3 of the sentence imposed in this case, when in fact in the **Dachchaini v The Attorney General** (Supra) the Accused was sentenced to a 7-year prison sentence for each of two counts of cheating;

II. The learned High Court Judge has refused the application for bail on the basis that there were no exceptional circumstances and thereby erred in law;

III. The learned High Court Judge has failed to apply the criteria set out in **Dachchaini v The Attorney General** (Supra);

IV. In any event the learned High Court Judge has erred in law in failing to consider the medical condition of the Petitioner's wife, the nature of the offence and that it would be unlikely that the Petitioner would abscond in exercising his discretion with regard to the granting of bail.

At the hearing of this revision application, the learned Counsel strenuously argued that the refusal of the exceptional circumstances standards is wrong and that a test with specific grounds for bail, similar to the provisions of Section 14(1) of the Bail Act, is to be adopted for considering questions of bail pending appeal. He further argued that the exceptional circumstances test is not found in the Criminal Procedure Act No. 15 of 1979 nor in the Bail Act No.30 of 1997.

Evolvement of Bail Pending Appeal in our Jurisdiction

The law relating to the release of accused persons, who have already been convicted by a court of law, pending appeal has received various interpretations from time to time.

In **King v Don Martin** (1923) 25 NLR 169 the Court held that:

> *"There is one other matter I wish to refer to. I find that after the petition of appeal was filed the proctor for the accused made an application for bail. This application was refused by the District Judge on the ground that the accused was a habitual criminal. In making this order the learned District Judge has evidently over-looked the provisions of section 341 of the Criminal Procedure Code by which a Court is bound to make an order for the release on bail of every convicted person who prefers an appeal. Habitual criminals are not excluded from the privilege granted by this section".*

Analysing this judgement, it is revealed that no discretion has been vested in a Magistrate or a Judge of District Court to determine whether a convicted accused should be released on bail or not.

However, in cases decided under the Court of Criminal Appeal Ordinance, which was in existence till 1973, the court held a different principle in deciding bail pending appeal.

In **King v Keerala** (1942) 48 NLR the Court held that:

> *"I am unable to allow this application on the grounds stated above This court does not grant applications for bail in the absence of exceptional circumstances".*

In **King v Cooray** (1950) 51 NLR 360 the Court held that:

> *"Release on bail will only be granted in cases pending appeal in exceptional circumstances. Having considered this matter carefully, I consider that there are in these case exceptional circumstances where I am justified in granting the application".*

In **R v Muthuretty** (1953) 54 NLR 43 the Court held that;

> *"In bail pending appeal, court will not grant bail as a rule. Bail is granted only in exceptional circumstances".*

In **Queen v B. Rupasinghe Perera** (**1958)** 62 NLR 238

> *"The applicant has not satisfied us that this is a case in which we should take the exceptional and unusual course of granting bail. The application is therefore refused".*

As per the judgements cited above under the Court of Criminal Appeal Ordinance, the Court has developed the principle that the application made under bail pending appeal must only be considered in favour of the accused only in the existence of exceptional circumstances.

This principle has been further developed under the Administration of Justice Law No.44 of 1973 (Hereinafter referred to as the AJL). The bail pending appeal provision was depicted in the Section 325(3) of the AJL. The said section is re-produced as follows:

> "When an appeal against a conviction is lodged, the court may admit the Appellant to Bail pending the determination of his appeal."

The much-celebrated Judgement **Ramu Thamodaram Pillai v Attorney General** [2004] 3 SLR 18 was delivered under the AJL the Court held that:

Per Vythialingam.J.

> *"Where a statute vests discretion in a court it is of course unwise to confine its exercise within narrow limits by rigid and inflexible rules from which a court is never at liberty to depart, nor indeed can there be found any absolutes or formula which could invariably give an answer to different problems which may be posed in different cases on different facts... but in order that like cases may be decided alike and that there will be ensured some uniformity of decisions it is necessary that some guidance shall be laid down for the exercise of that discretion".*

> *(4) Requirement of exceptional circumstances should not be mechanically insisted upon.*
>
> *(5) In the special circumstances of this case having regard to the serious nature of the charge of which the petitioner has been convicted, the severity of the punishment that was meted out to him, and the consequent temptation to abscond, the High Court was correct in refusing to admit the petitioner to bail on the ground of exceptional circumstances.*

In this case, His Lordship held that along with the exercise of the discretion granted under Section 325(3) a court will have to consider each and every case separately to ascertain whether the applicant has shown any exceptional circumstances that must be considered in his favour.

Followed by this case, the Supreme Court in **Re Ganapathipillai** (1920) 21 NLR and **Kannusamy v Minister of Defence and External Affairs** (1961) 63 NLR 214 held that the Court had no inherent right to grant bail, even under the Common Law.

After enacting the Code of Criminal Procedure Act No. 15 of 1979 (Hereinafter referred to as CPC) and after the abolition of AJL, and after enacting Bail Act No.30 of 1997, the legislature has not included either in the CPC or in the Bail Act the requirement of considering exceptional circumstances in considering bail pending appeal. But it is pertinent to note the Public Property Act No.12 of 1982 and Poisons, Opium and Dangerous Drugs (Amendment) Act, No. 41 of 2022 where statutorily, exceptional circumstances have been insisted on for the granting of Bail.

Bail pending appeal under CPC is depicted under Section 333(3) and it states;

> (3) When an appeal against a conviction is lodged, the High Court may subject to subsection (4) admit the appellant to bail pending the determination of his appeal. An appellant who is not admitted

> to bail shall pending the determination of the appeal be treated in such manner as may be prescribed by rules made under the Prisons Ordinance.

Under Bail Act, the bail pending appeal provision is laid down at Section 20(2) and it states;

> (2) When an appeal against a conviction by a High Court is preferred, the High Court may subject to subsection (3) release the appellant on bail pending the determination of his appeal an appellant who is not released on bail shall, pending the determination of the appeal be treated in such manner as may be prescribed by rules made under the Prisons Ordinance.

As the Section 333(3) of the CPC and the Section 20(2) of the Bail Act are similar in *verbatim,* in **Attorney General Vs Letchchemi & Another** SC Appeal 13 of 2006 dated 04.08.2006 the Supreme Court held that:

> "*Bail after conviction in the High Court referred to in Section 333(3) of the Code of Criminal Procedure Act No.15 of 1979 has been incorporated 'in verbatim' in Section 20(2) of the Bail Act No. 30 of 1997. The settled law on this is that where a section has been incorporated 'in verbatim' governing principles applicable are those contained in the principal enactment".*

Hence, there is no ambiguity in bail pending provisions under the CPC and the Bail Act.

The learned Counsel for the Petitioner citing **Dachchaini v The Attorney General** (Supra) primarily submitted to this Court that the refusal on the exceptional circumstances standard is wrong and that a test with specific grounds for bail, similar to the provisions of Section 14(1) of the Bail Act has to be adopted for considering questions of bail pending appeal as the exceptional circumstances test is not found in the CPC nor in the Bail Act.

Dachchaini v The Attorney General (Supra) Divisional Bench of the Court of Appeal held that:

> *i. The Bail Act, No. 30 of 1997 which came' into operation on 28th November, 1997 is the applicable law.*
>
> *ii. By the enactment of the Bail Act the policy in granting bail has undergone a major change. The rule is the grant of bail. The Rule upholds the values endorsed in human freedom. The exception is the refusal of bail and reasons should be given when refusing bail.*
>
> *Per Sriskandarajah, J.*
>
> *"By the enactment of the Bail Act there is a major change in the legislative policy and the Courts are bound to give effect to this policy. The High Court judge in the impugned Order has erred in not taking into consideration the policy change that has been brought in by the enactment and mechanically applied the principle that the accused have failed to show exceptional circumstances when this requirement is no more a principle governing bail pending appeal"*

As correctly pointed out by the learned State Counsel, the Petitioner due to sheer ignorance or in the alternative by devious design, failed to highlight that the aforesaid **Dachchaini** case (Supra) has been specifically overruled by the Supreme Court and that, therefore, the principles enunciated by the Court of Appeal has been expressly rejected.

In **Attorney General v Letchchemi** SC Appeal 13/2006 decided on 04.08.2006 reported in 2006 BLR 16, the Supreme Court specifically refused to endorse the ratio of the **Dachchaini** case (Supra) and overruled the said case. The Supreme Court held that;

> *“The presumption of innocence that inures in favour of those suspected or accused or connected with the commission of an*

offence, ceases to operate after conviction by a court of competent jurisdiction;

Bail after conviction in the High Court referred to in Section 333(3) of the Code of Criminal Procedure Act No.15 of 1979 has been incorporated in verbatim in Section 20(2) of the Bail Act No.30 of 1997. The settled law on this is that where a section has been incorporated in verbatim, governing principles applicable are those contained in the principal enactment. The interpretation of the principal enactment has always held that there must be exceptional circumstances.

As Section 20 of the Bail Act No.30 of 1997 is identical to that contained in the Code of Criminal Procedure, in its implementation the earlier restricted view of the convicted person having to disclose exceptional circumstances for grant of bail must prevail".

In **Attorney General v Ediriweera** SC Appeal 100/2005 decided on 04.08.2006 the Supreme Court held that:

a) *the norm is that bail after conviction is not a matter of right but would be granted only under exceptional circumstances;*

d) *exceptional circumstances only exist when the facts and circumstances of the case are such that they constrain or impel the Court to the conclusion that justice can only be done by the granting of bail, then and only then should bail be granted after conviction"*

…..The said Bail Act has succinctly set out that more stringent standards should be considered after conviction, which are distinctly different from those considered prior to conviction. In this sense, the norm is that bail after conviction is not a matter of right, and the Court of Appeal correctly held that this principle was applicable. Therefore, after conviction, bail would be granted only under exceptional circumstances."

Although the law is very clear with regard to granting of bail pending appeal, I am surprised on why the learned Counsel invited this Court to consider the ratio of **Dachchaini case** (Supra) which had been overruled by the Supreme Court.

Routine family matters would not generally be considered as "exceptional circumstances" in a bail application. This would be due to the fact that such situations are commonly faced by many individuals who are detained. In order to be considered exceptional, courts would require circumstances to be truly unusual, extraordinary or rare.

In **Attorney General v Ediriweera** (Supra) the Supreme Court held that;

> *"It is also to be noted in instances where bail after conviction is considered, the mere fact that he was a father or that the he had a profession and that he had no previous convictions should not alone be considered as exceptional circumstances as held in the aforesaid case of Ramu Thamothrampillai v Attorney General. These circumstances are not exceptional but circumstances which are general and operative in almost all the cases. The facts and circumstances of the case must take it out of the ordinary, creating circumstances that are sufficiently exceptional to merit the grant of bail despite the conviction".*

As per the judgment mentioned above, the exceptional circumstances would vary from case to case and would depend on the circumstances of the case.

The learned Counsel for the Petitioner, in his written submission drew the attention of this Court to the fact that the Accused has been sentenced to 5 years for two charges, which the learned High Court Judge has made it to run consecutively. If it did not run consecutively and had run concurrently, then the sentence would be only for 5 years.

This contention cannot be addressed in this revision application, as the contention raised certainly falls under the grounds of appeal.

In **Attorney General v Ediriweera** (Supra) Shiranee Thilakawardena, J. held that:

> *"In an application for bail after conviction the Appellate Court should not pre-empt the hearing of substantive appeal and pronounced upon the merits of appeal. The merits of the conviction are therefore a matter solely to be determined by the Appellate Court hearing the Appeal".*

The Court further held:

> *"…in the case of Ramu Thamodarampillai v Attorney General (SC 141/75) the court followed the well-recognised and uninterrupted practice of not granting bail pending Appeal to any convict sentenced to a term of imprisonment of Seven years or more and that this should be a norm to be adhered to…".*

The High Court Judge in his impugned order had very correctly and accurately considered the applicable law and legal norms and come to a correct finding that the Petitioner had failed to demonstrate the existence of exceptional circumstances. Although the learned Counsel for the Petitioner submitted that the Petitioner was sentenced to 10 years of imprisonment, upon examination of the judgement delivered in HC Colombo Case No.7259/2014, the Petitioner had been sentenced to 12 years and six months imprisonment.

In **Bank of Ceylon v Kaleel and Others** [2004] 1 SLR 284 it was held that:

> "*In any event to exercise revisionary jurisdiction the order challenged must have occasioned a failure of justice and be manifestly erroneous which go beyond an error or defect or irregularity that an ordinary person would instantly react to it-the*

order complained of is of such a nature which would have shocked the conscience of court".

Considering all the factors submitted above, I see no reason to revise the order of the learned judge of the High Court of Colombo. I too agree that the Petitioner had failed to demonstrate the existence of exceptional circumstances to the satisfaction of the court.

Further, I conclude that the material submitted by the Petitioner has failed to shock the conscience of this court. As such, I dismiss this revision application without cost.

JUDGE OF THE COURT OF APPEAL

Damith Thotawatta, J.

I agree.

JUDGE OF THE COURT OF APPEAL

Amal Ranaraja, J.

I agree.

JUDGE OF THE COURT OF APPEAL