

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

In the matter of an appeal in terms of
section 331(1) of the Code of
Criminal Procedure Act No 15 of
1979 read with Article 138(1) of the
Constitution of the Democratic
Socialist Republic of Sri Lanka.

Democratic Socialist Republic of Sri
Lanka

Complainant

C.A Case No.:CA (PHC) APN 55/2017

H.C Kuliypitiya Case No.: 137/12

Vs.

01. Thelasinghe Mudiyansele
- Chandrawathi Thelasinghe
02. Silmagurughe Julius Greshan

Accused

AND NOW BETWEEN

Thelasinghe Mudiyansele
Chandrawathi Thelasinghe (presently
at Wariyapola Prison)

Accused-Appellant-Petitioner

Vs

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

Complainant- Respondent

BEFORE : Padman Surasena, J. (P/CA)
K. K. Wickramasinghe, J.

Counsel : Nalin Ladduwahetty, PC with Keerthi sri
Gunawardena, Ashanthi De Alimaida and Shalika
Gunawardena for the Accused-Appellant-
Petitioner

Varunika Hettige, DSG for the Complainant-
Respondent

Written Submissions on : 29.11.2017 for the Complainant- Respondent
09.01.2018 for the Accused-Appellant-Petitioner

Decided on : 15.05.2018

K. K. WICKRAMASINGHE, J.

The Accused-Appellant-Petitioner (hereinafter referred to as the Petitioner) filed this revision application seeking to set aside the order, refusing bail by the Learned High Court Judge of the High Court of Kuliyaipitiya dated 13/03/2017. At the stage of argument it was agreed to conclude the case by way of filing Written Submissions and both parties had agreed to abide by the same.

Facts of the case:

The petitioner along with another indicted in the High Court of Kuliyaipitiya under the case number 137/2017, in terms of Sections 456 and 403 read with sections 113 and 102 of the Penal Code. After the trial, petitioner was found guilty for 1st, 2nd, 7th and 8th counts and was sentenced for 10 years Rigorous Imprisonment on each count separately with compensation to the victim and fines with default sentences. Further directed that the sentences for 1st and 2nd charges to run concurrently and sentenced for 7th and 8th charges to run concurrently. Thus the Petitioner was sentenced for 20 years Rigorous Imprisonment.

After the conviction, the Petitioner had filed a separate application for bail, to the High Court of Kuliyaipitiya. As exceptional circumstances, the petitioner averred the petitioner's health conditions, for not having previous convictions, not perverting the course of justice and the evidence. Learned High Court Judge had pronounced the order dated 13/03/2017 refusing to grant bail to the petitioner, on the ground that the petitioner had failed to demonstrate exceptional circumstances and when the health condition of the Petitioner is considered, the Medical Reports of the Judicial Medical Officer did not mention of any serious medical condition that is incapable of being treated inside the Prison or in the Prison Hospital.

Being aggrieved by the said order made by the Learned High court Judge, the Petitioner has filed this application for revision in this court. The Learned Counsel for the Petitioner states that the Learned High Court Judge had failed to consider the medical condition of the Petitioner which in fact was an exceptional circumstance.

In the case of **Sulaiman Lebbe Mohammed Uvais v Director General of Bribery (CA PHC APN 86/2010)**, citing the case of **Attorney General Vs Ediriweera (2006) BLR page 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."

It is further stated in the abovementioned Sulaiman Case, citing **Rex V s Muthuretty 54 NLR 43**,

"...that in a bail pending appeal, Court will not grant bail as a rule. Bail is granted only in exceptional circumstances. "

This court is of the view that the Learned High court Judge had correctly considered all aspects of bail pending appeal although the learned counsel for the petitioner argued to the contrary.

In the case of **Ramu Thamotheerampillai v Attorney General (2004) 3 Sri. L.R 180**, it was held that,

"...but the illness must be a present illness and that continued incarceration would endanger life or cause permanent impairment of health. Moreover there must be evidence of the nature of the illness and its effect."

Also, taking a similar view in the case of **Attorney General Vs Ediriweera (2006) BLR page 12**) it was held that,

"...he must additionally show that the illness was not only a present one but that continued confinement would imperil life or cause permanent impairment of his physical condition..."

It is important to draw attention to the well-recognized practice of not granting bail pending appeal to any convict sentenced to a term of imprisonment of 07 years or more. In the case of **Attorney General Vs Ediriweera (2006) BLR page 12)**,

Shiranee Tilakawardena, J, stated that

"...in the case of Ramu Thamotheerampillai v Attorney General (SC 141/75) the court followed the well-recognized 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..."

Accordingly the order of Learned High court Judge refusing the bail was sound in law since the sentence was exceeding seven years of imprisonment in this case.

When aforementioned authoritative cases are considered, it is abundantly clear that the intention of the legislature is that, unless the exceptional circumstances are demonstrated, bail shall not be granted.

Therefore considering severity of the punishment and the fact that the exceptional circumstances were not shown to exist, this court is of the view that the Learned High Court Judge was correct in refusing to admit the petitioner to bail.

Accordingly Revision application is dismissed without costs.

JUDGE OF THE COURT OF APPEAL

Padman Surasena, J

I Agree,

PRESIDENT OF THE COURT OF APPEAL