

**BENWELL**

v.

**THE ATTORNEY-GENERAL AND ANOTHER**

SUPREME COURT.

SHARVANANDA, C.J., ATUKORALE, J. AND

H. A. G. DE SILVA, J.

S.C. APPEAL No. 45/87; C.A. REV. APPLICATION 54/87;

H.C. COLOMBO EXTRADITION CASE No. 1 OF 1981.

AUGUST 27, 1987.

*Extradition—Bail—Committal under Extradition Law No. 8 of 1977 s. 10(4)—Jurisdiction of High Court to grant bail after committal—Extradition Law No. 8 of 1977 s. 10(2) — Code of Criminal Procedure Act, Sections 402, 403, 404 and 438—Power of Court of Appeal to release on bail.*

Once the High Court has made its order of committal it has no further jurisdiction to make any order impinging on the order of committal to custody. The power of the court of committal to release on bail is exercisable only for the "purpose of proceedings under section 10 of the Extradition Law" and does not extend to other purposes or stages after the proceedings under that section have terminated with the committal of the person subject to extradition proceedings.

Independent of s. 10(2), the Court does not have any inherent jurisdiction to release on bail. The Court of Appeal has no power to release on bail under s. 404 of the Code of Criminal Procedure Act. The power under s. 404 to release on bail is referable only to cases falling under sections 402 and 403. The appellant's case is not covered by sections 402 and 403. Further s. 438 provides that jurisdiction relating to fugitive persons shall be exercised in accordance with the law in force for the time being relating to fugitive persons and their extradition. The Extradition Law is the only law that governs proceedings relating to fugitive persons and their extradition in Sri Lanka.

**Case referred to:**

(1) *In re Ganapathipillai* (1920) 21 NLR 481, 492.

APPEAL from order of Court of Appeal.

*J. W. Subasinghe P.C.*, with *Miss Chandrani Jayawardene, D. J. C. Nilenduwa* and *Miss Saman Seneviratne* for petitioners.

*K. C. Kamalabayson SSC* with *K M. Parakrama Karunaratne S.C.* for respondents.

*Ur. adv. vult.*

September 17, 1987.

**SHARVANANDA, C.J.**

This is an appeal from the order of the Court of Appeal declining to revise the order of the High Court Judge refusing bail to the appellant who was committed to custody in terms of section 10(4) of the

Extradition Law No. 8 of 1977 (herein referred to as the Law) to await his extradition. The question that arises in this appeal is whether the High Court Judge has jurisdiction to release the person on bail after the court had committed him to custody to await his extradition.

On 12.01.1987 after the order of committal was made by the High Court of Colombo, Counsel for the appellant made an application to that court that the appellant be enlarged on bail. State Counsel appearing for the Attorney-General opposed the application and submitted that the court after committal had no jurisdiction to grant bail. The High Court Judge upheld the objection of the State Counsel and refused the application for bail. This order disallowing the application for bail was affirmed by the Court of Appeal.

Counsel for the appellant based his application for bail on the provision of section 10(2) of the Extradition Law which is the only section providing for bail in the entire scheme of the Law. It reads:

" For the purposes of proceedings under this section, a court of committal shall have the like jurisdiction and powers, including power to remand in custody or to release on bail as though the proceedings were in respect of an offence triable by that court."

The above sub-section admittedly vests jurisdiction in the court of committal to release the suspect on bail pending proceedings for this committal. But this jurisdiction to release on bail is vested in the High Court, which is the court of committal, in terms of section 10(1) of the Law, for the purposes only of proceedings under Section 10 of the Law—this purpose controls the wide ambit of the jurisdiction and powers referred to therein. The proceedings under the section terminate either in the discharge of the person from custody or in his committal to custody to await his extradition (section 10(4)). With the order of the committal under sub-section 4 of that section the proceedings come to an end. The court has no further jurisdiction to make any order impinging on the order of committal to custody.

Counsel for the Appellant contended that by virtue of section 10(2) of the Law, the provisions of sections 333(3), 402, 403 and 404 of the Code of Criminal Procedure Act No. 15 of 1979 relating to the power of the High Court to grant bail could be invoked by the appellant in support of his application for bail, after his committal under section 10(4) of the Law. But his contention overlooks the fact that the power

of the court of committal to release on bail is exercisable only for the "purpose of proceedings" under section 10 of the Law and does not extend to other purposes or stages after the proceedings under that section have terminated with the committal of the person subject to extradition proceedings.

The court of committal does not, independent of section 10(2), have any inherent jurisdiction to release on bail. Its power to do so is spelt only by section 10(2) of the Law (*vide in re Ganapathipillai*, (1) Counsel made reference to section 404 of the Code of Criminal Procedure Act No. 15 of 1979 which *inter alia*, provides that "notwithstanding anything to the contrary in this code or any other law the court of appeal may in any case direct that any person in custody be admitted to bail." It was urged that in any event, the court of appeal, had powers under this section to admit the appellant to bail. In my view, this section does not support Counsel's submissions. The expression 'in any case' can only refer to the cases referred to in the two previous sections, viz. 402 and 403 of the Code, and is not of general application. The Court of Appeal is empowered in the exercise of its appellate jurisdiction to admit any person in custody to bail in the cases referred to in sections 402 and 403. I agree with what Dias A.J., said on this point in the above case at page 492. The Appellant's case under the Extradition Law is not a case covered by the said sections 402 and 403. Hence section 404 does not give jurisdiction to the Court of Appeal to admit the appellant to bail.

Counsel for the appellant referred to the parallel provisions of the English Extradition and Fugitive Offenders Acts. But they have different orientations and are not safe guides. Further section 438 of the Code of Criminal Procedure Act No. 15 of 1979 provides that:—

"Jurisdiction relating to fugitive persons shall be exercised in accordance with the law in force for the time being relating to fugitive persons and their extradition."

This section does not permit the importation of any provisions or concepts of English Law other than the provisions of the Extradition Law No. 8 of 1977, in any matter relating to the exercise or regulation of jurisdiction relating to fugitive persons.

The Extradition Law is the only law that governs the proceedings relating to fugitive persons and their extradition in Sri Lanka.

I agree with the Court of Appeal that the High Court has no power to grant bail after it had, at the conclusion of proceedings under section 10 before it, made order committing the appellant to custody to await his extradition.

The appeal fails and is dismissed.

**ATUKORALE, J.**—I agree.

**H. A. G. DE SILVA, J.**—I agree.

*Appeal dismissed.*

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