## GUNASEKERA AND OTHERS
## VS
## RAVI KARUNANAYAKE

COURT OF APPEAL
MARSOOF P. C. J(P/CA),
SRISKANDARAJAH J.
CA (MC REV) 05/2004,
M.C. FORT 60956
NOVEMBER 2, 10, 17,24, 2004
DECEMBER 6, 2004

*Public Property Act,12 of 1982 - Section 3(2)- as amended by Act, 28 of 1999- Section 8 - Bail Act, No. 30 of 1997- Sections 3, 3(1), 21, Code of Criminal Procedure Act 15 of 1979 - Anticipatory Bail - Offences against Public Property Act-Applicability of the Bail Act?- ejusdem generis rule - Evidence Ordinance S 57(4)-Written Law - Prevention of Terrorism (Temporary Provisions) Act, 48 of 1979 - Could reference be made to the Parliamentary Debate ? - Official Secrets Act. 1920.*

The Respondent was suspected to have committed an offence under the Offences against Public Property Act. The respondent sought and was granted anticipatory Bail under the provisions of the Bail Act. The petitioner (officer in charge of the Anti Corruption Unit of the Crime Division) sought to revise the said Order on the sole ground that, as the Respondent was suspected to have committed an offence defined under the Offences against Public Property Act, Bail Act has no application -

**HELD** -

(i) To exclude a written law from the application of the Bail Act as provided under Section 3 of the Bail Act that written Law should provide express provision in respect of the release on bail of persons accused or suspected of having committed or convicted of offences under that written law.

(ii) The Bail Act provided for the procedure, forum and the conditions for the release of a person at the time of investigation, at the time of trial after conviction. Bail Act was enacted to have a clear policy and to lay guidelines to Bail.

(iii) The offences against Public Property Act does not provide for the procedure or forum but provides a condition for the release of persons at the time of investigation, at the time of trial and after conviction. The condition is in relation to the serious nature of the offence.

(iv) The release of persons on bail for an offence committed or suspected to have committed under the offences against Public Property Act in view of the provisions in Section 3(2) of the Bail Act has to be read with the Bail Act. The Court that releases a person on Bail is considering the condition laid down in offences against Public Property Act cannot act in isolation of the Bail Act as it provides not only the procedure but also other restrictions under Section 14 for the release of a person on Bail.

(v) The Bail Act is a general Act, the Offences against the Public Property Act is a special Act in relation to specific offences.

(vi) The proposition that the Bail Act is not applicable to the Offences against Public Property Act cannot be accepted.

(vii) It is legitimate to make reference to the debate that preceded the passage of the Bail Act in Parliament in order to clarify the ambuguities in Section 3 of the Act.

**APPLICATION** in Revision from an Order of the Magistrate's Court of Fort.

**Cases referred to** :

1. *Thilanga Sumathipala* vs *I. G. P. and* three others 2004 1 Sri LR 210
2. *Davis* vs *Johnson* - 1978 1 All ER 132
3. *Escoigne Properties* Ltd., Vs I.R.C. 1958 AC 549 at 566
4. *Sirisena* and others vs *Kobbekaduwa*, Minister of Agriculture and Lands - 80 NLR 1
5. *Manawadu* vs *Attorney General* - 1987 2 Sri LR 30
6. *J. B. Textiles* Ltd vs *Minister of Finance* - 1981 1 Sri LR 156
7. *Jeyaraj Fernandopulle* vs *De Silva and others* - 1996 1 Sri LR 22 at 34
8. *Pepper* vs *Hart* - 1993 1 All ER 42
9. *Anuruddha Ratwatte and 4 others* vs *Attorney General* - 2003 2 Sri LR 39

*W. P. G. Dep*, P. C., Addl. Solicitor General with *B. P. Aluvihare* S. S. C., for Respondent Petitioners

*K. N. Choksy* P. C., with *Kalinga Indatissa*, *Ms. Krishan Wijetunge*, *V. K. Choksy*, *Ranil Samarasooriya* and *Jayantha Jayaweera* for Petitioner Respondent

*cur adv vult*

January 1, 2005.
**Sriskandarajah J.**

This is an application filed by the 1st and 2nd Respondents - Petitioners (hereinafter referred to as the Petitioners) to revise an order of the learned Magistrate, Colombo Fort dated 06.07.2004 granting anticipatory bail to the petitioner - Respondent (hereinafter referred to as the Respondent) under Section 21 of the Bail Act, No. 30 of 1997.

Petitioners urged several grounds in their petition to revise the said order of the learned Magistrate but learned Additional Solicitor General relied only on two grounds at the time of arguing this application. Firstly ; that the Magistrate should not have issued notice in the first instance as the offence disclosed in the application for anticipatory bail is not a non-bailable offence. Secondly ; the Respondent is suspected to have committed an offence under the Offences against Public Property Act, No.12 of 1982 as amended and therefore he is not entitled to obtain anticipatory bail.

The learned Additional Solicitor General in his written submissions restricted his submissions to the second of the aforesaid grounds to revise the order of the learned Magistrate and did not pursue the first ground. He submitted that the Respondent was suspected to have committed an offence defined under the Offences against Public Property Act. As this Act makes express provision in respect of the release on bail of persons accused or suspected of having committed an offence, the Bail Act has no application to the offences under this Act. Therefore he submitted that the Magistrate had erred in resorting to the provisions of the Bail Act to grant anticipatory bail to the respondent.

Section 3(1) of the Bail Act No. 30 of 1997 reads as follows :

"Nothing in this Act shall apply to any person accused or suspected of having committed, or convicted of, an offence under, the Prevention of Terrorism (Temporary Provisions) Act, No. 48 of 1979, Regulations made under the Public Security Ordinance or any other written law which makes express provision in respect of the release on bail of persons accused or suspected of having committed or convicted of, offences under such other written law."

Learned Additional Solicitor General submitted that 'any other written law' which is specified in Section 3 (1) of the Bail Act means any written law which has express provisions pertaining to the release on bail of persons accused or suspected of having committed or convicted of offences under such written law. Petitioners also submitted that the *ejusdm generis* rule has no application to 'any other written law' for the reason that in this section after referring to Prevention of Terrorism Act, Regulations made under Public Security Act and any other written law.the sentence did not come to an end but it continued by describing the necessary requirements

of "any other written law". The necessary requirements or qualifications that are mentioned in the sentence are namely : "Which makes express provision in respect of the release on bail of persons accused or suspected of having committed, or convicted of , offences under such other written law". He submitted that the criteria spelt out in this sentence should be applied to ascertain whether a particular Act falls within 'any other written law'.

Learned Additional Solicitor General submitted that the Bail Act deals with persons accused or suspected of having committed or convicted of offences. That is, the Act contemplates three categories of persons namely : suspects, accused and convicted persons. He further submitted that the Prevention of Terrorism Act, Emergency Regulations and Offences against Public Property Act have express provisions pertaining to granting of bail to all the said three categories of persons. Therefore the Offences against Public Property Act is a written law that is contemplated in Section 3 of the Bail Act and as provided by this section it is excluded from the application of the Bail Act. The petitioners also contended that as the applicability of the Bail Act is excluded for Offences against Public Property Act, Section 3 (2) of the Bail Act also has no application to this Act. For these reasons the petitioners submitted that the Magistrate could not grant anticipatory bail under Section 21 of the Bail Act to the respondent against whom there is an allegation that he is suspected to have committed an offence under the Offences against Public Property Act.

Learned President's Counsel for the Respondents relied on the judgement of Justice Gamini A. L. Abeyratne in *Uduwatuwage Janathpriya Thilanga Sumathipala vs the Inspector General of Police and three others*[(1)] when interpreting Section 3 of the Sinhala text of the Bail Act which prevails over the English text of the Bail Act, His Lordship had held that "any other written law" in section 3 of the Bail Act refers to the Prevention of Terrorism Act and the Public Security Ordinance and no other written law is contemplated by that Section."

The learned Additional Solicitor General submitted that it appears that there is a discrepancy between the Sinhala text and the English text and the Sinhala text should prevail over the English text. But this difference is mainly due to the grammatical variations and the different method of

constructing sentences in the Sinhala and English languages. This ambiguity could be resolved by interpreting the section in a manner that will manifest the intention of the legislature. He urged that the court could resort to exceptional construction method to resolve this problem. He relied on the passage in Rupert Cross in his book on Statutory Interpretation (1976 pp 84-98) which states thus :

> "The judge may read in words which he considers to be necessarily implied by words which are already in the statute, and he has a limited power to add to, alter or ignore statutory words in order to prevent a provision from being unintelligible or absurd or totally unreasonable, unworkable or totally irreconcilable with the rest of the statute"

The learned Additional Solicitor General further submitted that the court in an appropriate case could add words or substitute words to give effect to the purpose of the statute. Section 3 of the Official Secrets Act 1920 prohibit persons "In the vicinity of" any, prohibited place from impeding sentries. The accused pleaded that although he was within the perimeter of a Royal Air force Station, he had not literally been in the vicinity or neighbourhood. However, Court added the word "in or" in the vicinity of to give effect to the object of the statute. In the same way Court had corrected statutes by substituting 'and' for 'or' or *vice versa*. Therefore the petitioners submitted in the same way the word "or" (in Sinhala හෝ) which causes the ambiguity could be resolved and the proper construction of that section would be that in addition to Prevention of Terrorism Act and the Regulations under Public Security Ordinance other written laws such as the Offences against Public Property Act are also contemplated.

In this context the question arises as to whether it is legitimate to have regard to the proceedings in Parliament which preceded the enactment of the legislation in question in order to understand the intention of Parliament. The traditional view that prevailed in the United Kingdom was that a court of law will not generally look at the proceedings in Parliament to ascertain the meaning of enacted legislation. In accordance with this view, in *Davis v. Johnson*[2] Viscount Dilhorne referred to the well established and well known rule that "Counsel cannot refer to Hansard as an aid to the construction of the Statute". In Escoigne Properties Ltd. v. I. R. C.[3] at 586 Lord Denning said :

".........In this country we do not refer to the legislative history of an enactment as they do in the United States of America. We do not look at the explanatory memoranda which preface the Bills before Parliament. We do not have recourse to the pages of Hansard. All that the courts can do is to take judicial notice of the previous state of the law and of the other matters known to well - informed people.".

Consistently with this approach, our courts too have shown considerable reluctance to use speeches made in parliament for the determination of the intention of Parliament. In *Sirisena and Others V. Kobbekaduwa, Minister of Agriculture and Lands*[(4)] the Supreme Court was invited to look at the Hansard Particularly at the Minister's speech and ascertain the intention of Parliament. Vytilingam J in what may be considered the majority judgement in that case, showed some reluctance to do so, and observed at page 71 that -

"For my part I am of the view that we ought not to do so unless there is such great ambiguity in the words that looking at the Hansard alone would be decisive."

In *Manawadu v. Attorney - General*[(5)] when a similar invitation was made, Sharvananda C. J. preferred to apply accepted canons of interpretation of statutes to ascertain the intention of Parliament, although Seneviratne J in his dissenting judgement relied on the views expressed by the Minister in Parliament to interpret the legislation in question.

However, it is noteworthy that in *J. B. Textiles Ltd.* v. *Minister of Finance*[(6)] Samarakoon, CJ expressed the view that Hansards are admissible to prove the course of proceedings in the Legislature in terms of Section 57(4) of the Evidence Ordinance, and that they constitute evidence of what was stated by any speaker in the Legislature. His Lordship observed at 164 that-

"The Hansard is the official publication of Parliament. It is published to keep, the public informed of what takes place in Parliament. It is neither sacrosanct nor untouchable."

The above *dictum* of Samarakoon CJ was quoted with approval by Mark Fernando J in the Majority judgement in *Jeyaraj Fernandopulle v De Silva*

*and others*[7]. In *Pepper v Hart*[8] the House of Lords shifted from the traditional approach and permitted the use of the Hansard to ascertain the intention of the legislature where the very issue of interpretation which the Court was called upon to resolve had been addressed in the Parliamentary debate and the promoter of the legislation had made a clear statement on the very issue. Lord Browne- Wilkinson observed at 69 that-

> "I therefore reach the conclusion, subject to any question of parliamentary privilege, that the exclusionary rule should be relaxed so as to permit reference to parliamentary materials where: (a) the legislation is ambiguous or obscure or lead to an absurdity; (b) the material relied on consisted of one or more statements by a minister or other promoter of the Bill together if necessary with such other parliamentary material as is necessary to understand such statements and their effect ; (c) the statements relied on are clear."

It is therefore legitimate to make reference to the debate that preceded the passage of the Bail Act in Parliament in order to clarify the ambiguity in Section 3 of the Act.

Hon. Prof. G. L. Peris, Minister of Justice (as he then was) when presenting the Bail Bill in Parliament on 2nd October, 1997 at the second reading (reported in Parliamentary Debates (Hansard) Volume 113 No. 5 Tuesday, 7th October, 1997) stated :

> "Mr Speaker, there have been various judicial decisions on this subject, but I think the time has come for Parliament to lay down clearly the principles that should govern the grant of bail. It is not a matter which can be left any longer entirely in the hands of the courts. This is because there are conflicting stands of decision and there is a great deal of confusion which has to be rectified by the intervention of Parliament. Parliament laying down very clear guidelines which will be binding on the courts in the future; Now that, Mr. Speaker, is exactly what we have done by means of this legislation."

At the close of his speech he said :

> "Those, Mr. Speaker, are the main provisions of this law. It has been necessary to exclude certain statutory regimes from the ambit of application of this law. The bill which I have the honour to present does

not apply to the *Prevention of Terrorism Act.* Offences under the Prevention of Terrorism Act are not caught up within the ambit of this law because there are special considerations applicable to the safety of the State.

*Salus Civitatis Suprema Lex* has always been an axiom of the law. The security of the State is of the highest possible legal value. In recognition of that reality we have refrained, for the moment, from bringing the Prevention of Terrorism Act within the applicability of this particular law. That is a matter to be considered in the future. I am not foreclosing that for all time. These matters are required to be assessed from time to time with changing circumstances. But right now we think that the right balance to be struck does not allow us to bring offences under that particular statutory regime within the four corners of this particular law. For the same reasons Mr. Speaker, Regulations under the Public Security Ordinance will also not be regulated by the provisions contained in this new piece of legislation Nor will this legislation apply to other written laws which contain express provisions in respect of bail for persons accused of offences under such laws."

Mr. Tyronne Fernando, Member of Parliament in his speech said :

"I very much welcome your clause on anticipatory bail. I think India is the only place where anticipatory bail has been in force since 1970. Sir, I would like to quote from Mr. P. V. Ramakrishna's "Law of Bails". There they give the reason for this anticipatory bail. This anticipatory bail, Sir, was made use of by even Mr. Narasinha Rao, the former Prime Minister, when the guns were turned on him. He did not want to be embarrassed by being suddenly picked up by the police. So, he went and got this anticipatory bail. That is precisely the reason why the anticipatory bail has been allowed, why there is provision. May I quote, Sir?

"the provision for anticipatory bail has been incorporated mainly in order to relieve a person from being disgraced by trumped up charges".

These trumped up charges are very common features in our part of the world, Sir. It is very salutary that this anticipatory bail has been brought in the case of non-bailable offences. One word of caution I want to address to the Hon. Minister. He Spoke about bailable and non-bailable offences and the machinations of the police and the local powers.

A bailable offence can easily be turned into a non-bailable offence by sleight of hand. I have a very good example for you. One of our youth candidates at the local government elections was remanded, just before nomination, for eight days on a trumped up charge. Soon after the local bodies were dissolved he had removed some files from the municipal council. He was then remanded on the basis of a "B" report which said, "පොදු දේපල පනත යටතේ රු. 5000 කට අධික දේපල සොරා ගැනීමක් නිසා යැයි කියා එයාව රිමාන්ඩ් කළා." Ten days later, Sir, I got a young lawyer called Weerasuriya to go into the case. The lawyer got the Magistrate to examine what these files are, whether they were of some million dollar affairs or some petty files important to this person. We still have files we have brought from our Ministries pertaining to various personal things of ours. Ultimately, after ten days this young man was remanded, just before the local government elections campaign, and the Magistrate held :

"අධිකරණය විසින් මෙම ලිපිගොනුවල ලේඛන පරීක්ෂා කරන ලදී. මෙම ලේඛනවල කිසිදු වටිනාකමක් ඇතැයි සැළකීමට නොහැක. ඒ අනුව මෙම දේපලවල වටිනාකම රු. 5,000 කට වැඩිය යන්න තක්සේරු කළ නොහැක. ඇප දෙමි."

So for ten days, purely by the police filing a 'B' report saying some files worth over Rs.5,000 are missing, this young man was in remand. We welcome your new law because this is a non-bailable offence on the 'B' report. He could have gone to court and got anticipatory bail".

In the Minister's speech he has clearly stated that Section 3 of the Bail Act excludes the applicability of the Bail Act to the Prevention of Terrorism Act, Regulation under the Public Security Ordinance nor will this legislation apply to other written laws which contain express provision in respect of bail for persons accused or suspected of having committed or convicted of offences under such law. Therefore the said ambiguity Sinhala text of the Baid Act could be resolved by considering the intention of the legislature which contemplates other written laws in addition to Prevention of Terrorism Act and Regulation made under Public Security Ordinance.

It is also manifest from the Minister's speech that the intention of the legislature is to exclude certain statutory regimes which have special consideration applicable to the safety of the State from the ambit of the application of the Bail Act. Therefore any other written law mentioned in

Section 3 of the Bail Act has to be read in *ejusdem generis* to the Acts mentioned in that section. The Offences against Public Property Act cannot be considered as an act which has concerns applicable to the safety of the State. Therefore this act cannot be considered as an Act which was intended by the Legislature to exclude from the applicability of the Bail Act. Mr. Tyronne Fernando, Member of Parliament in his speech has specifically referred to a situation under the offences against Public Property Act and welcomed the new law (Bail act) because the provision for anticipatory bail could be resort to in the future for non bailable offences under the offences against Public Property Act. It is clear from the speeches of the Minister of Justice and Mr. Tyronne Fernando, Member of Parliament mentioned above that the intention of the legislature is not to exclude the applicability of the Bail Act to the Offences against Public Property Act.

In my view to exclude a written law from the application of the Bail Act as provided under Section 3 of that act that written law should provide express provision in respect of the release on bail of persons accused or suspected of having commited, or convicted of, offences under that written law. This is similar to the long title of the Bail Act which reads as "An act to provide for release on bail of persons suspected or accused of being concerned in committing or having committed an offence." Chief justice Sarath N Silva in Anuruddha Ratwatte and 4 others vs Attorney General[9] observed.

"The Bail Act No. 30 of 1997 was passed by Parliament as stated in the long title to "provide for release on bail of persons suspected or accused of being concerned in committing or of having committed an offence".... A person is considered as being suspected of having committed an offence" at the stage of investigation and he would be considered as an accused after he is brought before a court on the basis of a specific charge that he committed a particular offence. He would remain an accused until the trial is concluded and a verdict of guilty or not guilty is entered or he is discharged from the proceedings. Thus the provisions of the Bail Act would apply in respect of all stages of the criminal investigation and the trial."

The stages in which a person could be released on bail enumerated in the long title of the Bail Act and the stages provided in section 3 of the Bail Act are similar. The Bail Act, the Prevention of Terrorism Act and the

Emergency Regulation (which was in force) provided for the procedure, forum and the conditions for the release of a person at the time of investigation, at the time of trial and after conviction. Therefore by necessary implication the written law mentioned in Section 3 of the Bail Act should also provide for the **procedure, forum and the conditions** for the release of a person at the time of investigation, at the time of trial and after conviction.

The offences against Public property Act No.12 of 1982 as amended by Act No. 28 of 1999 under section 8(1) does not provide for the **procedure or forum** but provides a condition for the release of person at the time of investigation, at the time of trial and after conviction. The condition is in relation to the serious nature of the offence namely, if the value of the subject matter in respect of which the offence committed exceeds Rs.25,000 then that person should be released on bail only on exceptional circumstances. The provisions in this Act clearly show that these provisions are not self-contained to release a suspect or accused on bail and it categorically states that in relation to bail Code or Criminal Procedure Act shall apply.

Section 8(1) of the offences against Public property Act as amended provides :

> "The provisions of the Code of Criminal Procedure Act, No.15 of 1979, in relation to bail shall apply where any person surrenders himself or is produced on arrest on an allegation that he has committed or has been concerned in committing or is suspected to have committed or to have been concerned in committing an offence under this Act :
>
> Provided, however, that where a Gazetted officer not below the rank of Assistant Superintendent of Police certifies that the value of the subject-matter in respect of which the offence was committed, exceeds twenty five thousand rupees such person shall be kept on remand until the conclusion of the trial. It shall be competent for the court in exceptional circumstances to release such persons on bail after recording reasons therefore."

The Provisions laying conditions to release a suspect or accused on bail embodied in the above section was enacted before the enactment of Bail Act. The Bail Act was enacted to have a clear policy and to lay guide lines to bail. Section 3(2) of the Bail Act provides :

3(2) Where there is a reference in any written Law to a provision of the Criminal Procedure Code Act, No.15 of 1979 relating to bail, such reference shall be deem, with effect from the date of commencement of this Act, to be a reference to the corresponding provision of this Act.

Therefore, the release of persons on bail for an offence committed or suspected to have committed under offences against Public property Act in view of the provisions in Section 3 (2) of the Bail Act has to be read with the Bail Act. The court that releases a person on bail in considering the condition laid down in offences against Public Property Act cannot act in isolation of the Bail Act as it provides not only the procedure but also other restrictions under Section 14 for the release of a person on bail.

The Bail Act is a general Act in relation to Bail which provides for the procedure, the conditions and the court by which a person could be released on bail but offences against Public Property Act is a special Act in relation to specific offences. Therefore, the condition that suspect or an accused could be released on bail only on exceptional circumstances shall prevail. This condition in the said Act is not in conflict with the provisions of the Bail Act. Even though, the guiding principle of the Bail Act is that the granting Bail shall be regarded as the rule and the refusal to grant bail as the exception. The specific circumstances of exceptions to refuse bail are given in Section 14 of the Bail Act. Section 15 of the Bail Act has also laid down provisions empowering Court to refuse bail after giving reasons for the refusal. One of the reasons for which a bail could be refused to a person who is suspected or accused of having committed an offence under the offences against Public Property Act is the absence of exceptional circumstances.

Under these circumstances the submission of the Petitioners that the Bail Act is not applicable to the offences against Public Property Act cannot be accepted. The petitioners did not pursue any other grounds to challenge the order of the learned Magistrate in granting anticipatory bail. This court after careful consideration of the Judgment of the Magistrate has decided not to interfere with the order of the Magistrate as there is no illegality in the order. Therefore, this Court dismisses the application of the petitioners without costs.

**MARSOOF J, (P/CA)** - *I agree*

*Application dismissed.*