

**PATHIRANA AND ANOTHER**  
**v.**  
**O.I.C. NITTAMBUWA POLICE**

**COURT OF APPEAL.**  
**RAMANATHAN, J. AND PERERA, J.**  
**CA 239/88.**  
**M. C. ATTANAGALLE No. 148/88.**  
**MARCH 16, 1988.**

*Criminal Procedure – Bail – Right to bail – Code of Criminal Procedure Act. s. 402.*

As offences under sections 314, 315 and 316 of the Penal Code are described as bailable under the Code of Criminal Procedure Act and s. 402 of the said Procedure Act provides that "when any person other than a person accused of a non-bailable offence appears or is brought before a Court and is prepared at any time at any stage of the proceedings before such Court to give bail such person shall be released on bail", the accused is entitled as of right to be released on bail at any stage of the proceedings. An order of remand in such circumstances is an illegal order.

APPLICATION for revision of an order of the Magistrate of Attanagalle.

*C. Sooriaratchi* for petitioner.  
*No appearance for respondent.*

March 16, 1988.

**PERERA, J.**

This is an application made to this Court in terms of Section 404 of the Criminal Procedure Code Act No. 15 of 1979 in respect of two suspects who have been produced before the Attanagalla Magistrate on 11th March, 1988 and remanded to fiscal's custody. According to the B report filed by the Nittambuwa police the suspects are alleged to have committed offences under Sections 314, 315, 316 of the Penal Code. The learned Magistrate has remanded these suspects till the 23rd of March, 1988 on the basis that the investigations into this matter have not been concluded.

Mr. Sooriarachchi on behalf of the suspects submits that this order of the learned Magistrate is in contravention of Section 402 of the Code of Criminal Procedure Act No. 15 of 1979. It is his submission that these offences under Sections 314, 315 and 316 are offences which are described as bailable offences under the provisions of the Code of Criminal Procedure Act. Counsel also adverted to the provisions of Section 402 of the Criminal Procedure Code which provides that 'when any person other than a person accused of a non-bailable offence appears or is brought before a Court and is prepared at any time at any stage of the proceedings before such Court to give bail, such person shall be released on bail'. It is counsel's submission that the order of the learned Magistrate is in direct contravention of the provisions of section 402 of the Code of Criminal Procedure Act. He submits that in terms of this provision a suspect is entitled as of right to be released on bail in these circumstances at any stage of the proceedings. The order of the learned Magistrate therefore refusing the application made on behalf of the suspect for bail is an illegal order. He also invited the attention of this Court to the fact that the learned Magistrate has in the course of the order stated that the police had no objection to the release of the suspects on bail.

We have however informed counsel that the proper procedure which should have been followed in this matter was for the petitioner to have filed an appeal against the order of the learned Magistrate and not made an application in terms of Section 404 of the Criminal Procedure Code.

However in view of the illegality of the present order we are of the view that this is a fit case in which we should set aside the order of the Magistrate acting in revision. We therefore set aside the order of the learned Magistrate dated 11.03.1988 remanding these two suspects to fiscal custody. We direct the Magistrate to release these two suspects on bail in a sum of Rs. 1000/-- (cash) each. The suspects will also furnish two sureties acceptable to Court.

RAMANATHAN, J.—I agree.

*Application allowed and bail ordered.*

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