RAMU THAMOTHARAMPILLAI
v
ATTORNEY-GENERAL

SUPREME COURT
VYTHIALINGAM, J.
SHARVANANDA, J.
GUNASEKERA, J.
SC 141/75.
HC 53/74 JAFFNA
(Revision).
M.C.POINT PEDRO 10990.
APRIL 3 , 1975.

Administration of Justice Law, No. 44 of 1973, sections 192(3), 269, 270(1) and 325(3) – Criminal Procedure Code (old), section 15(1), 15(2) and 341 – Granting of bail pending appeal? – Changes brought in by section 325(3) – Are exceptional circumstances necessary? – What are exceptional circumstances ? – Power of the Supreme Court to enlarge a person on bail?

The petitioner (moved to revise the order made by the High Court of Jaffna refusing to grant him bail pending his appeal against his conviction and sentence.

The High Court refused the application on the ground that the petitioner has not shown any exceptional circumstances.

It was contended that the provisions in the Criminal Procedure Code (old) would not be applicable after the passing of the Administration of Justice Law (AJL) more particularly section 325(3) and that there was no burden cast on the petitioner to show that exceptional circumstances existed, and that, bail should be granted unless good grounds existed for its refusal.

Held:

Per Vythialingam, J.

"If the true position under the present Law (AJL) is that ordinarily bail should be granted unless there were good grounds for refusing it, it would lead to the incongruous position that even a person convicted of murder and sentenced to death should be allowed to stand out on bail pending appeal unless there were good grounds for refusing it ....."

(1) That the intention of the legislature in enacting section 325(3) (AJL) was not to make the grant of bail a matter of course unless good grounds were shown to the contrary is made clear by section 325(2) (AJL)

Per Vythialingam, J.

"Where the intention of the legislature was that bail should be granted unless there were good grounds to the contrary it has said so is no unmistakable terms, sections 192(2) and 103 (2). There is a marked difference between the words of sections 192 (3), 106(2) and 325(3).

(2) Supreme Court has no inherent right to grant bail, nor has it power to do so under the Common Law. The power to grant bail is now vested in the Court by the AJL and other relevant enactments. It has wide discretion to grant or refuse bail under section 325(3).

(3) *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.

APPLICATION in Revision from the High Court of Jaffna

Cases referred to:

1. *Salahudeen* v *A.G* 77 NLR 262 at 263
2. *R v Mafika* (1995) SALR 1
3. *In Re Ganapathipillai* 21 NLR 490
4. *The Queen* v *Spillbury* (1890) 2 QB 609
5. *P. Kannasamy* v *The Minister of Defence and External Affairs* 63 NLR 214
6. *Queen* v *Liyanage* 65 NLR 289

7. *Ward* v *James* (1965) 1 AER 563
8. SC 1070/74 – Rev. H.C.C. 41/74 SCM 23.1.1975
9. *Naidu* v *Mudalige* 76 NLR 385 at 387
10. *Queen* v *Punchi Banda* 62 CLW 15
11. *Queen* v *N.L. Cornelis Silva* 74 NLR 113
12. *Rex* v *Cooray* 51 NLR 360

V.S.A Pullenayagam with *C. Mothilal Nehru, Dr. T. Tiruchelvam* and *T. Edward Chandra* for petitioner.

D.S. Wijesinghe, Senior State Counsel for A.G.

Cur.adv.vult.

April 3, 1975

VYTHIALINGAM, J.

The petitioner in this case moves this Court to revise the order made by the High Court Judge, Jaffna, refusing to grant him bail pending his appeal to this Court against his conviction and sentence in that Court. He was charged on two counts of murder and one of attempted murder along with eight others and was convicted on the charge of attempted murder and sentenced to seven year's rigorous imprisonment and a fine of Rs. 1,000/- in default, one year's rigorous imprisonment.

The grounds on which he relied for the grant of bail are that he has to make arrangements to retain Counsel to argue his appeal and to attend to other matters relating thereto, that he is the father of six children who are still attending school, that he is fifty-five years old, is suffering from rheumatism, feeble and ill, that he is a farmer and that he has not been convicted or even charged in any Court of Law prior to this.

The High Court refused the application for bail on the ground that the petitioner was the person who started the quarrel on that day and that during the trial it had been brought to his notice that a breach of the peace was imminent as soon as the case was concluded, so much so that he had to direct the Police to patrol the area for two weeks to avoid clashes. He also went on to say that "learned Counsel for the 3rd accused (i.e. the petitioner) has not shown any exceptional circumstances as to why I should allow the 3rd accused to be on bail till his appeal is decided."

The matter is now governed by section 325(3) of the Administration of Justice Law No, 44 of 1973 which is as follows: "When an appeal against a conviction is lodged, the Court may admit the appellant to bail pending the determination of his appeal". Mr. Pullenayagam for the petitioners submitted that the words must be given their natural and ordinary meaning and that having regard to the legislative history of the section the position now under the new Act is that bail pending appeal should ordinarily be granted unless there are good grounds for refusing it.

Mr. Pullenayagam submitted that this section made significant changes in the law as it stood in regard to the granting of bail. He pointed out that under the old law there were different provisions in respect of applications made by persons convicted in the Magistrates' and District Courts on the one hand and applications made by persons convicted in the Supreme Court on the other, and that different considerations applied to each. He submitted that under section 341 of the old Criminal Procedure Code in the case of appeals from the Magistrates' or a District Courts it was mandatory the part of the court from which the appeal was preferred to grant bail. No discretion to refuse bail was vested in such a case.

On the other hand in the case of an appeal by a person convicted after trial in the Supreme Court, a discretion was vested in the Court of Criminal Appeal to grant or refuse bail, because section 15 (1) of the Court of Criminal Appeal Act (Cap 7) provided that the Court may, if they think fit, on the application of an appellant, admit the appellant to bail pending the determination of his appeal. Mr. Pullenayagam argued that now, under section 325(3) the discretion was vested in all the Courts – Magistrates', District and High Courts, to grant or refuse bail because that section applied to all the Courts.

He submitted that to make exceptional circumstances a requirement for the grant of bail in all such cases would be to place an unwarranted restriction on the exercise of the discretion vested in the courts by the section and would also lead to harsh and unconscionable results if Magistrates and District Judges were also to insist on the presence of exceptional circumstances to grant bail even in the case of appeals against convictions for trivial offences

for which very light sentences had been considered a sufficient punishment.

He therefore submitted that the principle laid down by the former Court of Criminal Appeal as a guide for the exercise of the discretion vested in the Court under section 15(1) viz: that "It is a settled principle that the release of a prisoner on bail pending an appeal to the Court of Criminal Appeal will only be granted in exceptional circumstances."*Per* Samarawickrema, J. in *Salahudeen* v *Attorney-General* (1) is wholly inapplicable for the grant of bail under section 325(3) which is a section which is now applicable to all the three courts. He also submitted that recent decisions of this court had mechanically applied this principle to section 325(3) and needed to be reviewed. He argued that in this case the trial Judge had erred in law in requiring the petitioner to show that there were exceptional circumstances to be entitled to be admitted to bail under section 325(3).

It is undoubtedly true that section 325(3) is applicable to all three courts and any principles laid down as a guide to the exercise of the discretion vested under the section should be of general application to all three courts. But in deciding how the discretion should be exercised the determining factor is not the court from which the appeal has been preferred but the fact and circumstances of each case. It is not correct to say as contended by Mr. Pullenayagam that the legislative history of the section shows–that what the legislature intended was that ordinarily bail should be granted unless there were good grounds for refusing it but that, as pointed out by the Senior State Counsel, it was considered necessary to vest the discretion in the Magistrates' and District Courts as well because their jurisdiction to hear and determine cases involving offences of a more serious nature as well as their punitive powers had been greatly enlarged by the new law.

"Under the old Criminal Procedure Code (Cap. 20) a District Court could sentence a person only to imprisonment not exceeding two years, a fine not exceeding one thousand rupees, whipping or any lawful sentence combining any two of the aforesaid sentences (section 14).A Magistrate's Court could only sentence a person to imprisonment not exceeding six months, a fine not exceeding one hundred rupees, whipping if the offender was under sixteen years

of age or any lawful sentence combining any two of the sentences aforesaid (section 15(1)). This is of course subject to any special powers of punishment given to Magistrate's Court under any other enactments (section 15(2)).

Having regard to the delays in appeals coming up for hearing after it had been filed, if Magistrates and District Judges had been given a discretion to grant or refuse bail pending appeal then, if an application for bail had been refused, it could have well happened that the appellant would have been confined in goal though not as a prisoner serving his sentence of imprisonment but as an appellant under special treatment in such manner as may be prescribed by prison regulations, for a much longer period than the term of imprisonment to which he had been sentenced.

In this connection the Senior State Counsel referred us to the South African case of *R* v *Mafika* (2). In that case Clayden, J. said at page 2, "In the case of the Supreme Court, the offences with which the Court deals are likely to be of a far more serious nature and therefore, there is good reason for the court to exercise discretion as to whether a person should be admitted to bail or not; especially when that discretion is coupled with the power to allow the appellant to stay in goal without the performance of hard labour. But with the less serious crimes which come before Magistrates and with the necessity that persons would have to serve their sentences or portion of their sentences before their appeals can be heard there seems to be every reason, why, provided sufficient bail is given, a convicted person should as of right be allowed to provide bail, so as to preserve for himself the right not to serve his sentence should the appeal succeed".

Apparently in South Africa, in the case of appeals from a Magistrates' Court there was no power to stay hard labour pending appeal, though the Court of Appeal later had the power to direct that the period the appellant had been in custody should be regarded as part of the sentence. In our case however, in the case of Magistrates' Courts and District Courts where the granting of bail is mandatory section 342(4) of the repealed Criminal Procedure Code provides that where a person sentenced to imprisonment is unable to give the required recognizance he shall be detained in custody without hard labour until the judgment of the Supreme Court is made known and

subsection 5 vests a discretion in the Supreme Court to make order that the time so spent by such appellant in custody or any part thereof shall be reckoned as part of the term of his sentence. Similar provision is made in regard to the Court of Criminal Appeal in section 15, sub-sections (2) and (3).

However, even if a discretion was vested in Magistrates and District Judges to grant or refuse bail, coupled with the power to stay hard labour in the event of a refusal to grant bail it is important to note that the appellant would continue in confinement though not as a prisoner serving his sentence but as an appellant under special treatment. Having regard to the nature of the jurisdiction and the punitive powers of Magistrates and District Judges as it then existed, it was perhaps thought unnecessary that such appellants should continue in confinement which might have extended to several months and would have been far in excess of the term of their sentence. It was for this reason that bail was made mandatory in such cases.

Now, however, under the Administration of Justice Law a District Court has the power to impose a sentence of imprisonment for a term not exceeding five years, a fine not exceeding five thousand rupees, whipping, or any lawful sentence combining any one of the sentences aforesaid (section 27(2)), while a Magistrate's Court can now impose a sentence of imprisonment not exceeding eighteen months, a fine not exceeding one thousand-five hundred rupees, whipping or any lawful sentence combining any two of the sentences aforesaid (section 31(2)). This is in addition to special powers of punishment given to Magistrate's Court by any other written law (section 31(3)). In view of this extension of the jurisdiction and the enlargement of the punitive powers of these two courts, it was apparently felt necessary to vest in these two courts' also a discretion to grant or refuse bail.

Although there is special provision for the stay of execution of sentence pending appeal only in the case of a sentence of whipping (section 271(2)) nevertheless there is general provision in section 325(1) for stay of all further proceedings upon the notice of appeal being accepted by court. I take it that this means that all proceedings for the execution of the sentence shall also be stayed. So that when

bail is refused the appellant would not serve his sentence but be on remand as a person awaiting the decision of his appeal.

Moreover, if the true position under the present law is that ordinarily bail be granted unless there were good grounds for refusing it, it would lead to the incongruous that even a person convicted of murder and sentenced to death should be allowed to stand out on bail pending his appeal unless there were good grounds for refusing it.....What person under sentence of death could or would resist the temptation to abscond in order to avoid the supreme penalty? One could of course avoid the difficulty by saying that a sentence of death itself is a good reason for refusing bail. But then we are relating the exercise of the discretion to the nature of the sentence and there is no good reason for excluding other sentences of a severe nature. It is only a question of degree.

That the intention of the legislature in enacting section 325(3) was not to make the grant of bail a matter of course unless good grounds were shown to the contrary is made clear by section 325(2). That sub-section enacts that when an appeal against an acquittal is lodged the court may issue a warrant directing that the accused be arrested and brought before it and may commit him to prison pending the determination of the appeal or admit him to bail. If convicted persons have a right to be out on bail pending the determination of their appeal unless good grounds are shown to the contrary then it is absolutely essential that persons acquitted of any charge should be free pending the determination of the appeal against their acquittal, for there is no conviction against them at all. Yet the legislature has thought it fit to vest in the court a discretion to commit even such persons to prison or admit them to bail pending the determination of the appeal.

It may well be that this was because persons who are acquitted may leave the country and so put themselves outside the jurisdiction of the Courts of this country, except through the difficult and expensive process of extradition. But the exercise by the court of the discretion under this sub-section is not limited by the Act to this ground alone. The discretion is very wide and may be exercised by the court in appropriate circumstances. It is, however, unnecessary for the purpose of this case to consider in what circumstances the court would exercise the power vested in it by section 325(2).

Mr. Pullenayagam also sought support for his proposition from the fact that section 325(3) made two changes in the law as it was enacted in section 15(1) of the old Criminal Procedure Code. The first is that the words "on the application of an appellant" in section 15(1) are omitted in section 325(3). From this he contended that now there was no need for an application being made for bail and consequently there was no burden cast on the appellant to show that exceptional circumstances existed. He argued that it was now incumbent on court to consider the question of bail at the time of conviction and sentence and that the intention of the legislature was that bail should be granted unless good grounds existed for its refusal.

But under the Act there is no requirement that the Court should consider bail in the event of an appeal being preferred when passing sentence. In the case of a sentence of death section 269(2) requires the Judge who presided at the trial to forward to the President of the Republic the notes of the evidence together with his report, notwithstanding that any appeal to the Supreme Court may have been made. Sub-section (3) sets out that if the President determines that the sentence should be carried out, he shall appoint a date and time for the execution of the sentence.

In the case of a sentence of imprisonment section 270(1) requires the court passing the sentence to forthwith make out a warrant addressed to the Superintendent of Prisons for the area, signed by the Judge who passed the sentence and dated of the day when the sentence was passed. So that there is no duty cast on the Court to consider the question of release on bail in the event of an appeal being preferred. The appellant must still move the Court for the grant of bail and must make out a case for its grant.

Besides where the intention of the legislature was that bail should be granted unless there were good grounds to the contrary it has said so in no unmistakable terms. Section 192(2) provides that an accused who has been remanded pending his trial before a High Court as provided in sub-section (1), shall if he is not brought to trial within a period of forty-five days be entitled to be admitted to bail unless good cause be shown to the contrary or unless the trial shall have been postponed on the application of such accused. There is a marked difference between the wording of this section and section 325(3).

Then again in the case of persons who are brought before Court in respect of bailable offences section 103(2)(a) provides that the Court may discharge such person on his executing a bond as provided therein. But section 103(2)(b) states that "if the Court for good reasons does not discharge such person in terms of paragraph (a)....." Thus clearly indicating that if the court does not discharge such person on bail in terms of paragraph (a) it should do so for good reason only. In the case of convicted persons who have appealed against their conviction and sentence section 325(3) makes no such provision. It simply vests a wide discretion in the Court to grant or refuse bail in such cases.

Another fact relied on by Mr. Pullenayagam was that the words "If they (i.e. the Court of Criminal Appeal) think fit" occurring in section 15(1) have now been omitted from section 325(3). This he submitted supported his proposition that a change in the law had been effected. I do not think so. The simple reason for the omission of the words was that they were apparently thought to be redundant, for where a court may grant or refuse bail it is not going to do so unless it thinks it fit to do so. I do not think that any significance can be attached to the omission of the words in the new section.

This court has no inherent right to grant bail. Nor has it power to do so under the common law. In the case of *Ganapathipillai* (3) de Sampayo, J. said at page 491, "Mr. Elliot further cited the English case of The *Queen* v *Spillbury* (4). There the English Court held that they had jurisdiction because under the common law the court had powers to make such orders for bail in all cases. But in Ceylon the Supreme Court has no such common law power. Its power and jurisdiction are regulated by statute namely the Court Ordinance or the Criminal Procedure Code." See also the case of *P. Kannasamy* v *The Minister of Defence and External Affairs* (5) where it was held that the Supreme Court had no power to admit a person detained by order of the Minister, to bail.

The power to grant bail is now vested in the court as I have pointed out by the Administration of Justice Law and other relevant enactments, as the case may be. This court is vested with a wide discretion to grant or refuse bail by section 325(3) with which we

are now concerned. But this discretion must be exercised judiciously and not arbitrarily or capriciously. In *Queen* v *Liyanage*(6) the Court pointed out at page 291 "Even if our discretion to grant bail is unfettered it must still be judiciously exercised."But it pointed out at pages 292 and 293 "But it is not to be thought that the grant of bail should be the rule and the refusal of bail should be the exception where serious non-bailable offences of this sort are concerned."

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 would invariably give an answer to different problems which may be posed in different cases on different facts. The decision must in each case depend on its own peculiar facts and circumstances. 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 should be laid down for the exercise of that discretion.

Lord Denning pointed out in *Ward* v *James* (7). "The cases all show that when a statute gives a discretion the courts must not fetter it by rigid rules from which a Judge is never at liberty to depart. Nevertheless the courts can lay down the considerations which should be borne in mind in exercising the discretion and point out those considerations which should be ignored. This would normally determine the way in which the discretion is exercised and this ensures some measure of uniformity of decision. From time to time the considerations may change as public policy changes and so the pattern of decision may change. "This is all part of the evolutionary process."

What then are the considerations which ought to weigh with a court when it is called upon to exercise the discretion vested in it by section 325(3). The main consideration is, of course, whether if his appeal should fail the appellant would appear in court to receive and serve his sentence. When the offence is grave and the sentence is heavy the temptation to abscond in order to avoid serving the sentence in the event of his appeal failing would of course be great. In such cases the court would still require the

appellant to show the existence of exceptional circumstances to warrant the grant of bail pending appeal.

D.K.Lionel v *Attorney-General* (8) The High Court refused bail pending appeal to an appellant who had been convicted of attempted murder and had been sentenced to a term of fifteen years imprisonment on the ground that no special circumstances were shown to exist for the granting of bail. This Court refused to interfere. One sentence in my judgment in that case was much criticized by Mr. Pullenayagam for the reasons which I have already set out above. I said in that case that "The principles under which bail was allowed under that section (15(1) of the Court of Criminal Appeal Act) are therefore equally applicable under section 325(3)." But a sentence in a judgment cannot be isolated from its context and made generally applicable to different facts and circumstances. However general the terms may be in which parts of judgments are couched they must be taken in their proper context and read in the light of the particular facts and circumstances of the case unless of course there is a clear intention to state a proposition of general application.

In that connection I would refer to the passage in the judgment of Fernando, J. in the Court of Appeal in the case of *Naidu* v *Mudalige* (9) at 387 where he said: "The statement of the law contained in David Silva's case, as indeed all statements of law to be found in Court decisions must be understood in the light of the particular facts of the case under decision." I was there dealing with the case of an application made by a person found guilty after trial before a jury of a very serious offence and sentenced to a heavy term of imprisonment. After dealing with the grounds urged for the grant of bail I went on to say, "The seriousness of the charge, the nature of the sentence and the likelihood of the appellant absconding are also factors to be taken into consideration.... In the instant case the sentence is 15 years imprisonment and the temptation to abscond is far greater."

However, if there is any real likelihood of that sentence being misunderstood as laying down a general proposition that in the case of every application under section 325(3) irrespective of the seriousness of the charge and the nature of the sentence, exceptional circumstances must be shown to exist before bail can be granted, then I am glad that I have this opportunity of saying, and

the context shows that it was never my intention to lay down any such general proposition. Nor would such proposition have been correct in law.

But the requirement of exceptional circumstances should not be mechanically insisted upon merely because the case is from the High Court. Even in the case of High Courts it is possible for the appellant to have been convicted of a trivial offence and to have been given a very light sentence. For instance, a man charged with murder may ultimately be found guilty only of causing simple hurt and be sentence to a small term of imprisonment. In such a case the court would not expect the appellant to show that exceptional circumstances existed before granting bail. In this regard even under the Court of Criminal Appeal Act the position was the same.

In the case of *Queen* v *Punchi Banda et* al [10] the petitioners were charged with being members of an unlawful assembly the common object of which was to cause hurt and also with murder. They were found guilty only on the imprisonment. Their application for bail was allowed. In his judgment Weerasooriya, J. made no reference to exceptional circumstances but said that "But in view of the short sentence imposed and as I understood from the Deputy Registrar against their convictions will not be listed for hearing at the next sitting of the Court of Criminal Appeal and also as in my opinion, it is unlikely that the petitioners will abscond in the event of their appeals being dismissed I order that each of them be released on his furnishing bail....."

In other words, although the case was one of a conviction after trial before the Supreme Court the Court took into consideration the nature of the offence of which the appellants were convicted, the lightness of the sentence imposed, the improbability of their absconding and the delay in the hearing of the appeal in granting bail. These then would be the main considerations which ought to weigh with a court when deciding whether to grant or refuse bail.

As I pointed out the jurisdiction and the punitive powers of District Court and Magistrates' Court have now been greatly enlarged and it is possible that they may try cases involving serious charges and pass severe sentences. For instance, a District Court is now empowered to try such serious offences as attempted murder

and can impose the maximum term of five years' imprisonment. A sentence of three years rigorous imprisonment for attempted culpable homicide (Salahudeen, supra) and four years rigorous imprisonment for attempted murder (The *Queen* v *N. L. Cornelis Silva* (11)). were considered to be heavy and on that ground they were distinguished from Punchi Banda's case (*supra*) and bail was refused on the ground that no exceptional circumstances were shown to exist for the grant of bail. Thus in such a case a District Court too would be justified in requiring the appellant to show that exceptional circumstances existed for the grant of bail.

In addition to the above, other factors which a court may take into consideration in the exercise of its discretion to grant or refuse bail are the likelihood of the appellant committing other offences or of taking revenge on witnesses who have testified against him and the existence of tension between the opposing parties which might be inflamed as a result of the convicted person being released on bail pending the determination of his appeal.Conceivably also in a given case the court might be required to consider the chances of the success or failure of the appeal. These matters are by no means intended to be exhaustive of the consideration which ought to weigh with a court when considering whether bail ought to be granted or not. As I have emphasised this would depend entirely on the facts and circumstances of each case and there may be in a given case circumstances other than those enumerated above which a court could take into consideration.

One of the grounds urged by the appellant was his age and his ill health in that he is suffering from rheumatism, feeble and ill. Illness is undoubtedly a factor which has to be taken into consideration. In the case of *Rex v Cooray*(12) bail was allowed on the ground of ill health, that he was not likely to abscond and the complexity of the case.

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.

In Liyanage's case (*supra*) the accused were charged with the very serious offence of conspiracy to overawe by means of criminal

force or the show of criminal force the lawfully established Government of Ceylon, to overthrow the Government otherwise than by lawful means and to wage war against Queen. One of the grounds urged for the grant of bail was the ill-health of the accused persons and affidavits were filed in regard to this. Bail was refused on the ground that there was no sufficient material before Court to enable the Court to say that their present health demands that they be released on bail.

The Court said in its judgment "whatever may have happened earlier what we have to consider on these applications is the present physical and mental condition of the defendants. On this point, apart from their affidavits which state that medical attention has been rendered to several of them, that one had received the attention of a psychiatrist as well and that two of them had been admitted to hospital we have no expert medical evidence before us about the condition of any single defendant. Nor have we evidence as to how dangerous it would be to their health to let any of them remain in Fiscal's custody. While we sympathise with them in respect of the conditions under which, and the period for which, they were held in solitary confinement we do not feel, that we have sufficient material before us to enable us to say that their present health demands that they be released on bail."

That was a case in which the application was made by persons awaiting trial. But the same conditions would be true where application is made by convicted persons pending appeal. In the instant case there is only the bare statement in the affidavit that the petitioner is suffering from rheumatism, feeble and ill and nothing more. There is no evidence as to his health to allow him to remain in confinement.

Two other grounds urged by him are that he is the father of six children who are attending schools, presumably meaning thereby that his presence is necessary to look after them and that 'he has to retain counsel to argue his appeal and to attend to other matters relating thereto'. Referring to those two grounds *Weeramantry, J. said in Cornelis Silva's case at 114* "The first of these reasons scarcely bears examination while the difficulty envisaged in the second ground is by no means extraordinary as it is one which would be common to many accused persons."

He also states that he is a teacher turned farmer and I take it that by this he means that he should be released on bail to enable him to look after his farm. He does not however, state the nature or extent of his farming activities. Nor does he state why he cannot make arrangements for his farm to be looked after by someone else. In any event, interference with one's occupation, professional activities, business or trade are not circumstances which ordinarily would entitle a person to be allowed to stand out on bail where the charge is serious and sentence heavy. The fact that he has not been charged in any court previously is also not a relevant circumstance.

In the special circumstances of this case and 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 trial Judge was correct in refusing to admit the petitioner to bail on the ground that exceptional circumstances were not shown to exist.

SHARVANANDA, J. - I agree.

GUNASEKERA, J. - I agree.

Application dismissed.