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

In the matter of an Application in terms of Section 15B of the Prevention of Terrorism (Temporary Provisions) Act No. 48 of 1979 as amended by Act No. 12 of 2022.

Mohamed Rameez Mohamed Sajid,
15/9 A, Kiringadeniya,
Mawanella.

Court of Appeal Case No.
CA/BAL/0621/2023

Petitioner

High Court of Colombo
Case No. HC TAB 2972/2021

Vs.

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

2. The Director,
   Criminal Investigation Department,
   New Secretariat Building,
   York Street,
   Colombo 01.

Respondents

BEFORE : **P. KUMARARATNAM, J**

K.M.G.H. KULATUNGA, J

COUNSEL: H.G. Hussain instructed by M.G.M. Shammas for the Petitioner.

Sudharshana De Silva, SDSG with Akila Dalpatadu for the Respondents.

INQUIRY ON: 07.02.2025

DECIDED ON: 18.03.2025

K.M.G.H. KULATUNGA, J.

ORDER

1. This is an application for bail made under Section 15B of the Prevention of Terrorism (Temporary Provisions) Act No. 48 of 1979 as amended by Act No. 12 of 2022. The petitioner is the 9th accused in the Trial at Bar No. HC TAB 2972 of 2021 currently in progress at the High Court of Colombo. According to the petitioner, the said indictment 10.08.2021 contains 23270 counts against 25 accused and there are 931 charges against him.

2. This matter was taken up for inquiry on 09.12.2024 on which day the learned Senior Deputy Solicitor General who appeared on that day raised a preliminary objection as to the jurisdiction of the Court of Appeal to entertain this application which was over ruled on that day. The matter was then taken up for inquiry on the substantive matter on bail and the order was reserved. However, in the interim as there was a change of the bench the matter was fixed for re-inquiry and considered on 07.02.2025.

3. The learned Senior Counsel Mr. Gazzali Hussain for the petitioner submitted that the suspect has been in remand since 21.04.2019. He concedes that the trial in the High Court is in progress and but submits that in view of the number of charges and large number of listed witnesses

(2190 witnesses) this trial would not conclude in the foreseeable future and it will take a very long time. It is his position that, the petitioner has been languishing in remand for over five years and there is no reasonable prospect of the trial concluding soon. Mr. Hussain lamented that the accused has been deprived of the best part of his youth. In these circumstances he moves that the petitioner be granted bail under Section 15B of the PTA as amended by Act No. 12 of 2022.

4. The learned State Counsel, Ms. Akila Dalpadatu who appeared on 07.02.2025 did attempt to reagitate the issue of jurisdiction. Since an order has already been made this was not entertained. As for the merits she submitted that the trial is now proceeding and a great part of the delay is attributed to the accused-petitioner as he is not cooperating at least by admitting basic the facts which are not in dispute. It was further submitted that as the Trial at Bar is proceeding and is taken up almost three days of a week with all the accused present. As such granting of bail at this stage may disrupt the progress of the trial if the suspect was to abscond. Further, the learned State Counsel emphasized on the gravity and the seriousness of the offence and submitted that certain confessions made by the petitioner has been admitted and there is tangible and cogent evidence led and placed before the High Court at bar as at now.

5. This application for bail is made and now considered under Section 15 B of PTA which reads as follows;

> *15B. Notwithstanding anything to the contrary in the provisions of this Act, if the trial against a person remanded or detained under this Act has not commenced after the expiration of twelve months, from the date of arrest, the Court of Appeal may release such person on bail, upon an application in that behalf, made by the suspect or an Attorney- at Law on his behalf:*
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> *Provided however, notwithstanding the provisions of subection (2) of section 15, the High Court may in exceptional circumstances release*

the suspect on bail subject to such conditions as the High Court may deem fit:

Provided further, where the trial against an accused in respect of whom the indictment has been forwarded and filed in the High Court, has not commenced after the expiration of twelve months from the date of such filing, the High Court may consider to release such person on bail, upon an application in that behalf made by the accused or an Attorney- at-Law on his behalf.".

6. According to which if the trial against a person remanded or detained under the provisions of PTA has not commenced upon the lapse of 12 months from the date of arrest the jurisdiction to release such person on bail accrues to the Court of Appeal. The corollary of this would be a suspect correspondingly acquiring a right to make an application for bail to this Court. The right so acquired cannot be extinguished or denied by the subsequent filing of charges or indictment or trial commencing after the expiration of 12 months before an application for bail is made.

7. What sparks off the jurisdiction is the failure to commence the trial within 12 months. It is a contingent jurisdiction so to say. Section 15B of the Act, provides that the provisions of Section 15B shall prevail, *notwithstanding anything to the contrary in the provisions of this Act.* This is a classic **non obstante** clause. Thus, it is relevant and necessary to now consider the effect of the said **non obstante** clause.

8. A **non obstante** clause is a legislative device which is usually employed to give an overriding effect to such a provision over other contrary provisions that may be found either in some enactment or some other enactment as the case may be. This will have the effect of avoiding the operation and effect of all contrary provisions. It is equivalent to saying that in spite of the provisions of the Act or any other Act mentioned in the non obstante clause, it will have its full effect and operation or that the provisions embraced in the **non obstante** clause would not be an

impediment for the operation of the said provision. Section 15B will thus prevail notwithstanding other provisions of the the Prevention of Terrorism (Temporary Provisions) Act No. 48 of 1979 as amended. The legal is that filing of charges or indictment or trial commencing after the expiration of 12 months will not be an impediment for this court to entertain and consider an application for bail under section 15B.

9. As for the grounds which bail may considered under Section 15B they are not specified nor are exceptional circumstances required. That being so this Court is now required to consider this application on its merits. Since, this is provided for by a special Act the general provisions would have no application. Thus, it is for this Court to determine such applications on the merits and circumstances of each case. No doubt, the accused had been in remand for over five years. The indictment certainly contains a large number of charges and witnesses. This is so in view of the particular circumstance of this matter. In view of the nature of the offence and facts on which the said indictment is preferred it appears to entail and require the inclusion of 24 suspects and the large number of charges along with the witnesses as listed. The addition of charges as well as witnesses would certainly be in accordance with the provisions of the Criminal Procedure pertaining to joinder of charges and accused. If it has not been in compliance and in accordance with the said provisions it was open for the persons accused to have taken up and raised such objections at the very out set before the relevant forum. In the absence of such challenged it has to be assumed that the large number of charges and accused have been added and preferred lawfully and is legitimate.

10. The time required to establish such charges itself cannot be considered as a ground to grant bail in respect of charges under the PTA specially as the trial is now proceeding. The nature and the gravity of the offences and the alleged circumstances of the offending are also a relevant fact. The magnitude and the enormity of the trial admittedly would take a considerable period of time. There are three judges who are assigned and

nominated to hear and determine this trial at bar. An application for bail made to the said trial at bar has also been rejected. It is within the purviews of the said Trial Judges to remand suspects upon the commencement of the trial or to refuse bail. In these circumstances, the said refusal to grant bail is a matter which this Court in exercising the power of granting bail under Section 15B should be live and mindful. This consideration may have not been there if an application for bail was made soon after the expiration of 12 months before the charges or indictment was filed or the trial commenced. As I see, it is the petitioner himself who may be blamed for not filing an application for bail under Section 15B without delay and prior to the commencement of the trial. Therefore, the subsequent developments are relevant and may be considered.

11. As Stated above, a trial of this nature which takes time should not be open to the risk or jeopardy of further delay by an accused possibly absconding. Accordingly, considering the nature, gravity and circumstances of the offence and the nature of the trial and its present position, it appears to this Court that it is not a fit matter to enlarge the Petitioner on bail at this juncture in the current context.

12. Accordingly, this application is refused and rejected.

JUDGE OF THE COURT OF APPEAL

P. Kumararatnam, J.

I agree.

JUDGE OF THE COURT OF APPEAL