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

In the matter of application for Revision in terms of Article 138 of the Constitution together with Sections 364 and 368 of the Criminal Procedure Code.

Case No : CPA 152/24

HC of Chilaw Case No:

BA 113/24

Officer in charge

Police Station

Koswatta

Complainant

V.

Ranaweera Arachchilage Shanuka Madushan alias Olu Mara
No. 03/199. Kirimetiyana Watta
Lunuwila

Suspect

AND NOW BETWEEN

Warnakulasuriya Weerakonda Arachchilage Sujali Malisha Shiranki Fernando
No. 03/199, Kirimetiyana Watta

Lunuwila

Petitioner

Vs.

1. Officer in charge

   Police Station

   Koswatta

Complainant-Respondent

Vs.

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

Respondent

AND NOW BETWEEN

Warnakulasuriya Weerakonda Arachchilage Sujali Malisha Shiranki Fernando
No. 03/199, Kirimetiyana Watta
Lunuwila

Petitioner-Petitioner

Vs.

2. Officer in charge

   Police Station

   Koswatta

Complainant-Respondent -Respondent

Vs.

2. Hon. Attorney General
   Attorney General's Department
   Colombo 12

Respondent-Respondent

Before : B. Sasi Mahendran, J.
Amal Ranaraja, J

Counsel: Darshana Kuruppu for the Petitioner

Supported On: 18.02.2025

Written Submissions On: 03.03.2025 (by the Petitioner)

Order On: 20.03.2025

ORDER

B. Sasi Mahendran, J.

This is an application of revision against the order of the Learned High Court Judge of Chilaw dated 25.09.2024.

According to the Petitioner, the Learned High Court Judge has refused the bail application on the basis that there is a tendency of committing offences in the future once the bail is granted which falls under Section 14 (1) of the Bail Act.

For easy reference, an excerpt from the order is reproduced below.

> "අපරාධ පරීක්ෂණ දෙපාර්තමේන්තුවේ නීතිවිරෝධී වත්කම් විමර්ශන කොට්ටාශය මගින් පවත්වාගෙන යන නඩු:
>
> 16. 2006 අංක 05 දරණ මුදල් විශුද්ධිකරණය වැළක්වීමේ පනත යටතේ සිදු කරන ලද විමර්ශනයේදී මගඵ නඩු අංක බී 1581 යටතේ අධිකරණයට ඉදිරිපත් කර ඇප මත මුදා හැර ඇත. ඉදිරි නඩු දිනය 2024.10.01 දින වේ.
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> 17. මෙම සැකකරු විසින් මත්ද්‍රව්‍ය ජාවාරම් කිරීමෙන් ලබා ගන්න ලද නීති විරෝධී උපත ලබ්ධිත දේපලක් සම්බන්ධයන් 2006 අංක 05 දරණ මුදල් විශුද්ධිකරණය වැළක්වීමේ පනත යටතේ මෙම අධිකරණයේ ක්‍රියාවිරහිත කිරීමේ නියෝගයක් දැනටමත් පවති.
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> මෙම සැකකරුගේ පෙර වැරදි හා පවතින නඩු සලකා බැලීමේදී සමහර නඩු සමඵයට පත්ව ඇති වුවද මෙම සැකකරුගේ ක්‍රියාකලාපය පිළිබඳව මෙම අධිකරණයට පැහැදිලිව පෙනී යන්නේ සැකකරු ඇප ලැබීමෙන් පසුවත් දිගින් දිගටම අපරාධමය වැරදි සිදු කර ඇති බවය.
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> මෙම සැකකරුගේ සම්පූර්ණ පෙර වැරදි සහ පවතින නඩු ලැයිස්තුව සලකා බැලීමේදී සැකකරු සංවිධානාත්මක අපරාධ කල්ලි සාමාජිකයෙකු වශයෙන් හා ඔහුව "ඕලු මරා" වශයෙන් හඳුන්වන බවට අපරාධ වාර්තා කොට්ටාශයේ ලේඛනගත වී ඇති බවට වගඵත්තරකරුවන් අධිකරණයට වාර්තා කරන කරුණු පිළිගැනීමට සිදුවේ. බස්නාහිර පළාත් උතුරු අපරාධ කොට්ටාශය මගින් මෙම සැකකරු අධීක්ෂණය කරනු ලබන බවටද වගඵත්තරකරුවන් විසින් ඉදිරිපත් කරන ලද වාර්තාවේ සඳහන් වේ.
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> අභියාචනාධිකරණය විසින් 2023.08.02 වන දින ඇප ලබා දී වසරක් ගතවීමට පෙර මෙම නඩුව සම්බන්ධයෙන් සැකකරු නැවත අත්අඩංගුවට ගෙන ඇත.
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> මෙම කරුණු සලකා බැලීමේදී මෙම නඩුව සම්බන්ධයෙන් ඇප ලබාදීමක් සිදුකළහොත් සැකකරු නැවත නැවත අපරාධමය වරදවල් සිදු කිරීමෙන් වැලකී සිටී යයි මා හට තීරණය කිරීමට නොහැක.
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> 1997 අංක 30 දරණ ඇප පනතේ 14 (ආ) (iii) වගන්තිය ප්‍රකාරව සැකකරු ඇප පිට සිටින විට වෙනත් වරදක් සිදු කල හැකි බවට මා හට විශ්වාස කිරීමට හේතු ඉදිරිපත් වී ඇති බවට තීරණය කරමි."

The relevant facts of this case are as follows:

According to the petition, as per the B Report and further reports filed by the Koswatta Police in Marawila Magistrate's Court Case No. B1034/24, on 07.04.2024, at around 4.35 PM, Koswatta Police received a telephone call about a quarrel near the shop of Koswatta Ananda. Upon such information, the OIC of the Koswatta Police with other officers went to the location. Upon the arrival of the Police Jeep, a car was observed speeding away towards Thobbawa. Thereafter, the Police followed the car and conducted a search after stopping the car near the Post Office.

The Petitioner states that as stated in the B report, the Suspect who is the husband of the Petitioner was the driver of the vehicle accompanied by three others. The Petitioner further states that after the inspection, the Police discovered a live hand grenade in the left front pocket of the Suspect.

The Petitioner states that thereafter, all the suspects were produced before the Marawila Magistrate's Court and a 48-hour detention order was obtained solely against the Suspect.

The Petitioner avers that although on 09.04.2024, Koswatta Police, via a further report, sought an order to record a statement from the Suspect, no such statement was recorded until the bail application was filed before the Chilaw High Court on 19.05.2024 in terms of Section 10 of the Offensive Weapons Act as amended by Act No. 02 of 2011.

The Petitioner states that exceptional circumstances were submitted before the Court that warranted the release of the Suspect on bail.

The Petitioner further states that however, after the inquiry, the said bail application was dismissed by the Learned High Court Judge by order dated

25.09.2024 on the basis that the suspect has several pending cases and mentioned that recently the suspect was released on bail by the Court of Appeal only on 02.08.2023.

The main gravamen of the Petitioner was that the Learned High Court Judge failed to consider the exceptional circumstances adduced by the Petitioner but focused on Section 14 (1) of the Bail Act.

In this context, the Petitioner has preferred the present revision application invoking the revisionary jurisdiction of this Court to set aside or revise the said order of the Learned High Court Judge dated 25.09.2024 on the basis that the order is illegal.

Before the Bail Act No. 30 of 1997 was introduced, Section 403 (1) of the Criminal Procedure Code enabled the Magistrate or the Judge of the High Court to release the suspect on bail, accused of any non-bailable offence.

> "403. (1) A Magistrate or a Judge of the High Court, at any stage of any inquiry or trial, as the case may be, may in his discretion release on bail any o person accused of any non-bailable offence:
>
> Provided that a person alleged to have committed or been concerned in committing or suspected to have committed or to have been concerned in committing, an offence punishable under section 114, 191 and 296 of the Penal Code shall not be released, at any stage of any inquiry or trial, except by a Judge of the High Court. "

After the Bail Act came into operation, when granting bail, our Courts have focused on Section 14 (1) of the Bail Act which reads as follows:

> (1) Notwithstanding anything to the contrary in the preceding provisions of this Act, whenever a person suspected or accused of being concerned in committing or having committed a bailable or non-bailable offence, appears,

is brought before or surrenders to the court having jurisdiction, the court may refuse to release such person on bail or upon application being made in that behalf by a police officer, and after issuing notice on the person concerned and hearing him personally or through his attorney-at-law, cancel a subsisting order releasing such person on bail if the court has reason to believe :"

(a) that such person would "

(i) not appear to stand his inquiry or trial;
(ii) interfere with the witnesses or the evidence against him or otherwise obstruct the course of justice; or
(iii) commit an offence while on bail; or

(b) that the particular gravity of, and public reaction to, the alleged offence may give rise to public disquiet.

But we are mindful that numerous statutes have also provided for bail. Relevant provisions of such statutes are reproduced below.

Prevention of Terrorism Act No 48 of 1979

19. Notwithstanding the provisions of any other written law

(a) every person convicted by any court of any offence under this Act shall, notwithstanding that he has lodged a petition of appeal against his conviction or the sentence imposed on him, be kept on remand until the determination of the appeal;
(b) any order made under the provisions of subsection (4) of section 14 shall, notwithstanding any appeal made against such order, continue in force until the determination of such appeal:

Provided, however, that the Court of Appeal may in exceptional circumstances release on bail any such person referred to in paragraph (a) subject to such conditions as the Court of Appeal may deem fit, or vary or suspend any order referred to in paragraph (b),

Offences against Public Property Act No. 12 of 1982

8.

(1) 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 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 person on bail after recording reasons; therefor.

(2) Every person convicted by the court of any offence minder this Act shall, notwithstanding that he has lodged a petition of appeal against his conviction or the sentence imposed on him, be kept on remand until the determination of the appeal:

Provided, however, that it shall be competent for such court in exceptional circumstances to release such person on bail after recording reasons therefor.

Poisons, Opium, and Dangerous Drugs (Amendment) Act No. 13 of 1984

83. (1) No person suspected or accused of an offence under section 54A or section 5 of this Ordinance shall be released on bail, except by the High Court in exceptio circumstances.

(2) Notwithstanding the provisions of subsection (1), the provisions of the Criminal Procedure (Special Provisions) Law. No. 15 of 1978,* shall, so long as that law is in force, apply to and in relation to any person suspected or accused of an offence under this Ordinance."(See List of enactment omitted from the Revised Edition.)

Immigrants and Emigrants (Amendment) Act No. 31 of 2006

47A. (1) Notwithstanding anything in any other law, no person accused of an offence under section 45C shall be enlarged on bail except by a High Court upon proof of **exceptional circumstances**.

(2) Where there is no express provision made in respect of the granting of bail for an offence under this Act, bail shall be granted by a Magistrate.

(3)) Notwithstanding anything to the contrary in any other law, the application of the provisions of this section shall extend to every person who is in remand on the date of coming into operation of this section.".

Customs Ordinance No. 17 0f 1869 as amended by Act No. 24 of 1991

127C. No person suspected or accused of an offence under this Ordinance in respect of any goods the value of which exceeds one million rupees, shall be released on bail except by the High Court, in **exceptional circumstances**. The power conferred on the High Court by this section shall be exercised by

> the Judge of the High Court holden in the Zone within which the accused resides or the Judge of the High Court holden in the Zone within which the offence is alleged to have been committed.

It should be noted that there is an indication that exceptional circumstances should be established to release such suspects on Bail.

In the instant case, the suspect was charged under the Offensive Weapons Act. It is true that this Act makes express provision in respect of the release on bail of persons accused or suspected of having committed an offence. Accordingly, Section 10 of the Offensive Weapons Act No. 18 of 1966 reads as follows;

> "Notwithstanding anything to the contrary in the Criminal Procedure Code or any other written law, no person charged with, or accused of, an offence under this Act shall be released on bail except on the order of the Supreme Court."

Subsequently, it was amended by Act No. 02 of 2011;

> "No person charged with, or accused of, an offence under this Act, shall be released on bail except on the order of the High Court of the Province established under Article 154P of the Constitution, for such Province.".

According to the above Section, the Act provides for a forum, the High Court to invoke the jurisdiction to release a person on bail. But there is no condition (exceptional circumstances) with regard to the release of such a suspect. Then the question is whether the Bail Act will be applicable in such an instant. The Bail Act is a general act dealing with bail, the Preamble of which reads as follows;

> "An Act To Provide For Release On Bail Of Persons Suspected Or Accused Of Being Concerned In Committing Or Of Having Committed An Offence ; To Provide For The Granting Of Anticipatory Bail And For Matters, Connected Therewith Or Incidental Thereto"

According to Section 2 of the said Act, granting bail shall be regarded as the rule and the refusal to grant bail is the exception. The circumstances for such exception are set out in Section 14 of the Act.

We are mindful that Section 10 of the Offensive Weapons Act does not provide any condition to grant bail. On the other hand, there are statutes conditioned for granting bail.

The question before us is whether the Learned High Court Judge correctly applied Section 14 (1) of the Bail Act when considering the bail application.

It is true that Section 3 (1) of the Bail Act excludes any written law from the application of the Bail Act which has expressed provisions pertaining to the release on bail of persons accused or suspected of having committed or convicted of an offence under such law. We are mindful that the words provided in Section 3 (1) indicate that to qualify to exclude the written law, there should be a sentence mentioning which makes express provision in respect of release on bail.

When we peruse Section 10 of the Offensive Weapons Act which was amended, it provides for the forum to make the application for bail which is the High Court.

Unlike other statutes that I referred to earlier, which have expression provisions relating to bail, the present Act does not provide for such.

In my considered view, to be eligible to exclude any written law from the application of the Bail Act which is provided under Section 3 (1) of the said Act, that law should provide for express conditions such as exceptional circumstances.

This was considered by Justice Sriskandarajah in **Gunasekara and Others v. Ravi Karunanayake, 2005 (1) SLR 18, at page 28:**

> “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 committed, 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) 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."

Otherwise, Section 14 of the said Act will be applicable to all the cases. This is reflected in the long title of the Bail Act “An act to provide for release on bail of persons suspected or accused of being concerned in committing or having committed an offence”.

We are also mindful that the original Section 10 of the Offensive Weapons Act had reference to the Criminal Procedure Code relating to bail.

Under these circumstances, the submission of the Petitioner that the Bail Act is not applicable to the Offensive Weapons Act cannot be accepted.

After considering the above facts, this Court has decided not to interfere with the order of the Learned High Court Judge as there is no illegality in the said order.

We are mindful that if there is no illegality in an order, revisionary jurisdiction cannot be invoked.

In Athurupana v. Premasinghe, SC Appeal No. 21/202, Decided on 14.05.2004, (2004 BLR 60 at page 63), His Lordship Sarath N. Silva, C.J held that;

> "Section 753 of the Civil Procedure Code which gives the ambit of the revisionary jurisdiction of the Court of Appeal empowers the Court to examine the record "for the purpose of satisfying itself as to the legality or propriety of any judgment or order……..or as to the regularity of the proceedings" and thereupon "pass any judgment or make any order as the interests of justice may require."
>
> The section has three elements that constitute the basis of the exercise of revisionary jurisdiction. They are:
>
> i. the legality or propriety of the judgment or order called in question;
> ii. the regularity of the proceedings;
> iii. the need to pass any judgment or make any order in the interests of justice.
>
> An examination of these elements demonstrate that every illegality, impropriety or irregularity does not warrant the exercise of revisionary jurisdiction. Such jurisdiction will be exercised only where the illegality, impropriety or irregularity in the proceedings has resulted in a miscarriage of justice, by the party affected being denied what is lawfully and justly due to that party. In such event the Court will in revision set right the illegality, impropriety or irregularity by passing "any judgment of making any order as interests of justice may require."

In the present application, the Petitioner has failed to establish that the said order of the Learned High Court Judge is illegal.

Therefore, this Court dismisses the application of the Petitioner with costs.

JUDGE OF THE COURT OF APPEAL

Amal Ranaraja, J.

I AGREE

JUDGE OF THE COURT OF APPEAL