

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

In the matter of an Application for revision in terms
of Article 138 of the Constitution of the Democratic
Socialist Republic of Sri Lanka.

Officer in Charge,
Police Station,
Kaluthara North.

Complainant

V.

Court of Appeal Case No.
CA (PHC) APN 62/2020

High Court of Kaluthara Case
No. BA 34/2019

Magistrate's Court of
Kaluthara Case No. 93364/19

Kandana Arachchige Nuwan Iresh Fernando,
No 62/15A,
Dakunu Sri Sumangala Mawatha,
Kaluthara North.

Second Suspect

AND

Kanakka Hewage Saslin Jayawathi Silva,
No 62/15A,
Dakunu Sri Sumangala Mawatha,
Kaluthara North.

Petitioner

V.

1. Officer in Charge,
Police Station,
Kaluthara North.
2. Hon. Attorney General,
Attorney General's Department,
Colombo 12.

Respondents

AND NOW BETWEEN

Kandana Arachchige Nuwan Iresh Fernando,
No 62/15A,
Dakunu Sri Sumangala Mawatha,
Kaluthara North.
(Currently incarcerated at the Angunakolapelessa
Prison)

Suspect-Petitioner

V.

1. Officer in Charge,
Police Station,
Kaluthara North.
2. Hon. Attorney General,
Attorney General's Department,
Colombo 12.

Respondents- Respondents

BEFORE : **ACHALA WENGAPPULI, J**
K. PRIYANTHA FERNANDO, J

COUNSEL : Aruna Pathirana Arachchi for the Suspect –
Petitioner, instructed by Upul Dissanayake.
Panchali Witharana SC for the Respondent.

ARGUED ON : 24.09.2020

OBJECTIONS

FILED ON : 28.08.2020 by the Respondent.

JUDGMENT ON : 13.10.2020

K. PRIYANTHA FERNANDO, J.

01. The Suspect-Petitioner (hereinafter referred to as Petitioner) has invoked the revisionary jurisdiction of this Court seeking to revise the order made by the High Court of *Kaluthara* on 02.04.2020 in case No. BA 34/2019, refusing to enlarge him on bail.

02. The petitioner had been produced before the Magistrate's Court of *Kaluthara* on 06.01.2019, in case No. 93364/19, as the 2nd suspect, for committing offences under Section 300 of the Penal Code and Section 44(a) of the Fire Arms Ordinance as amended, and was remanded.
03. An application for bail had been made before the High Court of *Kaluthara*. The main ground urged before the High Court had been that the Petitioner had been in remand custody for more than a year, and therefore he is entitled to be released on bail in terms of Section 16 of the Bail Act. Although the learned State Counsel who appeared for the respondent before the High Court did not object to bail being granted to the Petitioner on the basis that one year had lapsed in remand, and the fact that the Attorney General had not made an application in terms of Section 17 of the Bail Act for further remand, the learned High Court Judge refused to release the Petitioner on bail. The reason for refusal mentioned in the order by the learned High Court Judge was, that the Petitioner had pending cases of similar offences.
04. Learned Counsel for the Petitioner strenuously argued that the Petitioner is entitled to be released on bail in terms of Section 16 of the Bail Act, and as the Attorney General had not made any application in terms of Section 17 seeking for further remand, the learned High Court Judge had erred in refusing bail.
05. Although the learned State Counsel had filed objections to the application, at the inquiry stage she conceded that the Attorney General had not made any application in terms of Section 17 seeking for further remand of the Petitioner.
06. It is an undisputed fact that the Petitioner had been in remand for more than a year for this case by the time the order refusing bail was made by the High Court.
07. The issue this Court has to address is whether a suspect to whom the Bail Act applies can be kept in remand for more than one year, irrespective of Section 16 of the Act, when there is no application seeking further remand by the Attorney General in terms of Section 17.

08. This issue was discussed at length by a Divisional Bench of this Court in the case of *Wickramasinghe V. Attorney General and Another [2010] 1 Sri LR 141* where it was held that;

“The maximum period that a suspect to whom the Bail Act applies can be kept on remand is 2 years, the period of 2 years is considered only if the Attorney General acts under section 17. If there is no application under section 17 the maximum period that a suspect/accused to whom the Bail Act applies can be kept on remand is 1 year.”

09. The Court further held that Section 16 and 17 of the Bail Act are not subject to Section 14.

10. Hence, the learned High Court Judge was in error when the Petitioner to whom the Bail Act applies was refused bail by his order dated 02.04.2020, when in fact the petitioner had been in remand for more than a year, and the Attorney General had not made any application in terms of Section 17.

11. Therefore, we set aside the order of the learned High Court Judge dated 02.04.2020, and order that the petitioner be released on bail on the following conditions.

12. When deciding on the bail conditions we take into consideration the pending cases against the Petitioner, reported by the respondent;

1. Rs. 200000/- cash bail
2. Surety bail of Rs. 2000000/- each with two sureties acceptable to the learned Magistrate. One of the sureties has to be a permanent public servant. When accepting the sureties, the learned Magistrate has to satisfy himself with the means of the persons to stand as sureties to meet the surety bond.

3. Upon being released on bail, the Petitioner is to report at the Kaluthara North Police Station every Sunday between 9am and 2pm.

Revision application is allowed.

JUDGE OF THE COURT OF APPEAL

ACHALA WENGAPPULI, J

I agree.

JUDGE OF THE COURT OF APPEAL