

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

In the matter of an application for revision
and in terms of Article 138 of the
Constitution read with Section 15 B of the
Prevention of terrorism (temporary
provision) Act No.12 of 2022.

The Democratic Socialist Republic of Sri
Lanka

Complainant

Vs

Case No: **CA/CPA/0054/2024**

High Court of Colombo Case No:
6233/12

1. Selwarasa Kirubakaran *alias* Aliyar
Mohommad Nisthar *alias* Lafeer *alias*
Gajan
2. Shanmugalingam Suriyakumar
3. Thambiyah Prakash *alias* Dhanush

Accused

AND NOW BETWEEN

Thambiyah Prakash *alias* Dhanush

Accused - Petitioner

Vs

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

Respondent

Before : **P. Kumararatnam, J.**

Pradeep Hettiarachchi, J.

Counsel : Asthika Devendra with Lawrance Adam Harley instructed by Brintha Chandragesh for the Accused – Petitioner.
Anoopa De Silva, DSG for the Respondent.

Argued on : 16.01.2026

Decided on : 23.01.2026

Pradeep Hettiarachchi, J

Order

1. This order disposes of the preliminary objection raised by the learned DSG regarding the maintainability of the accused-petitioner's (hereinafter referred to as 'the petitioner') application for bail.
2. The petitioner has instituted the present application seeking to have the order dated 05.02.2024 of the High Court of Colombo in Case No. 6233/12 set aside. The petitioner further prays that he be released on bail on suitable conditions.
3. The petitioner has been indicted before the High Court of Colombo under the Prevention of Terrorism Act and Emergency Regulations. The petitioner is the 3rd accused in the aforementioned case before the High Court of Colombo.
4. The said case is still pending before the High Court. The Petitioner made an application for bail before the High Court on 28.03.2023, which was objected to by the Hon.

Attorney General. Accordingly, the learned High Court Judge dismissed the petitioner's bail application by his order dated 05.02.2024. It is against that order; the petitioner instituted the present application.

5. The learned DSG challenged the maintainability of the present application on the following grounds:
 - a. The petitioner has failed to submit the copy of the bail application filed before the High Court and thereby has suppressed the material facts;
 - b. The original bail jurisdiction of the High Court is exhausted and therefore, the petitioner has no jurisdiction to invoke original bail jurisdiction in the High Court;
 - c. The petitioner has included two causes of action in one application;
 - d. An alternative remedy is available i.e., right of appeal against the bail order;
 - e. There are no exceptional grounds
6. It is to be noted that the petitioner had not filed a separate petition and affidavit before the High Court seeking bail, but had merely moved for bail orally and, in support thereof, filed written submissions. Consequently, there was no formal petition and affidavit for bail before the High Court. It is also noteworthy that a copy of the written submissions filed in the High Court in support of the bail application has been annexed to the petition filed in the Court of Appeal. Accordingly, the respondent's objection in this regard is devoid of merit.
7. It must be stated at the very outset that the present application is a revision application. Learned counsel for the petitioner clearly informed court that he would pursue only the revision application. Accordingly, the fact that the High Court dismissed the bail application does not preclude the petitioner from invoking the revisionary jurisdiction of the Court of Appeal.

8. Furthermore, in my view, the mere failure of the petitioner to file an appeal should not be considered a ground to refuse the present revision application. If the petitioner fails to establish the existence of exceptional circumstances that shock the conscience of the court in relation to the impugned bail order, the application for bail will undoubtedly stand dismissed. However, the mere availability of an alternative remedy should not, by itself, be treated as a ground to prevent the petitioner from invoking the revisionary jurisdiction where the facts of the case warrant the intervention of this court.
9. The respondents, in their objections, have also stated that the instant petition contains two causes of action and is therefore bad in law. However, a careful examination of the petition filed before this Court reveals that it does not disclose two causes of action, but merely refers to section 15B of the PTA in the caption. The petitioner has clearly stated that he seeks the revision of the order of the High Court and his enlargement on bail. Accordingly, I am unable to agree with the said objection raised by the learned DSG.
10. It was further averred that the petitioner has invoked the revisionary jurisdiction without providing adequate reasons for not invoking the appellate jurisdiction. It must be stated that when a party invokes the revisionary jurisdiction, it is a condition precedent to plead the existence of exceptional circumstances that shock the conscience of the court. In the present petition, the petitioner has sufficiently averred such exceptional circumstances and has therefore satisfied the necessary criteria to invoke the revisionary jurisdiction.
11. At the conclusion of the inquiry, this Court will consider whether the circumstances averred by the petitioner can indeed be regarded as exceptional so as to warrant the exercise of its revisionary powers. Accordingly, the mere fact that the petitioner has filed a revision application instead of an appeal is not, in my view, fatal to the maintainability of the present revision application.
12. It is also pertinent to note that the petitioner in the present application has been incarcerated for nearly 17 years. In these circumstances, mere technical objections should not be given undue prominence, nor should they be permitted to stand in the way of considering his application.

13. In view of the foregoing, I overrule the preliminary objections raised by the respondents regarding the maintainability of the present revision application.

14. Accordingly, the matter is fixed for inquiry.

Judge of the Court of Appeal

P. Kumararatnam,J

I agree,

Judge of the Court of Appeal