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

In the matter of an application for Bail in terms of the provisions of the Code of Criminal Procedure Act read with Section 15(b) of the Prevention of Terrorism (Temporary Provisions) (Amendment) Act No. 12 of 2022.

Court of Appeal

Application No:

CA/Bail /0399/24

Thanabalasingam Katheeswaran

Vinayakar Lane, Oddisuddan 8,

Mullaitheivu.

(Presently in remand)

Petitioner

HC Kilinochchi

No. KN/235/2025

MC Colombo

No. B/6137/03/2023

Vs.

1. The Officer-in-Charge

   Counter Terrorism Investigation

   Division

   Kilinochchi.

2. Officer In-Charge

   Unit 01,

   Counter Terrorism Investigation Unit

   149, Butani Capital Building

   Kirulapane Avanue, Colombo-05.

3. The Director
   Counter Terrorism Investigation Unit.

   149, Butani Capital Building

   Kirulapane Avanue, Colombo-05.

4. The Inspector General of Police
   Police Headquarters,
   Colombo-01.
5. The Attorney General

   Attorney General's Department

   Colombo-12.

Respondents

BEFORE : **P. Kumararatnam, J.**
R.P.Hettiarachchi, J.

COUNSEL **K.S.Ratnavele with Ranitha Gnanaraja and Woshan Herath for the Petitioner.**
Tharaka Kodagoda, SC for the Respondents.

ARGUED ON : **03/06/2025.**

DECIDED ON : **07/07/2025.**

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ORDER

P.Kumararatnam,J.

The Petitioner filing this Application has invoked the jurisdiction of this Court to grant bail to him upon suitable condition as this Court consider appropriate.

The Petitioner is the 3rd Accused in the case bearing No. HC 235/25 in the High Court of Kilinochchi.

The Petitioner was arrested by officers attached to Counter Terrorism Investigation Division on 13.02.2024, when they went there upon a message received from the Kilinochchi Police and detained him at the Counter Terrorism Investigation Division, Colombo-05 for about three months before he was produced in the Magistrate Court of Colombo under case No. B/6137/2023 on 06.06.2024. While he was in detention, he was inquired about his connection with terrorist activities which he had vehemently denied. He had been indicted under the Prevention of Terrorism Act (Temporary Provisions) Act No.48 of 1979, as amended. Now the Petitioner seeks relief in the exercise of the Original Jurisdiction vested by Section 15 B of the Prevention of Terrorism (Special Provisions) (Amendment) Act No. 22 of 2022.

According to the Petitioner, he is 45 years old and was not involved in any illegal activities. He is married with four children. He is the sole breadwinner of the family and looking after his aged mother as well. Up to now he is not aware why he was suspected under the Prevention of terrorism act.

The Petitioner states the following circumstances exist for the grant of bail to him.

a. That he was only produced before the Magistrate Court once and was not produced physically after that;
b. His case is in no date position until the directions come from the Attorney General;
c. There are no improvement or further decision being taken or informed by the Attorney General Department even though the Petitioner concluded more than 16 months detention and remand custody;
d. The Petitioner should not be made to suffer for the lack of technical ability/efficiency on the part of the investigations;
e. The arrest by the police was not made on any reasonable suspicion as the investigation does not reveal any unlawful activity on the part of himself.

The Section 15 B of PTA (Amended) Act No. 12 of 2022 states:

> "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:
>
> Provided however, notwithstanding the provisions of subsection (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."

At the hearing the State Counsel representing the Respondents raised following objections:

1. The time period of remand cannot be considered as a circumstance to grant bail to a person suspected or accused of an offence of a similar nature;
2. The Petitioner has failed to adduce any acceptable circumstances before court;
3. The Petitioner does not disclose any legal and or/factual grounds on which the reliefs prayed therein could be granted.

In reply to objection (2) the Petitioner contend that Section 15 B of PTA which has no application, and that it is the newly enacted Section 15 B that is applicable. A reading of Article 138(2) of the Constitution and Section 15 B would make it clear that the Court of Appeal has 'Original Jurisdiction'. The Court of Appeal does not lose its jurisdiction merely based on the 'Indictment being served on the accused' in the High Court as claimed by the Respondents.

In reply to objection (c) the Petitioner contends that the Constitutional jurisdiction vested and ordained in the Court of Appeal under Article 138(2) of the Constitution cannot in law be exhausted or ousted by Section 15 B of the PTA, which latter provision in fact and in law consolidates and strengthens the powers of the Court of Appeal, which, Parliament by enacting 15 B of PTA has by law vested and ordained as specific in Article 138(2) of the Constitution.

The main objection taken by the Respondent is that Section 15 B of PTA has no application in this matter since the indictment has been already served on the accused in the High Court of Kilinochchi.

The Section 15 B of PTA (Amendment) Act No. 12 of 2022 states:

> 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:

In 15 B of PTA (Amendment) Act No. 12 of 2022, the key word is **"the trial"**. [Empasis added] If the trial has not commenced after 12 months from the date of arrest, the Court of Appeal may release such person on bail, irrespective of whether the suspect has been indicted or not. Unless the trial is commenced, sending out indictment to relevant High Court does not preclude the suspect from seeking bail from the Court of Appeal. The bail jurisdiction of the Court of Appeal under Section 15 B of PTA (Amendment) Act No.12 of 2022 only shifts to High Court once the trial is commenced in the High Court.

The plain meaning of the "trial" is the 'formal examination before a competent tribunal of the matter in issue in a civil or criminal cause in order to determine such issue.' Hence, serving the indictment on him does not preclude him from invoking the jurisdiction of this Court for bail under Section 15 B of PTA (Amendment) Act No.12 of 2012. This entitlement only shifts once the formal trial commence before the High Court upon filing an indictment. As long as the trial is not commenced after filing the indictment before the High Court, the Petitioner is legally entitled to seek bail before the Court of Appeal.

Due to aforesaid reasons this Court is satisfied that the Petitioner has submitted acceptable circumstances to grant bail to him. Hence, the Petitioner is granted bail subject to the following conditions:

1. Cash bail of Rs.50,000/=.

2. To provide 02 sureties. They must sign a bond of five hundred thousand (Rs.500,000/-) each.
1. The Petitioner and the sureties must reside in the address given until conclusion of his case.
2. Not to approach any prosecution witnesses directly or indirectly or to interfere with.
3. To surrender his passport if any, to court and not to apply for a travel document. The Controller of the Immigration and Emigration is informed of the travel ban on the Petitioner.
4. To report to the Officer-in-Charge, Counter Terrorism Investigation Division, Kilinochchi on the 2nd and last Sunday of every month between 9am to 1pm.
5. Any breach of these conditions is likely to result in the cancellation of her bail.

The Bail Application is allowed and the Learned High Court Judge of Kilinochchi is hereby directed to enlarge the Petitioner on bail on the above bail conditions.

The Registrar of this Court is directed to send this bail order to the High Court of Kilinochchi, and Officer-in-Charge of the Counter Terrorism Investigation Division, Kilinochchi.

JUDGE OF THE COURT OF APPEAL

R.P.Hettiarachchi, J.

I agree.

JUDGE OF THE COURT OF APPEAL