

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	Thambu Kunasekaram
Application No:	Karadikunru, Nachchikuda.
CA/Bail /0400/24	(Presently in remand)
<u>Petitioner</u>	
HC Kilinochchi	Vs.
No. KN/235/2025	1. The Officer-in-Charge
MC Colombo	Counter Terrorism Investigation
No. B/6137/03/2023	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.**

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 1st 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 at his residence on 08.12.2023 and detained him at the Counter Terrorism Investigation Division, Colombo-05 for about six months before he was produced in the Magistrate Court of Colombo under case No. B/6137/2023 on 06.06.2024. During the investigation one of the friends of the Petitioner namely Arokiyanathan Severiyan was also arrested. At present both had been indicted in the High Court of Kilinochchi for Conspiracy and failed to give information regarding manufacturing arms and ammunition. Both 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 64 years old and was seriously injured in his hip and his left side eye was blind and was waiting for the lens to be fixed after eye surgery. There are injuries that occurred as a result of being a victim of shelling during the last phase of war. He further state that he was severely sick at the remand prison and was taken to the National Hospital for further treatment and now is unable to manage his both eyes and his physical difficulties.

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

- a. That he was only produced before the Magistrate Court for 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 18 months in 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 contend 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 in view of 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**". [Emphasis 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.

3. The Petitioner and the sureties must reside in the address given until conclusion of his case.
4. Not to approach any prosecution witnesses directly or indirectly or to interfere with.
5. 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.
6. 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.
7. 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