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 Sri Lanka from the Order of the Learned Magistrate of Kurunegala as dated 28' May 2025, in relation to the Application for Bail in Magistrate Court of Kurunegala Case No. B1196/25.

CA/ MCR/05/25

MC Kurunegala

B1196/2025

Office-In-Charge
Motor Traffic Division
Police Station
Kurunegala

COMPLAINANT

Vs.

Edirisinghe Mudiyanselage Pradeep
Lanka Edirisinghe
Meepitiyawatta
Dodamgaslanda

SUSPECT/ACCUSED

AND NOW BETWEEN

Eladuwa Pedrick Appuhamilage
Niroshani Anjula Wijenayaka
Meepitiyawatta
Dodamgaslanda

PETITIONER

Vs.

Office -In-Charge
Motor Traffic Division
Police Station

Kurunegala.

Complainant-Respondent

The Hon. Attorney General

Attorney General's department

Colombo 12.

Complainant-Respondent

Edirisinghe Mudiyanselage Pradeep
Lanka Edirisinghe

Before : **B. Sasi Mahendran, J.**

Amal Ranaraja, J

Counsel: Mohan Weerakoon, Pc with S. Peiris for the petitioner
Oswald Perera, SC, for the Respondents

Argued On: 24.07.2025

Order On: 29.07.2025

JUDGMENT

B. Sasi Mahendran, J.

The petitioner has submitted this revision application under the revisionary jurisdiction of this Court, seeking the reliefs outlined in the petition dated 16 June 2025.

(a) Issue notice on the Complainant-Respondent and the Respondent above named

(b) Set aside the Magistrate's Order dated 28th May 2025 marked "X3".

(c) Release the Suspect-Respondent on bail in terms of Section 7 of the Bail Act No. 30 of 1997;

(d) such other and further relief as the Court may deem just and appropriate in the circumstances.

The following facts are relevant to the Application.

On 6 April 2025, a motor traffic accident occurred on the Colombo–Kurunegala Road involving vehicles bearing registration numbers NW-KK 2367 and NW-CAD 9534. The latter was driven by the suspect, Edirisinghe Mudiyanselage Pradeep Lanka Edirisinghe. The driver of vehicle NW-KK 2367 sustained injuries and was admitted to the hospital. According to the Medico-Legal Report (MLR), the suspect was found to be under the influence of alcohol, marijuana, and MDMA at the time of the incident. He was subsequently produced before the Learned Magistrate of Kurunegala on a charge of causing grievous hurt and was released on bail pursuant to Section 14 of the Bail Act No. 30 of 1997.

As stated in the Petition, on 8 April 2025, the Learned Magistrate revoked the previously granted bail and issued a warrant for the suspect's arrest, based on a complaint by the aggrieved party alleging that the suspect was attempting to tamper with evidence. Following his discharge from the hospital on 10 April 2025, the suspect was produced before the Learned Magistrate and remanded in custody. On 20 April 2025, the injured driver succumbed to his injuries, prompting the police to file a report indicating an offence under Section 298 of the Penal Code, along with Sections 148(1), 149(a), 151(3), 151(1)(b), and 126(4) of the Motor Traffic Act. Subsequently, on 24 April 2025, a further report was submitted by the police asserting that the offence committed by the suspect falls within the ambit of Section 296 of the Penal Code. On 5 May 2025, the police informed the Learned Magistrate that they had retrieved CCTV footage relevant to the investigation and moved to submit the same to the Government Analyst for examination.

On 8 May 2025, a fresh bail application was submitted, asserting that there was no substantive evidence to support a charge of murder and seeking the release of the suspect on bail. The Learned Magistrate refused the application, remanded the accused. Against the said order, this application was filed.

When the matter was supported on 27 June 2025, Counsel for the Petitioner informed the Court that an application for bail had been filed before the High Court. Upon consideration of the submissions, notice was issued to the respondent.

On 24 July 2025, when the case was called, State Counsel objected to the revision application on the ground that the Learned Magistrate lacked jurisdiction to grant bail where the suspect was charged under Section 296 of the Penal Code. It was further contended that this Court does not possess original jurisdiction to entertain bail applications in relation to Section 296.

It is noteworthy that the Learned Magistrate had initially granted bail to the suspect. However, on 8 May 2025, the said bail was revoked without assigning any reasons, in deviation from the procedural safeguards set out under the Bail Act.

With regard to the cancellation of bail, the relevant section of the Bail Act is section 14.

Section 14 of the Bail Act No 30 of 1997

14. (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 believer."

Section (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 cause of justice; or

(iii) Commit an offence while on bail; or that the particular gravity of, and public reaction to, the alleged offence may give rise to public disquiet. (emphasis added)

In the present matter, it is noteworthy that the police did not file an application seeking the cancellation of the bail order previously granted.

The following judicial decisions pertain to the legal framework and principles governing the cancellation of bail."

Anuruddha Ratwatte and Others v. The Attorney- General, 2003 (2) SLR 39 at page 49, S.N. Silva CJ held that;

In this case the accused-appellants appeared before the High Court on notice being issued for the service of indictments. Except for the 12th accused the others had been released on bail. The High Court enhanced the bail that had been ordered and those accused appellants continued to be on bail. On 21.01.2003 when the High Court committed the accused appellants to remand custody the court in effect cancelled the previous order for enhanced bail made by the court itself on 15.11.2002. However it is seen that the order placing the accused in remand custody, which is contained in a single line does not even state that the previous order 330 made by that very court is cancelled. I have to note that the order placing the accused-appellants in remand custody has been per-functorily made without there being any application, without a hearing, without grounds being adduced and without any reasons stated in writing.

In terms of the mandatory requirements of Section 14(1) such a cancellation could have been done only on :-

(i) an application being made by a police officer;

(ii) hearing the accused appellant personally or through his attorney-at-law:

(iii) if the court had reasons to believe that any one of the grounds as specified in paragraph (a) (i) to (iii) or paragraph (b) have been made out.

The accused appellants have been committed to remand custody without there being any compliance with any of the requirements set out above.

In Rupathunga v. Attorney General ad another, 2009 (1) SLR 170 at 172, Ranjith Silva, J held that;

"Section 15 of the Bail Act states that where a Court refuses to release on bail any person suspected or accused of, or being concerned in committing or having committed any offence or cancels a subsisting order releasing a person on bail or rescinds or varies an order cancelling a subsisting order it shall state, in writing the reasons for such refusal, cancellation or rescission or variation as the case may be. Therefore, it is the bounden duty of a High Court Judge to state reasons when she is cancelling an already existing bail order. The reasons are set out in Section 14 and it is for those reasons that an already existing bail order could be cancelled. On a perusal of this impugned order we find that she had not given any reason as enumerated in Section 14. Apart from what has already been stated what shocks the conscience of this Court is that this particular learned High Court Judge had not even cared to provide an opportunity to the accused, at least to show cause as to why bail should not be cancelled instead has considered some extraneous matters which are not even covered by Section 14 and has rushed to the conclusion that bail should be cancelled which I should say is indecent. Although it is pertinent to note that the same learned High Court Judge on a subsequent date namely on 11.07.2008 when an application was made to reconsider the cancellation of bail, has made an order wherein she has stated that when she ordered a cancellation of bail she acted under Section 14 (1)(a)(3) of the Bail Act whereas she had not even mentioned that particular Section in her impugned order dated 24.09.2007. Having completely failed to refer, even in passing, to Section 14 of the Bail Act or any provision of the Bail Act, on 11.07.2008, she has

stated in her order that she considered the application for bail under Section 14(1) of the Bail Act. It is pathetic to note that the learned High Court Judge has not even been mindful of Sections 14 and 15 of the Bail Act when she made the impugned order. These are orders which could be branded as capricious, arbitrary and unjust. Therefore, we set aside the said impugned order and the learned High Court Judge is directed to forthwith release the accused from remand custody.

The above said judgments were considered by Justice Sampath B. Abeykoon in CPA/132/2023 decided on 31.01.2024 held that;

"I find that the reasons given by the learned High Court Judge to cancel bail of the accused does not fall within the ambit of section 14 of the Bail Act to justify cancellation of bail. I am of the view that any cancellation of bail given to an accused shall be under limited circumstances as provided for in section 14 of the Bail Act, whatever the section 263 of the Code of Criminal This said section was considered in the following judgments

In the present case, the Learned Magistrate failed to afford the suspect an opportunity to show cause as to why the bail previously granted should not be cancelled. Furthermore, the Magistrate did not assign any reasons for the cancellation of bail.

It is my considered view that the Learned Magistrate's order lacks justification and does not comply with the requirements set out under the Bail Act No. 30 of 1997. Specifically, Section 14 of the Act prescribes the procedure to be followed for the cancellation of an existing bail order, which was not duly adhered to in this instance.

It is recognized that the present matter is a revision application. Where the impugned order is such that it shocks the conscience of the court, the court is vested with the jurisdiction to grant the relief sought by the petitioner.

In ***Wijesinghe V. Tharmaratnam*** **CA 120/80, Decided on 14th October 1986, page 47 at page 49** ***Srikantha's Law Reports, Volume (IV)*** **Jameel J.** held that,

"Revision is a discretionary remedy and will not be available unless the application discloses circumstances which shocks the conscience of court."

This was further established in **Bank of Ceylon Vs Kaleel and others [2004] 1 SLR 284, Per Wimalachandra J,**

"In any event to exercise revisionary jurisdiction the order challenged must have occasioned a failure of justice and be manifestly erroneous which go beyond an error or defect or irregularity that an ordinary person would instantly react to it; the order complained of is of such a nature which would have shocked the conscience of court."

Accordingly, we conclude that the order issued by the Learned Magistrate in respect of the cancellation of bail was rendered without due regard to the relevant provisions of the Bail Act. As such, the said order is unlawful and constitutes a clear violation of the established legal framework governing bail proceedings.

The pertinent question, however, is whether the Learned Magistrate, upon being presented with the facts, gave due consideration to whether the alleged offence falls within the ambit of Section 296.

In **Dayananda v. Weerasinghe and Other**s, (1983) 2 SLR 84 at page 91, his Lordship Ratwatte, J held that:

"Magistrate should be more vigilant and comply with the requirement of the law when making remand orders and not act as mere rubber stamps."

In Udaya Prabhath Gammanpila v. M.D.C.P. Gunathilake and Others, S.C.F.R. Application No. 207/2016, decided on 11.07.2016, his Lordship K. Sripavan, C.J. held that;

"The Court emphasizes that when a "B" Report is filed, the Magistrate has to apply his judicial mind to the said Report and give appropriate directions to the

Police if further investigations are necessary. The Magistrate shall not make orders mechanically without applying his judicial mind."

In the instant case, the police filed the further report on 20th April 2025, following the death of the driver, wherein the alleged offence was categorized under Section 298 of the Penal Code, together with Sections 148(1), 149(a), 151(3)(b), and 126(4) of the Motor Traffic Act.

Subsequently, on 24th April 2025, the police filed a further report indicating that the offence committed by the suspect falls within the scope of Section 296 of the Penal Code.

We are mindful that in forming the opinion that the alleged offence falls under Section 296, the Learned Magistrate failed to take into account the third limb of Section 294 of the Penal Code, which provides as follows:

Section 294 of the Penal Code

294. Except in the cases hereinafter excepted, culpable homicide is murder –

Fourthly, If the person committing the act knows that it is so imminently dangerous that it must in all probability cause death, or such bodily injury as is likely to cause death, and commits such act without any excuse for incurring the risk of causing death or such injury as aforesaid.

According to the facts submitted through the further report, the police have stated that the motor accident occurred while the suspect was overtaking a bus on the highway. There had also not been any evidence to establish that the suspect knew that the vehicle in which the deceased was travelling was coming from the opposite direction. Such circumstances perse, set up a situation of negligent conduct of the suspect. It is perplexing that the Learned Magistrate failed to take into account the following statutory provision when the road accident was formally reported.

261B. Any person who is guilty of the offence of contravening the provisions of subsection (1B) of section 151 shall, on conviction after summary trial before a Magistrate, be liable-

a. Where he causes death to any person, to imprisonment of either description for a term not less than two and not exceeding ten years and to the cancellation of his driving licence;

b. Where he causes injury to any person, to a fine not less than five thousandrupees or to imprisonment of either description for a term not exceeding five years or to both such fine and imprisonment and to the cancellation of his driving licence.

I am mindful of the words uttered by his Lordship Yasantha Kodagodage PC in Mohamed Razik Mohamed Ramzy v. B.M.A. S.K. Senaratne and Others, SC/FR Application No.135/2020, Decided on 14.11.2023, held that;

" That being material based upon which the Magistrate having to determine whether or not the suspect being produced by the officer-in-charge of the police station should be placed in remand custody and/or enlarged on bail. Section 115(2) of the Code of Criminal Procedure Act provides that 'The Magistrate before whom a suspect is forwarded under this section, if he is satisfied that it is expedient to detain the suspect in custody pending further investigation, may after recording his reasons, by warrant addressed to the superintendent of any prison authorise the detention of the suspect …'

Itis well established in our jurisprudence that an accused person is presumed to be innocent until proven guilty. Section 115(2) of the Criminal Procedure Code stipulates that where a suspect is produced before a Magistrate under Section 115(1), the Magistrate may order the detention of the suspect pending further investigation provided he is satisfied that such detention is warranted and records the reasons for his decision.

In this context, it is essential to examine the reasons recorded by the Learned Magistrate when the order for remanding the suspect was made."

මුල් බී වාර්තාවේ පරීක්ෂණ පැවැත්වීමේදී මරණකරු පදවන ලද කාර් රථය කුරුණෑගල දෙස සිට කොළඹ දෙසට ධාවනය කරන අවස්ථාවේදී කොළඹ සිට කුරුණෑගල දෙසට ධාවනය වූ සැකකරු පදවන ලද කාර් රථය මාර්ගයේ දකුණු තීරුවේ පැමිණ මරණකරු පදවන රථයේ ගැටී මෙම අනතුර සිදු වී ඇති බවට අනාවරණය වූ බවට සඳහන් කර ඇත. මුල්වරට කරුණු වාර්තා කරන ලද දිනයේදී සැකකරු සම්බන්ධයෙන් පවත්වන ලද ස්වසන පරීක්ෂණයට අදාළ ශ්වසන පරීක්ෂණ නලය සහ පොලිස් 414 පෝරමය අධිකරණයට ඉදිරිපත් කර ඇත. එම ශ්වසන පරීක්ෂණ නලය අධිකරණය විසින් නිරීක්ෂණය කිරීමේදී එහි කැට කොල පැහැ ගැන්වී මාධ්‍ය රේඛාව ඉක්මවා විහිදී ගොස් ඇති බවට නිරීක්ෂණය කරන ලදී. එසේම, මුල් බී වාර්තාව සමග ඉදිරිපත් කර ඇති සැකකරුගේ අධිකරණ වෛද්‍ය පෝරමයේ සැකකරු අන්තරාදායක ඖෂධ භාවිතා කර ඇති බවට සඳහන් කර ඇත. ඒ අනුව, මෙම නඩුවේ සැකකරු මත්ද්‍රව්‍ය සහ මත්පැන් භාවිතා කර රිය පැදවීමට නුසුදුසුව සිටින අවස්තාවක රිය පැදවීමෙන් රිය අනතුරක් සිදු වී මරණයක් සිදුවීමේ හෝ මරණයක් සිදුවිය හැකි ශාරීරික පාඩුවක් සිදුවීමේ අන්තරායක් ඇති බවට දැනගෙන සිටිමින්ම රිය ධාවනය කර ඇති බවට වන පදනම මත සැකකරු දණ්ඩ නීති සංග්‍රහයේ 296 වගන්තිය යටතේ වරදක් සිදු කර ඇති බවට පැමිණිල්ල කරුණු වාර්තා කර ඇති බවට පෙනී යයි. පැමිණිල්ල විසින් අපරාධ නඩු විධාන සංග්‍රහ පනතේ 115 (1) හා 120 (1) වන වගන්තිය ප්‍රකාරව ඉදිරිපත් කර ඇති බී වාර්තා මගින් අනාවරණය කර ඇති ඉහත සඳහන් කරන ලද කරුණු සලකා බැලීමේදී එකී ස්ථාවරය තහවුරු කිරීමට ප්‍රමාණවත් කරුණු (sufficient Materials)ඇති බවට පෙනී යයි.

It is my considered view that the Learned Magistrate failed to properly assess whether the offence allegedly committed by the suspect falls under the provisions of the Motor Traffic Act or constitutes the offence of murder. Upon examination of the circumstances, I am of the view that the incident is more appropriately categorized under the Motor Traffic Act."

For the above-mentioned reasons, we set aside the order made on 28.05.2025 and also quash the order made on 08.04.2025 by the learned magistrate. The Learned Magistrate is directed to enlarge the suspect on the same terms imposed on him by order dated 07.04.2025. We also direct the Learned Magistrate to send the case record to the Hon. Attorney General to consider the material available for further action.

We direct the prison authority to produce the suspect before the Learned Magistrate without delay to enable the Learned Magistrate to act as directed by the instant order of this court.

The Registrar is requested to communicate this order by fax to the High Court and the Magistrate's Court of Kurunegala for information/compliance.

Application allowed.

JUDGE OF THE COURT OF APPEAL

Amal Ranaraja, J.

I AGREE

JUDGE OF THE COURT OF APPEAL