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.

Court of Appeal
Revision Application No:
CA (PHC) APN/0112/2023

The Director General
Commission to Investigate Allegations of Bribery or Corruption
Malalasekera Mawatha, Colombo-07.

COMPLAINANT

High Court of Colombo
Case No. HCB 1961/2013

Vs.

1. Marakkala Manage Sampath Priyankara
   No.31, Jalashaya Kanda,
   Bandarawela.
2. Jayaweera Arachchige Don Deshapriya Ranasinghe
   No.39/7, Teacher's Training College Road, Bandarawela.

ACCUSED

AND

1. Marakkala Manage Sampath
   Priyankara
   No.31, Jalashaya Kanda,
   Bandarawela
2. Jayaweera Arachchige Don
   Deshapriya Ranasinghe
   No.39/7, Teacher's Training College
   Road, Bandarawela.

ACCUSED-APPELLANTS

Vs.

The Director General
Commission to Investigate Allegations
Of Bribery or Corruption,
Malalasekera Mawatha,
Colombo-07.

COMPLAINANAT-RESPONDENT

AND NOW

1.Marakkala Manage Sampath
Priyankara
No.31, Jalashaya Kanda,
Bandarawela.
(Presently at Welikada Prison)

1st ACCUSED-APPELLANT-PETITIONER

Vs.

The Director General

Commission to Investigate Allegations

Of Bribery or Corruption,

Malalasekera Mawatha,

Colombo-07.

COMPLAINANAT-RESPONDENT-RESPONDENT

AND NOW BETWEEN

1. Marakkala Manage Sampath

Priyankara

No.31, Jalashaya Kanda,

Bandarawela.

(Presently at Welikada Prison)

1ST ACCUSED-APPELLANT-PETITIONER-PETITIONER

Vs

The Director General

Commission to Investigate Allegations

Of Bribery or Corruption,

Malalasekera Mawatha,

Colombo-07.

COMPLAINANAT-RESPONDENT-RESPONDENT-RESPONDENT

BEFORE : **Sampath B. Abayakoon, J.**

P. Kumararatnam, J.

COUNSEL : **Anil Silva, P.C, with Aman Bandara for the Petitioner.**

Anusha Sammandapperuma, Assistant Director Legal for the Respondent.

SUPPORTED ON : **01/02/2024.**

DECIDED ON : **03/06/2024.**

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ORDER

P.Kumararatnam,J.

The Accused-Appellant-Petitioner-Petitioner (hereinafter referred to as the Petitioner) had filed this Revision Application to revise the order of the Learned High Court Judge of Colombo delivered in HCB 1961/2013 on 28.07.2023. In his order the Learned High Court Judge had refused to enlarge the Petitioner on bail pending appeal on the ground that there were no exceptional circumstances.

The Petitioner was the Accused in the High Court of Colombo Case No. HC 1961/2013.In the said case the Petitioner together with the 2nd Accused were indicted on the following charges:

i. Between the period 01st August 2011 to 21st September 2011 at Bandarawela within the jurisdiction of this Court you the 1st accused being a public servant to wit a Member of the Bandarawela Urban Council did solicit a gratification in a sum of

Rs. 2,000,000/- from Saukenda Mudiyanselage Piyasena as an inducement or reward to perform an official act to wit take necessary steps to give a Boutique at the Wholesale Vegetable Market situated within the area of the Bandarawela Urban Council to Saukenda Mudiyanselage Piyasena and thereby committed an offence punishable under Section 19(b) of the Bribery Act.

ii. At the time place and in the course of the transaction referred to in Charge 1 you the 1st accused being a public servant to wit Member of the Bandarawela Urban Council did solicit a gratification of Rs. 2,000,000/- from Saukenda Mudiyanselage Piyasena and thereby committed an offence punishable under Section 19 (c) of the Bribery Act as amended.

iii. On 22nd September 2011 at the place and in the course of the transaction referred to in Charge 1 you the 1st accused being a public servant to wit a Member of the Bandarawela Urban Council did accept a gratification in a sum of Rs. 800,000/- from Saukenda Mudiyanselage Piyasena as an inducement or reward to take necessary steps to give a Boutique at the Wholesale Vegetable Market situated within the area of the Bandarawela Urban Council to Saukenda Mudiyanselage Piyasena and thereby committed an offence punishable under Section 19(b) of the Bribery Act.

iv. At the same time place and in the course of the transaction referred to in Charge 1 you the 1st accused being a public servant to wit a Member of the Bandarawela Urban Council did accept a gratification of Rs. 800,000/- from Saukenda Mudiyanselage Piyasena and thereby committed an offence punishable under Section 19(c) of the Bribery Act as amended.

v. At the time place and in the course of the transaction referred to in Charge 3 you the 2nd accused aided and abetted the 1st accused to commit the offence referred to in Charge 3 and as a result of the abatement the 1st accused committed the said

offence and thereby the 2nd accused committed an offence punishable under Section 19(b) read with section 25(2) of the Bribery Act.

vi. At the time place and in the course of the transaction referred to in Charge 4 you the 2nd accused aided and abetted the 1st accused to commit the offence referred to in Charge 4 and as a result of that abatement the 1st accused committed the said offence and thereby the 2nd accused committed an offence punishable under Section 19(c) read with section 25(2) of the Bribery Act as amended.

After trial the Petitioner was convicted for 2nd and 4th charges and he was acquitted from 1st and 3rd charges on 28.10.2022. The 2nd Accused was convicted of charge 6 and acquitted of charge 5. The Petitioner was sentenced as follows:

2nd Count

05 years RI and a fine of Rs.5,000/-. In default 01-year simple imprisonment.

4th Count

05 years RI and a fine of Rs.5,000/-. In default 01-year simple imprisonment.

The Petitioner was further ordered to pay Rs.800,000/- as a penalty with a default sentence of 01-year simple imprisonment.

The Learned High Court ordered the term of imprisonment imposed on counts 2 and 4 were to run consequently.

The Petitioner states that upon being aggrieved by the said conviction and the sentences he had preferred an appeal to this case on 03.02.2023.

In the meantime, the Petitioner made an application for bail pending appeal to the High Court of Colombo through his Counsel on 21.03.2023 in terms of Section 20(2) of the Bail Act No.30 of 1997.

The Learned High Court Judge of Colombo delivering his bail order dated 28.07.2023 has refused to enlarge the Petitioner on bail on the sole reason that the Petitioner has failed prove any exceptional circumstances which warrant granting of bail to the Petitioner.

The Petitioner pleads the following circumstances to be considered as exceptional.

1. The Petitioner's daughter who was sitting for the Advance Level Examination was suffering from severe depression due to the incarceration of the Petitioner and had to undergo medical treatment.
2. The education of the son of the Petitioner has come to a halt as the Petitioner is the sole breadwinner of the family.
3. The wife of the Petitioner had left the matrimonial house leaving two children thereby depriving the Petitioner's children the care and protection of both parents.

It is a settled principle that release on bail pending appeal to the Court of Appeal will only be granted in exceptional circumstances.

In **King vs. Keerala** 48 N.L.R. 202, Wijewardana J. held,

> *"the Court of Criminal Appeal does not grant applications for bail in the absence of exceptional circumstances".*

In **The Queen vs. B. Rupasingha Perera** 62 N.L.R.238, Basnayake C.J. with Sansoni J. held,

> *"bail is not granted by the Court of Appeal unless there are exceptional circumstances".*

In, **The Queen vs. Koranelis Silva** 74 N.L.R. 113, Weeramanthri J. held,

> *"release on bail pending appeal to the Court of Criminal Appeal will only be granted in exceptional circumstances".*

In an application of this nature, the bail only be granted upon successful submission that the Accused has an exceptional ground. Further the bail should not be granted as a right for a person who was convicted by a competent court.

In **The Attorney General v Letchemi and others** SC Appeal No. 13/2006 decided on 04.08.2006 the Supreme Court held that:

> *" (b) The presumption of innocence that inures in favour of those suspected or accused or connected with the commission of an offence, cease to operate after conviction by a court of competent jurisdiction".*

On 01.02.2024, the Learned Counsel for the Respondent in her reply to the bail pending application inquiry had very extensively submitted to court why the medical and other circumstances submitted should not be considered in favour of the Petitioner.

The Learned High Court Judge in his well-considered order considered the heath condition of the Petitioner and other circumstances very extensively and given reasons as to why he refused the application for bail pending appeal of the Petitioner.

In **Attorney General v Ediriweera** SC Appeal No. 100/2005 decided on 04.08.2006 the Supreme Court held that:

> *" In addition to the above, the Court also to consider the nature of the charges and the severity of the sentence, in granting bail pending appeal. In this context, it is important to note that this Accused-Respondent has been given a sentence of a period of 10*

years rigorous imprisonment. In such cases where the sentence is severe there is a likelihood of the temptation and the propensity to abscond and flee from justice."

Hence, considering the seriousness of the offence and the punishment imposed on the Petitioner by the Learned High Court Judge, I consider this is not an appropriate case to issue notice to the Respondent. The only remedy available to the Petitioner would be to make an application before the Court to fix the main appeal to an early date considering the circumstances of this case.

Hence, we refuse notice in this case.

The Registrar of this Court is directed to send this order to the High Court of Colombo for information.

JUDGE OF THE COURT OF APPEAL

SAMPATH B. ABAYAKOON, J.

I agree.

JUDGE OF THE COURT OF APPEAL