

IN 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 Provisions) Act No.
48 of 1979 as amended by the Amendment
Act No. 19 of 2022.

The Democratic Republic of Sri Lanka

Complainant

Court of Appeal Case No:
CA/CPA/ 0054/2024

High Court of Colombo Case No:
6233/12

-Vs-

01. Selwarasa Kirubakaran *alias* Aliyar
Mohamed Nisthar *alias* Lafeer *alias*
Gajan
02. Shanmugalingam Suriyakumar
03. Thambiyah Prakash *alias* Dhanush

Accused

AND NOW BETWEEN

Thambiah Prakash *alias* Dhanush

Accused-Petitioner

-Vs-

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

Respondent

Before : **P Kumaratnam, J.**
Pradeep Hettiarachchi, J.

Counsel : Asthika Devendra with Aruna Madhusanka for the Accused-Petitioner
Anoopa De Silva, DSG for the State

Argued on : 26-06-2026

Decided on : 17-07-2026

Pradeep Hettiarachchi, J

Judgment

1. The Petitioner instituted the instant revision application seeking to have the order dated 05-02-2024 (marked as P3) of the Learned High Court Judge of Colombo in the case bearing No 6233/2012 set aside or revised.
2. The Petitioner has been indicted in the High Court of Colombo in the case bearing No. 6233/2012 on 20-09-2012, as the 3rd Accused under the provisions of the Prevention of Terrorism Act and Emergency Regulations.
3. The said Indictment dated 20-09-2012 includes 115 charges under the Prevention of Terrorism (Temporary Provisions) Act and another 115 charges under the provisions of Emergency Regulations contained in the Extraordinary Gazette bearing No. 1405/14 dated 13-08-2005. The said Indictment also contains a list of 106 witnesses.
4. Thereafter, the trial has commenced, and the confessions alleged to have been given by the Accused have sought to be marked as evidence against them by the prosecution.
5. However, since the Learned Counsels for the Accused raised objections regarding the voluntariness of the confessions, the Learned Trial Judge has ordered to conduct a *voir dire* inquiry.

6. Accordingly, a *voir dire* inquiry has been conducted in respect of the Petitioner, who was the 3rd Accused in the case. At the conclusion of the *voir dire* inquiry, the Learned High Court Judge, by his Order dated 29-08-2019, had concluded that his confession was made voluntarily and therefore is admissible as evidence.
7. The Petitioner opted not to challenge the aforesaid order made by the Learned High Court Judge for the purpose of an expeditious conclusion of the case against him.
8. It has also been brought to the attention of this Court that the same confession has already been concluded to be involuntary and the Petitioner was acquitted in HC Gampaha Case bearing No: 63/2014 even without his defense being called.
9. According to the Petitioner, the trial proper of the case has thereafter commenced on 27-11-2024.
10. Thereafter, a bail application on behalf of the Petitioner was made before the Learned High Court Judge of Colombo on 28-03-2023, under and in terms of Section 15B of the Prevention of Terrorism (Temporary Provisions) (Amendment) Act No. 12 of 2022.
11. After hearing both parties, the Learned High Court Judge, by his Order dated 05-02-2024, refused to grant bail to all three Accused.
12. Being aggrieved by the aforesaid Order, the Petitioner has preferred this revision application to this Court.
13. Subsequently, several preliminary objections were raised by the Respondent regarding the maintainability of this Revision Application, which this Court overruled by the Order dated 23-01-2026.

Exceptional Circumstances

14. The Petitioner has *inter alia* urged the following grounds for consideration of granting bail;

- (a) The Learned High Court Judge is vested with powers to grant bail for the Petitioner under exceptional circumstances under Section 15B of the Prevention of Terrorism (Temporary Provisions) Act No. 12 of 2022.
- (b) The Learned High Court Judge has failed to consider the intention of the legislature to enact the Prevention of Terrorism (Temporary Provisions) (Amendment) Act no. 12 of 2022.
- (c) The Learned High Court Judge has failed to consider that a long period of time may be taken for the conclusion of this matter.
- (d) The Petitioner was arrested on or around 09-08-2009 and has been in incarceration up to date, and the Learned High Court Judge failed to consider the said long period of time and/or failed to consider the gravity of the same properly.
- (e) The Learned High Court Judge has failed to consider that the Petitioner has no previous convictions and of the cases where he had been/indicted other than the instant case, he had been acquitted.
- (f) The Learned High Court Judge has failed to apply the principle of presumption of innocence against the Petitioner.
- (g) The Learned High Court Judge has failed to appreciate that the authorities he has relied upon are irrelevant and/or can be distinguished under both fact and law from the present case.
- (h) The Learned High Court Judge has failed to consider authorities, both local and foreign, where the period of incarceration and the long delay in trial have been taken into consideration when considering bail.

Consideration of the Exceptional Circumstances

15. The aforementioned exceptional circumstances urged by the Petitioner could be broadly categorized under two main grounds: (a) the Learned High Court Judge's failure to consider the intention of the legislature in enacting the Prevention of Terrorism (Temporary Provisions) (Amendment) Act no. 12 of 2022, and (b) the long delay in prosecuting the Petitioner.
16. Prior to the Amendment introduced to PTA in 2022, there was no specific provision to apply for bail in the principle enactment, other than the provisions contained in Section 19 of the Act, where it states that any person convicted by any court of law for any offence under this Act shall, notwithstanding that he has lodged a petition of appeal against his conviction or the sentence imposed on him may be released by the Court of Appeal upon satisfaction of the exceptional circumstances.
17. Furthermore, Section 15(2) of the principal enactment provided that, upon the indictment being received in the High Court against any person in respect of any offence under this Act or any offence to which the provisions of Section 23 shall apply, the Court shall, in every case, order the remand of such person until the conclusion of the trial. Accordingly, prior to the amendments introduced by Act No. 12 of 2022, the statutory scheme contemplated the continued remand of a suspect/accused until the conclusion of the trial.
18. It was against this legislative backdrop that Parliament enacted the Prevention of Terrorism (Temporary Provisions) (Amendment) Act, No. 12 of 2022. The new amendments represented a significant departure from the previous statutory framework by conferring, for the first time, a limited jurisdiction upon the High Court to grant bail prior to the conclusion of the trial.
19. In contrast to the position under the principal enactment, the new Amendment introduced specific provisions regulating the grant of bail to persons held in remand or detention under the Act. Section 15B of the Prevention of Terrorism (Temporary Provisions) (Amendment) Act no. reads as follows;

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.

20. Accordingly, by virtue of the first proviso to Section 15B, Parliament has created an express exception to the mandatory remand requirement contained in Section 15(2). The High Court is now vested with the jurisdiction to release an accused person on bail, pending the conclusion of the trial, upon being satisfied that there exist exceptional circumstances warranting the grant of bail to the accused.

21. The mischief that the legislature sought rectify by introducing the aforesaid provision was the absence of a specific statutory provision by which a person arrested or detained under the Act could make an application for bail and to eliminate any uncertainty that may have existed under the previous legal regime as to whether a suspect or accused person was entitled to invoke the jurisdiction of the Court to seek bail during the pendency of the case. The legislature has addressed this defect by introducing Section 15B, thereby conferring upon the High Court a limited jurisdiction to grant bail in appropriate cases, subject to the conditions prescribed by that provision.

22. When perusing the Judgment, it can be noted that while the Learned High Court Judge had admitted the jurisdiction of the High Court to grant bail to the Petitioner upon establishing exceptional circumstances, the impugned order is devoid of any consideration of the legislative purpose underlying the introduction of Section 15B. In particular, the Learned High Court Judge has failed to apply his mind to the purpose/objective behind the said provision, an exercise which, in my opinion, was necessary in determining an application of this nature.
23. The other main ground advanced by the Petitioner is the long delay in prosecuting him. According to the Petitioner, he has spent 14 years and 07 months in detention as of the date of the Petition. It was further stated that he was 26 years old when he was arrested, and as a result, he has spent the prime time of his youth in detention.
24. According to the Petitioner, his daughter was just one year old, and he had only started his married life when he got arrested. Hence, his wife and daughter have lost his love and protection for the past 15 years.
25. In determining whether the prolonged pre-conviction detention amounts to a punishment and is against the principle of presumption of innocence, the following case law authorities are of much relevance;
26. In ***Sanjay Chandra v. CBI***, AIR 2012, Supreme Court 830 (Decided on 23-11-2011), the Indian Supreme Court held that;

“In bail applications, generally, it has been laid down from the earliest times that the object of bail is to secure the appearance of the accused person at his trial by reasonable amount of bail. The object of bail is neither punitive nor preventative. Deprivation of liberty must be considered a punishment, unless it can be required to ensure that an accused person will stand his trial when called upon.

The courts owe more than verbal respect to the principle that punishment begins after conviction, and that every man is deemed to be innocent until duly tried and duly found guilty.

From the earliest times, it was appreciated that detention in custody pending completion of trial could be a cause of great hardship. From time to time, necessity demands that some un-convicted persons should be held in custody pending trial to secure their attendance at the trial but in such cases, 'necessity' is the operative test.

In this country, it would be quite contrary to the concept of personal liberty enshrined in the Constitution that any person should be punished in respect of any matter, upon which, he has not been convicted or that in any circumstances, he should be deprived of his liberty upon only the belief that he will tamper with the witnesses if left at liberty, save in the most extraordinary circumstances. Apart from the question of prevention being the object of a refusal of bail, one must not lose sight of the fact that any imprisonment before conviction has a substantial punitive content and it would be improper for any Court to refuse bail as a mark of disapproval of former conduct whether the accused has been convicted for it or not or to refuse bail to an un-convicted person for the purpose of giving him a taste of imprisonment as a lesson."

27. Also, in ***Queen v. Kevin Antic and Others*** 2017 SCC 27, it was held that;

"The right not to be denied reasonable bail without just cause is an essential element of an enlightened criminal justice system. It entrenches the effect of the presumption of innocence at the pre-trial stage of the criminal trial process and safeguards the liberty of accused persons."

28. In the present case, the Petitioner has been living in trepidation for a prolonged period without knowing the outcome of his case and has spent the prime time of his youth under detention. The human desire for liberty is an essential attribute of human dignity. Accordingly, such continued incarceration, in my opinion, has ceased to serve the limited purposes for which pre-trial detention is intended to achieve and has assumed the character of punishment prior to conviction. This is fundamentally inconsistent with the presumption of innocence, which remains the cornerstone of criminal jurisprudence.

29. Therefore, when considering all the above circumstances in totality, I am of the opinion that the delay of 15 years is an exceptional circumstance warranting the grant of bail to the Petitioner.
30. It is also noteworthy that the learned High Court Judge has cited several authorities, i.e., CA/PHC/APN/04/2016, CA/PHC/ 147/2017 and CA/PHC/ APN/ 145/2017 to justify his conclusion that the time period spent in remand custody alone shall not be a ground to grant bail to a suspect/accused. However, it is pertinent to note that in all those judgments, the time period the suspect/accused spent in the remand custody was less than 4 years, whereas in the present case, the Petitioner has spent nearly one and a half decades under detention.
31. The long period of incarceration, spanning over sixteen years, cannot be lost sight of when considering the factual context of this application. Notwithstanding the nature and gravity of the offence, every person accused of a criminal offence is constitutionally and legally entitled to a fair hearing within a reasonable time and to a speedy trial.
32. It is equally true that a person indicted for a serious offence carrying a severe or deterrent punishment may present a greater risk of absconding if released on bail. Accordingly, the Court must carefully balance the accused's right to liberty against the interests of the administration of justice. Where bail is considered appropriate, the Court must ensure that stringent bail conditions are imposed to secure the attendance of the accused at trial and to safeguard the due administration of justice.
33. Therefore, the case law authorities mentioned above can be distinguished from both facts and law in the present case.
34. For the reasons stated above, it is my considered view that the Learned High Court Judge could have considered granting bail to the Petitioner.
35. Accordingly, I set aside the Order of the Learned High Court Judge and order the grant of bail to the Petitioner on the following conditions;

- a. Rupees two hundred thousand cash bail with four sureties;
- b. The sureties must enter into a bond amounting to Rupees five million each;
- c. The Accused shall report to the Officer-in-Charge of the Counter Terrorism and Investigation Division, Police Headquarters, Colombo 01, once every fortnight on a Sunday between 9.00 am and 10.00 am; and,
- d. The Accused shall surrender his passport, if any, to the High Court of Colombo.

36. Any violation of the above conditions would likely result in the cancellation of the bail granted to the Accused.

37. The Registrar of this Court is directed to communicate this bail order to the High Court of Colombo forthwith.

Judge of the Court of Appeal

P. Kumararatnam, J

I agree

Judge of the Court of Appeal