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

In the matter of an application for *Restitutio-In-Integrum* and Revision under and in terms of Article 138 (1) of the Constitution of the Democratic Socialist Republic of Sri Lanka

Court of Appeal
Case No: RII/0032/2023

The Democratic Socialist Republic of Sri Lanka

Complainant

High Court Colombo
Case No: HC 2492/21

Vs.

Hewabaddage Ruwani Harshani

Accused

AND NOW BETWEEN

Siriwardana Mudalige Vineetha De Alwis
No. 103/D/40/1, Kurulu Uyana,
Aluthgama, Bogamuwa,
Yakkala

Petitioner

Vs.

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

Respondent

Before : R. Gurusinghe J

P. Kumararatnam J

&

M.C.B.S. Morais J

Counsel : Hafeel Farisz with Shannon Tillekeratne
for the Petitioner

Suharshi Herath, D.S.G.
for the Respondent

Supported on : 27-02-2025

Decided on : 15-05-2025

M.C.B.S. Morais J.

This is an application for *restitutio-in-integrum* under Article 138 of the Constitution of the Democratic Socialist Republic of Sri Lanka. The Petitioner seeks to invoke this jurisdiction on the grounds of the following alleged exceptional circumstances.

- The Petitioner states that the Honorable High Court Judge has failed to appreciate that the order of the Magistrates' Court dated 2nd of December 2020 in imposing the surety bond of 2,000,000 LKR was for the specific and sole purpose of the suspect temporary travelling abroad and thereafter presenting herself to the Magistrates' Court.
- The learned High Court Judge has failed to appreciate the law of sureties as mandated in the code of Criminal Procedure.
- The Petitioner states that the order of the Honorable High Court Judge is ex-facie erroneous in law and inconsistent with the procedure for forfeiture of sureties set out by the Code of Criminal Procedure.
- The Petitioner states that the Petitioner is a 56-year-old retiree with no source of income and property to her name and is incapable of fulfilling the forfeited surety amount of 1,500,000 LKR.
- The Petitioner has no means of income nor property.

The Accused, Hewabaddage Ruwani Harshani, the daughter of the Petitioner, has been indicted on three separate charges before the High Court of Colombo. The indictments are as follows: Case No. HC 2486/21 for the misappropriation of Rs. 2,900,000, Case No. HC 2487/21 for the misappropriation of Rs. 70,000, and Case No. HC 2492/21 for the misappropriation of a sum of Rs. 2,800,100, all allegedly from Mount Royal Industries (Pvt) Ltd.

The alleged financial discrepancies were discovered in June 2013, and the first B Report pertaining to the complaint was lodged at the Fort Magistrates' Court on the 17th of July, 2013. Following an additional report dated 20th of January, 2014, the Petitioner was arrested and produced before the Magistrates' Court. Consequently, the Learned Magistrate ordered that the Accused be remanded in custody until the 22nd of January, 2014.

The Accused was granted bail by the **Magistrates' Court** on the **29th of January, 2014,** subject to certain conditions, including the imposition of a **travel ban**. Although an order was issued for the surrender of her passport to the court, the Accused informed the court that she did not possess a passport, and as a result, no passport was submitted. The court further ordered a **cash bail** in the sum of **Rs. 50,000** and imposed an additional condition requiring two sureties, each in the amount of **LKR 1,000,000.**

During the pendency of the proceedings, the Accused expressed an intention to travel to Japan with her child. Accordingly, on the 2nd of December, 2020, the Accused filed an application before the Magistrates' Court of Fort requesting permission to travel overseas. The Learned Magistrate issued an order temporarily suspending the travel ban until the next scheduled hearing, which was set for the 17th of March 2021, in addition to imposing an additional surety bond in a sum of **Rs. 2,000,000** to be furnished with a surety for the specific purpose of lifting the travel ban.

On 17th of March 2021 the matter has been postponed onto 25th of August 2021 and it appears that the suspect has not been presented before the court due to the Covid 19 pandemic. Thereafter, before 25th of August 2021 the indictment was filed in the High Court, Colombo where the matter before the Learned Magistrate has been split into three indictments before the High Court of Colombo, numbering HC 2486/21, HC 2487/21 and HC 2492/21.

Case No. 2486/21 was filed on the 15th of March 2021. Summons were issued for the accused to appear in court on the 09th of July 2021; however, the accused failed to appear. Notices have been issued to the accused and the sureties. Despite the case being set for trial in the absence of the accused under Section 241 of the Code of Criminal Procedure, the accused appeared in court on the 26th of January 2023, and subsequently, on the 03rd of February 2023, the accused pleaded guilty, and the case was concluded.

Case No. 2487/21 was instituted on 08th of December 2021. Although summons were issued for the accused to appear in court on 08th March 2022, the accused failed to attend. The accused eventually appeared in court on the 25th of January 2023. On 22nd of February 2023, the accused appeared once more, pleaded guilty, and the case was brought to a conclusion.

Case No. 2492/21 was filed on the 19th of March 2021, and summons were issued for the accused to appear in court on the 03rd of June 2021. However, the accused failed to appear. Notices were subsequently issued to the sureties. On 26th of January 2022, it was undertaken by the Petitioner that the accused would be produced before the court on the 29th of April 2022. On that date, however, only the Petitioner, appeared in court, but the accused was not produced. On the 14th of September 2022, the accused was again not presented, though all three sureties, including the Petitioner, appeared in court. The case was then postponed to 08th of November 2022. On that date, the accused was still not presented. As a result, the case was scheduled for 05th of January 2023. On this date as well, the accused failed to appear, which lead to the forfeiture of the surety's bail.

As for the circumstances set out above, they raise two fundamental issues, that require determination by this court. These issues are pivotal to the resolution of the matter at hand and must be addressed to ensure a just outcome. Accordingly, the court must consider:

1. Whether it is illegal or unlawful to confiscate the bail under the given circumstances?
2. Whether the quantum of confiscation is unjustifiable or not?

When addressing the first issue as for the bail bond entered on 02nd of December 2020, though undertaken to produce the suspect in Magistrates' Court on the 17th of March 2021, the Petitioner has failed to comply with that and has not produced the suspect in court until the 25th of January 2023, which is a clear violation of her own undertaking. In addition, as for the format of the surety bond under the Administration of Justice Law which has been continued to be used up to this date, the surety guarantees that the accused will attend court on the appointed date and will keep on appearing until the court directs otherwise. If the accused fails to do this, the surety agrees to pay the specified amount to the Republic of Sri Lanka.

Furthermore, by signing the said bond the surety asserts and confirms that he has sufficient funds and assets to comply with that undertaking if such necessity arises. Therefore, the last two alleged exceptional circumstances need not be considered any further.

As per the proceedings, it is evident that the Petitioner's daughter has failed to return to **Sri Lanka as for the undertaking** or appear in court on notice. The Petitioner was fully aware of the obligation to present her daughter before the court in connection with the legal proceedings. However, despite this knowledge, the Petitioner failed to secure of her daughter's presence in the country, or to take any steps to ensure her appearance as required by law.

From the proceedings, it is apparent that the suspect whom the bail was granted has left Sri Lanka on 11th of December 2020 and return to Sri Lanka only on the 19th of January 2023, in spite of the undertaking given by the surety to bring the suspect back to the country on 29th of April 2022 according to the proceedings marked and submitted as 'Y' (which has not been challenged). Therefore, it is evident that the Petitioner has failed to fulfill her obligations and is thereby liable for the confiscation of bail. Furthermore, it is evident from the proceedings in case No. HC 2492/21 dated 16th of March 2023 of No.03 of High Court of Colombo which was marked as 'X7' that the Petitioner has admitted the commission of the said offence of failure to produce the suspect which is reproduced below in verbatim. This omission constitutes a failure on the part of the Petitioner to comply with the court's directives, potentially impacting the legal obligations of both the Petitioner and her daughter in that case.

මූලික ප්‍රශ්න:

ප්‍ර: හේවා බැද්දගේ රුවනි හර්ෂනී කියන්නේ කවිද?

උ: මගේ දුව

ප්‍ර: ඇය අන්තිමට ලංකාවට ආවේ කවද්ද?

උ: ජනවාරි 19

ප්‍ර: අවුරුද්ද එක්ක කියන්න?

උ: 2023 ජනවාරි 19

ප්‍ර: දැන් මේ නඩුවට ඒ කියන්නේ 2492/21 නඩුවට තමන්ට චූදිතව ඉදිරිපත් කරන්න නොතීසි ලැබුනා නේද?

උ: ඔව්

ප්‍ර: ඒ නොතීසිය තමුන් 2022.01.26 ආවා නේද?

උ: ඔව්

ප්‍ර: 2022 අප්‍රේල් 29 ආවා නේද?

උ: ඔව්

ප්‍ර: 2022. 09 වෙනි මාසේ 14 වනදා ආවා නේද?

උ: එහෙමයි.

ප්‍ර: 2023 ජනවාරි 05 ආවා නේද?

උ: එහෙමයි

ප්‍ර: (නඩු වාර්තාවට ගොනු කර ඇති දිවුරුම් ප්‍රකාශය පෙන්වා සිටී.) ඇප රාජ සන්තක නොකරන්න තමන් 2022 නොවැම්බර් 06 වෙනිදා දිවුරුම් පෙත්සමක් ගත්තා නේද?

උ: එහෙමයි

ප්‍ර: එතකොට තමන් දන්නවා මේ නඩුවට තමුන්ගේ දුවව ඉදිරිපත් කරන්න ඕනේ කියලා?

උ: එහෙමයි

ප්‍ර: දුව කොටුව මහේස්ත්‍රාත් උසාවියේ 2020.12.02 වනදා නියෝගය පරිදි විදේශගත වෙන්න අවසර ලබා දුන්නා නේද?

උ: ඔව්

ප්‍ර: ඒකට ඇප වෙලා තමන් 2020. 12.03 වනදා ඇප අත්සන් කළා නේද?

උ: එහෙමයි

ප්‍ර: එතකොට එහෙම ඇපකරයකුත් අත්සන් කරලා තිබෙද්දි දුව මෙම රටට ආවට පස්සේ තමන් මෙම උසාවියට දැන් වුවද දුව ආවා කියලා?

උ: නඩුව කැඳෙව්වෙ නැති නිසා කිවේ නැහැ.

ප්‍ර: දුව කවදද අන්තිමට ලංකාවට ආවේ?

උ: 2023 ජනවාරි 19

ප්‍ර: ආපහු ගියේ කවද්ද?

උ: 2023 මාර්තු 08 වනදා

ප්‍ර: හැබැයි තමන් දන්නවා නේද මේ නඩුවට ඒ තැනැත්තා ඉදිරිපත් කරන්න ඕනේ කියලා?

උ: මට එච්චර දැනුවත් වෙලා සිටියේ නැහැ.

In accordance with the terms, the Petitioner signs this bond after thoroughly reading and understanding the entire contents of the bond application. By doing so, the Petitioner acknowledges her full awareness of the conditions and obligations stated in the bond application.

Therefore, if I have no option but to answer the first question in the negative that it is quite correct for that the High Court Judge to confiscate the bail under the given circumstances.

Now, I will address the second issue.

When considering the second issue, the court observes on the face of it, that the amount forfeited appears to be excessive. Nevertheless, based on the documentation presented to us, it is evident that this amount was confiscated by the court on a request from the Petitioner's counsel himself which is as follows;

ඇපකාරිය වෙනුවෙන් නීතීඥ මහතා කරුණු දක්වයි.

ගරු මැතිතුමනි, මෙම නඩුවේ ඇපකාරිය ලෙස අද දින පෙනී සිටින තැනැත්තිය කියා සිටින්නේ විත්තිකාරිය තමාගේ දරුවාගේ අධ්‍යාපන කටයුත්තක් සම්බන්ධයෙන් විදේශගත වී ඇති බවත්, ඇය පැමිණි වහාම අධිකරණයට ඉදිරිපත් කිරීමේ හැකියාව ඇති බවටත් ගරු අධිකරණයට දැනුම් දී සිටිනවා. අධිකරණයට විත්තිකාරිය ඉදිරිපත් නොකිරීමේ වරද සම්බන්ධයෙන් ඉතා ගෞරවයෙන් ඉල්ලා සිටින්නේ සහනදායී මුදල් රාජ සන්තක කිරීමක් කරන ලෙසය. ලක්ෂ පහලොවක මුදලක් මේ සම්බන්ධයෙන් ගෙවීමට කැමැත්ත ප්‍රකාශ කර සිටිනවා.

Based on the above request of the Petitioner's counsel which was made on the instructions of the Petitioner, the court could not have confiscated anything less. Therefore, the confiscation of Rs. 1,500,000 is justifiable and would not be excessive.

Therefore, I have to answer the second issue too in the negative. However, there seems to be two minor consequential matters to be addressed.

In the case No. HC 2492/21, on 16th of March 2023, the Learned High Court Judge directed the Petitioner to pay Rs. 750,000 which is not quite in compliance with the earlier direction

given on the same day. As for the earlier proceedings, this Petitioner was allowed to pay the said amount in three installments. Therefore, the order made to pay Rs. 750,000 should be corrected to read as 500,000 instead of Rs.750,000 to pay as the first installment. The balance should be paid in two more installments of Rs.500,000 each on dates to be decided by the Learned High Court Judge.

Furthermore, there is one final issue of default term imposed. When a fine is imposed it is quite legal to impose a default term. Though the Petitioner states that the said imposed default term of 24 months of simple imprisonment is illegal, she has failed to cite applicable or appropriate legal provisions as to such.

However, when interpreting the default terms, it is apparent that, generally on confiscation of bail the default term of imprisonment imposed is six months simple imprisonment.

Accordingly, I direct instead of the imposed 24 months simple imprisonment, a default term of six months to take place.

Subject to the above mentioned directions this application is dismissed.

Judge of the Court of Appeal

P. Kumararatnam J
I agree.

Judge of the Court of Appeal.

R. Gurusinghe

I have had the benefit of reading the draft judgment of Justice Morais. I am unable to agree with the findings in it. Therefore, I set out my decision below.

The petitioner filed this application before this court seeking to set aside the Order of the Learned High Court Judge of Colombo dated 16-03-2023, in the case of HC 2492/21 marked 'X7', ordering the petitioner to pay a sum of Rs. 1.5 million as forfeiture due to a Bond entered into by the petitioner.

The petitioner was the surety in the Magistrate's Court of Fort on behalf of the petitioner's daughter, in the case bearing no. B 1220/13 as surety to lift the travel ban imposed on the suspect (daughter of the petitioner) (hereinafter referred to as the suspect). The CID produced the suspect before the Magistrate's Court of Fort on 10-01-2014, in connection with criminal misappropriation of money belonging to the complainant-respondent. The suspect was granted bail on 29-01-2014 by the Learned Magistrate of Fort. The bail conditions were to furnish Rs. 50,000/- cash bail and Rs. 1.0 million surety bail with two sureties. In addition, an overseas travel ban was imposed on the suspect. The suspect was released from remand, furnishing the above condition. The petitioner was not a surety for the suspect. There were two different sureties.

The case was called several days before the Magistrate's Court. On 02-12-2020, an application was made on behalf of the suspect seeking to lift the travel ban imposed on the suspect temporarily. The Learned Magistrate of Fort lifted the travel ban imposed on the suspect until the next calling date of the case on condition of Rs. 20.0 million surety bond and the petitioner, the mother of the suspect, to stand as the surety. The order of the Learned Magistrate marked X2 is as follows:

විදේශ ගත වීමට අවසර පතයි. රු. ලක්ෂ 20.0 ඇප බැඳුම් කරයක් මත ඉදිරි දිනය දක්වා විදේශගත වීම සඳහා විදේශ ගමන් තහනම ඉවත් කරමි.

මව ඇප කරු වශයෙන් ..... තහවුරු කල යුතුයි.

ආගමන විගමන පාලකට දන්වන්න

ඉදිරි දින කැඳවන්න

ඉදිරි දින 13-03-2021

On 17-03-2021 case was not called in open court, there is a minute which states that “since the spread of Covid -19 රෝගය පැතිරි යාම නිසා පැමිණීම අත් හිටවුවා ඇත. ඉදිරි දිනය පිළිබඳව දැන්වීම දැනටමත් පල කර ඇත. ඒ අනුව කැඳවන්න.
2021-08-20.

After that date, the case was not called before the Magistrate’s Court. There is a minute dated 30-03-2021 which says, “Registrar of the High Court of Colombo, mentioning two High Court case numbers, requested to send original case record and the productions”. The Learned Magistrate made an Order to send the original case records and the productions to the High Court and keep a sub-file. The case bearing no. B 1220/2013 was not called thereafter.

There were three cases filed against the suspect in the High Court of Colombo in different divisions. In the case of HC 2486/21, the suspect appeared before the High Court on 26-01-2023 as the accused. She pleaded guilty to the indictment on 03-02-2023. Accordingly, she was convicted and imposed a one-year rigorous imprisonment, which was suspended for five years, and imposed a Rs. 5,000/- fine. It further ordered that once the fine was paid, the travel ban would be lifted, and later, since the fine was paid, the passport was released to the accused. Thus, one case against the suspect was terminated.

In the High Court Case of HC 2487/21, the suspect was present in Court on 25-01-2023, and she was ordered to furnish bail. On 10-02-2023, the accused informed the Court of her willingness to plead guilty to the indictment. On 22-02-2023, the accused pleaded guilty while the PW1 requested to have Rs. 35,000/- as compensation. Accordingly, the accused was convicted and imposed a one-year rigorous imprisonment, which was suspended for five years, and also imposed a Rs. 5,000/- fine with a one-month simple imprisonment as a default sentence.

The accused paid the fine and Rs. 35,000/- compensation to PW1; thus, the second case against the suspect was terminated.

Another case bearing no. HC 2492/21 has been filed against the suspect. The three cases against the suspect were taken up before different divisions of the High Court of Colombo. The suspect did not appear before the High Court for this case. The Learned High Court Judge issued notices on the two sureties of the suspect in the Magistrate’s Court Case No. B1220/13 and issued notice to the petitioner. The Learned High Court Judge discharged the two sureties on 16-03-2023, because the Learned Magistrate lifted the travel ban imposed on the suspect without informing the two sureties.

As the forfeiture of the surety bond, the Learned High Court Judge imposed a fine of Rs. 1.5 million on the petitioner with a default term of 24 months,

simple imprisonment. The petitioner in this application seeks to set aside/ revise this Order.

I have reproduced the Learned Magistrates' Order dated 02-12-2020 above. According to that Order, the petitioner stood as surety for the purpose of lifting the travel ban imposed against the suspect for a certain period. On the due date for the suspect to appear before the Magistrate's Court, the case was not called due to the COVID-19 pandemic. After that, the Magistrate's Court Case was never called. The Honourable Attorney General has filed three indictments before the High Court of Colombo against the suspect in the case of B 1220/13 in the Magistrate's Court.

At the conclusion of the High Court cases No. HC 2486/2021on 03-02-2023 and HC 2487/2021on 22-02-2023 respectively, the respective State Counsel appearing for the Attorney General failed to inform the court that there was another case against the accused, arising from the same B report, especially when the accused made an application to lift the travel ban at the conclusion of the HC 2486/2021. The State Counsel did not raise any objection to the application of the accused, to lift the travel ban. Moreover, the court was not informed that another indictment had been filed against the accused, based on the same facts of the B Report No. B 1220/13). If all three cases against the accused were filed in the same division of the High Court and called before one High Court Judge, the travel ban would not have been lifted until all three cases were concluded.

According to the order of the Learned Magistrate on 02-12-2020, the petitioner's duty was to ensure that the suspect would appear before the Court on the next date after travelling abroad. After 02-12-2020, the suspect had come to Sri Lanka and appeared before the High Court for two cases. Therefore, the petitioner has duly fulfilled her duty to ensure that the suspect returns to Sri Lanka and appears before the Court. The question arises as to how the petitioner, the elderly mother of the suspect, could reasonably have anticipated that one case before the Magistrate's Court would split into three separate cases and subsequently be filed in the High Court.

The provisions in section 405 of the Code of Criminal Procedure Act No. 15 of 1979 provide as follows:

405. (1) Before any person is released on bail or released on his own bond a bond for such sum of money as the officer or court as the case may be thinks sufficient shall be executed by such person, and when he is released on bail by one or more sufficient sureties, conditioned that such person shall attend at the time and place mentioned in the bond and shall continue so to attend until otherwise directed.

(2) If the case so requires, the bond shall also bind the person released on bail to appear when called upon at the High Court or other court to answer the charge and to continue so to appear on every date to which the trial may be postponed or adjourned.

Sub-section 2 of section 405 of the Criminal Procedure Code specifically provides that if the person so released on bail is to appear in the High Court or other Court, the bond must expressly say so. The bond that the petitioner signed on 03-12-2020 does not indicate that the surety is bound to produce the suspect before the High Court. The petitioner undertook before the Magistrate's Court to see that the suspect shall appear in the above Court on 17-03-2021 and continue to appear until otherwise directed by the Court. There was no such direction from the Magistrate's Court to the petitioner.

The petitioner fulfilled her obligation to produce the suspect before the Court after travelling overseas. After obtaining permission from the Magistrate's Court to travel overseas on 03-12-2020, the suspect appeared before the High Court in two cases.

In *Emperor v. Chintaram* AIR 1936 Nag 243 (1), it was held:

"Where there is no mention in surety bond of the court in which the accused is to appear, the bond cannot be enforced. The fact that surety did not produce the accused in a totally different Court, even supposing he had undertaken to produce him in a particular court, is not a breach of the bond, and surety is not liable. The term of surety bond have to be determined by the language used in the bond itself."

In the case of *Bhoop Singh v State of Madhya Bharat,* 1954 Cri. LJ 334: AIR 1954 Madh-B 8 (k) it was held:

"Where a security bond is given for attendance and production of the accused in a particular Court only, the liability of the surety comes to end when the case is transferred to another court and in such a case bond cannot be forfeited for failure of the accused to appear before transferee Court."

In the case of *Abdul Hameed vs. Kalmunai Police,*47 NLR 212, the facts are briefly as follows;

> In this case a surety bound himself on behalf of an appellant "that he (the appellant) shall attend at the Magistrate's Court after the proceeding in the case and shall have been returned to the Magistrate's Court from the Supreme Court on appeal and there surrender himself .... and abide sentence which shall have been pronounced against him ...."

> The appeal was duly heard and dismissed, and the accused attended the Magistrates' Court on April 23, 1945, when the Supreme Court decision was communicated to him. He was subsequently given time to pay the fine which was due from him. Thereafter, the accused did not appear and the Magistrate ordered the surety's bond to be forfeited.

The Supreme Court held *that the term of the surety's bond was fulfilled when the accused appeared on April 23, 1945, and the surety's liability came to an end on that date.*

Having considered the facts of the case and the applicable law, I am of the view that the petitioner's obligation as a surety was discharged once the suspect, having travelled abroad with the court's permission granted on 02-12-2020, duly appeared before the High Court as an accused. The Learned High Court Judge discharged the other two sureties on the premise that the Learned Magistrate had granted permission to the suspect to travel overseas without informing the two sureties. Likewise, the Learned High Court Judge could have considered the fact that in the case of HC 2492/2021, the Learned High Court Judge lifted the travel ban imposed on the accused and released her passport.

Furthermore, the Learned High Court Judge imposed a default term of 24 months' simple imprisonment against the petitioner, violating the expressed provisions of sub-section 4 of section 422 of the Criminal Procedure Code. The default term imposed on the petitioner by the Learned High Court is illegal.

422 (4) is as follows:

If such penalty be not paid and cannot be recovered by such attachment and sale the person so bound shall be liable by order of the court which issued the warrant to simple imprisonment for a term which may extend to <u>six months.</u>

Learned High Court Judge also failed to comply with provisions of section 422(2) of the Criminal Procedure Code.

In CA(PHC)APN No: 134/12 *<u>Jayawickrama Subasinghe Arachchige Ariyapala vs Attorney General</u>* decided on 06.11.2012,A.W.A. slam J observed the following, among other matters;

> *Several questions arise as to the legality of the various orders made by the High Court Judge. The first and foremost is whether the bail bond could have been regarded as being forfeited. The word "forfeited" means that a condition or more imposed upon the executant of the bond and*

agreed to by him has been contravened. (vide Tarni Yadav Vs State (1962) Cr W 627- AIR 1962 Pat 431.

....
Undoubtedly, the application of the concept pertaining to the grant of bail, cancellation, forfeiture etc, requires a greater command of the legal principles. It is an established principle of law that the grant of bail is a judicial discretion and not a mere discretion. (Emphasis is mine.) An important decision on the exercise of discretion is worth being referred to at this stage. In the case of Roberts vs. Hopwood and others, 1925 AC page 578 at page 613, Lord Wrenbury (House of Lords) voiced his opinion as to the manner in which judicial discretion should be exercised, in the following words.

> *"The person in whom is vested a discretion must exercise his discretion upon reasonable grounds. A discretion does not empower a man to do what he likes merely because he is minded to do so- he must, in the exercise of his discretion, do not what he likes but what he ought. In other words, he must, by use of his reason, ascertain and follow the cause which reasons direct. He must act reasonably."*

....
No court has jurisdiction or authority to pass an order of cancellation of a bail bond or to declare a bond as forfeited, otherwise than in accordance with the statutory provisions. It is settled law that a surety bond has to be strictly construed because the violation of its terms provides for interference with the personal liberty and or deprivation of property rights.

In the present case, as pointed out above, the bond was forfeited for an alleged violation of a condition that was neither stipulated in the bond itself nor reflected in the order of the Magistrate.

For the reasons enumerated in this judgment, I hold that the petitioner has not violated the conditions of the surety bond she entered into in the Magistrate's Court of Fort.

The Order of the Learned High Court Judge of Colombo to forfeit the bond against the petitioner is not valid in law. Therefore, the order dated 16-03-2023, in the case of HC 2492/21 marked 'X7', directing the petitioner to pay a sum of Rs. 1.5 million, and imposing a 24-month default term is hereby set aside, and the petitioner is discharged. The application of the petitioner is allowed.

Judge of the Court of Appeal.