

IN THE COURT OF APPEAL OF THE DEMOCRATIC SOCIALIST

REPUBLIC OF SRI LANKA

In the matter of an Application for bail under and in terms of Section 15B of the Prevention of Terrorism (Temporary Provisions) Act No. 48 of 1979 as amended by Act No. 12 of 2022.

Withanage Siriyawathi
No. 158, Erandi,
Pitiduwa Road,
Weligama.

Petitioner

CA Case No: **CA/BAL/185/2025**

Colombo HC: **5447/2025**

Colombo HC: **4834/24**

Colombo Fort MC: **B27181/23**

-Vs-

1. Officer-in-Charge,
Counter Terrorism and Investigation
Division,
Colombo 01.
2. Hon. Attorney General,
Hon. Attorney General's Department,
Colombo 12.

Respondents

3. Nadun Chinthaka Wickremaratne

1st Accused

Before : **Hon. P Kumararathnam, J.**
Hon. Pradeep Hettiarachchi, J.

Counsel : Tenny Fernando with Pasindu Gamage for the Petitioner.
Sajith Bandara SC for the Respondents.

Inquiry on : 16-03-2026

Decided on : 15-05-2026

Pradeep Hettiarachchi, J

Order

Background Facts

1. This Bail Application is preferred to this Court by the Petitioner named Withanage Siriyawathie (hereinafter referred to as “the Petitioner”) on behalf of her son named Nadun Chinthaka Wickremaratne *alias* ‘Harak Kata’ (hereinafter referred to as “the 1st Accused”) in terms of Section 15 B of the Prevention of Terrorism (Temporary Provisions) (Amendment) Act No. 12 of 2022 (PTA).
2. The Petitioner is the mother of the 1st Accused in HC 4834/24. The 1st Accused has been arrested on 15-03-2023 relating to a shooting incident that took place in the Mount Lavinia Court premises and produced before the Magistrate Court of Mount Lavinia under the case bearing No. B 5269/22 that had been instituted against him. Thereafter, the Detention Order bearing No. MOD/LEG/PTA/9/23 was obtained by the police, and the 1st Accused was detained at the Criminal Investigation Department for about a year until the High Court case bearing No. HC/4834/24 was instituted. The Indictment was served on the 1st Accused on 11-03-2024.

3. The Petitioner's position is that the aforesaid Detention Order had been obtained by the Criminal Investigation Department by misleading the Minister of Defense. The case bearing No. HC/4834/24 was first fixed for trial on 09-06-2025.
4. The Petitioner states that another Detention Order (bearing No. MOD/LEG/ PTA/ 15/01//24) was issued on 11-03-2024 by the Secretary to the Ministry of Defense wherein he had ordered that the 1st Accused shall be detained in Tangalle Old Prison from 11-03-2024 until the case against him is concluded.
5. Accordingly, the 1st Accused has been in solitary confinement in Old Tangalle Prison for more than a year and a half.
6. However, on 05-08-2025, the Indictment in the case bearing No. HC/4834/24 was withdrawn, and a fresh Indictment was filed under the case bearing No. HC/ 5447/25 by adding two more accused persons.
7. Thereafter, the Pre-trial Conference commenced, but an appeal was preferred by the 2nd Accused on 30-01-2026 against an Order made by the Learned High Court Judge regarding non-furnishing of certain documents requested by the 2nd Accused. Thereafter, the said appeal was withdrawn.
8. The aforesaid case bearing no. HC/ 5447/25 is fixed for trial on 18-03-2026, almost three years after the 1st Accused was arrested.
9. Subsequently, the present Secretary to the Ministry of Defense, Mr. Sampath Thuyyakontha, also issued a Detention Order (bearing No MOD/LEG/PTA/15/05/25) requiring the 1st Accused to be detained in Old Tangalle Prison under the case bearing No. HC/5447/25 is concluded.
10. The Petitioner states that the trial against the 1st Accused has not commenced as at the date of the argument, and he has been in remand for nearly 3 years.

11. Furthermore, it is mentioned in the Petition that the 1st Accused has about 20 pending cases in several courts in Sri Lanka, and as far as the Petitioner is aware, he has been granted bail in about 10 of those cases.

12. The Petitioner has urged several grounds for consideration of granting bail to the 1st Accused;

(a) As per Section 15B (1) of the Prevention of Terrorism (Temporary Provisions) Amendment Act No. 12 of 2022, the maximum period a person can be detained is 12 months. Therefore, exceeding the said time period is illegal.

(b) As per the decision in *CA/Writ/479/23*, the Detention Order bearing MOD/LEG/ PTA/9/23 is illegal as it was obtained in respect of a non-terrorist act.

(c) Accordingly, keeping the 1st Accused in detention under that order amounts to an unlawful detention.

(d) Keeping the 1st Accused in solitary imprisonment is contrary to Sections 2 and 3 of The Convention against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment Act No. 22 of 1994.

(e) The 1st Accused has not given milk toffees to any of the police officers in the prison as mentioned in the Indictment, and such an act, if committed, does not amount to an assault on the police officers. Furthermore, the police officers have not even eaten the milk toffees given to them. Therefore, there was no way for them to get intoxicated by eating them. Also, the Government Analyst Report confirmed that the milk toffees do not contain any narcotic substance. Furthermore, giving milk toffees to the police officers does not, *ex facie*, amount to a 'terrorist act'.

(f) The Attorney General has withdrawn the Indictment in the High Court Case bearing No. HC/4834/24 on 05-08-2025, even if the same was filed citing the need to commence the case urgently.

- (g) Instituting the High Court Case bearing No. HC/5447/25 without concluding the investigations in the Magistrate Court Case bearing No. B 27181/23 is contrary to Section 120 of the Code of Criminal Procedure Act No. 15 of 1979.
- (h) The shooter of the Mount Lavinia Court incident was granted bail in the case bearing No. HCEBA 1463/2024.
- (i) The present High Court Case against the 1st Accused is supposed to be withdrawn once the suspect named ‘Midigama Chooti,’ who was arrested in a foreign country, is brought to Sri Lanka.
- (j) The 1st Accused should be given bail in order for him to get prepared for his case.
- (k) Refusing bail and keeping the 1st Accused in remand prison is against the due process of the law.
- (l) Remanding the 1st Accused for an indefinite period of time itself amounts to a punishment, and remanding should not be done as a way of punishment.
- (m) There is no *prima facie* case against the 1st Accused.
- (n) The 1st Accused is suffering from osteoarthritis, and therefore, he needs proper medical treatment.

Analysis

13. Section 15B of the PTA (as amended) states 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.”

14. Accordingly, if the trial against a suspect who is in remand custody or in detention has not commenced after the expiration of twelve months from the date of arrest, the Court of Appeal has the power to grant bail to such suspect upon an application made by the suspect or his Attorney-at-Law.
15. The Petitioner’s main contention is that the 1st Accused has been in detention for more than one year and the trial against him has not yet commenced. In response, the Counsel for the Respondents contended that the Petitioner cannot invoke the jurisdiction of this Court under Section 15B of the PTA as the Indictment had already been served on the 1st Accused.
16. Furthermore, it was submitted by the Counsel for the 1st Accused that withdrawal of HC 4834/24 and filing of HC/5447/25 on the same day as the 1st Accused facing similar charges, can have only one purpose, i.e., to circumvent the 1st Accused’s accrued right to seek bail under Section 15B of the PTA. His argument was that, by creating a new case with a new case number, the Attorney General has sought to create an illusion that the one-year period against the 1st Accused shall be calculated afresh.
17. While it is desirable to emphasize that having served with the Indictment within one year is not a bar for an accused to invoke the jurisdiction of this Court under Section 15B, if the trial against the accused has still not commenced, it is pertinent to note in this regard that, in the present case, the pre-trial conference has been concluded and it was stated at the argument stage that the appeal preferred by the 2nd Accused against an order issued by the Learned High Court Judge subsequent to the conclusion of the pre-trial conference has later

withdrawn by the 2nd Accused. Therefore, it is expected that the trial against the 1st Accused will commence soon.

18. Furthermore, when granting bail in a case of this nature, the Court has to take into account several relevant considerations, such as the gravity and the seriousness of the offence and nature of accusation, severity of being relevant in granting bail to a suspect in remand custody/ under detention.

19. In **CA/BAL/81/2022** (decided on 22-03-2023), it was held by the Court of Appeal that;

“Hence considering the grant of bail under the amended PTA which requires the discretion of the Court, one can refer accepted considerations such as the gravity and severity of the offence and the nature of the accusation; severity of punishment if convicted; the likelihood of the accused fleeing from justice; the possibility of tampering with evidence and/or the witnesses; the possibility of repetition of the offence or similar offence while on bail; prima facie satisfaction of the court in support of the charge including frivolity of the charge; the peculiar facts of each case and nature of supporting evidence etc. When the circumstances of a particular case is viewed in totality with other considerations such as the personal standing of the applicant and his or her ability to take part in the justice process in light of their personal commitments may also be considered. More importantly, courts can take cognizance of the progress made by investigating and prosecutorial authorities to process a complaint.”*

20. Furthermore, the very purpose of granting bail is to secure the presence of the accused for legal proceedings. Therefore, if there is a likelihood that the suspect will abscond after being granted bail or if there is a propensity for him to re-engage in crimes of a similar nature, then the Court should not grant bail.

21. The 1st Accused had been arrested under the provisions of the Prevention of Terrorism Act on 15-03-2023 upon being deported from the Republic of Madagascar, where he was last residing, having absconded from all judicial processes against him in Sri Lanka. Therefore,

there is a clear risk that the 1st Accused may once again attempt to abscond and evade judicial process if he is granted bail by this Court.

22. Also, as per the report marked P1, the 1st Accused has nearly 17 pending cases for offences such as robbery, murder, and possession and trafficking of commercial quantities of heroin. Therefore, needless to say that the 1st Accused is a controversial figure in the underworld. Considering the controversial nature of the 1st Accused and the negative public opinion towards him, I am of the view that the 1st Accused's release on bail, if permitted, might attract negative feedback from the general public and might give rise to public disquiet.
23. Moreover, this Court cannot lightly disregard the fact that the 1st Accused, having been released on bail in another case, left the country using a forged passport, thereby willfully violating the bail conditions and evading the judicial process. The very purpose of granting bail was undermined by the conduct of the 1st Accused, who departed the country illegally without informing the Court. Such conduct clearly demonstrates a blatant disregard for court procedure and the administration of justice.
24. In my view, these circumstances strongly militate against the grant of bail, particularly when his past conduct provides no assurance that he would appear before the Court when required.
25. A careful examination of Section 15B of the PTA reveals that the Court of Appeal is vested with a discretion to grant bail to a suspect detained or remanded under the Act, provided that the trial has not commenced upon the expiration of 12 months from the date of arrest. The use of the word "may" in that Section clearly indicates that the grant of bail is not mandatory merely because the trial has not commenced after the lapse of the stipulated period.
26. The legislature, in its wisdom, has enacted Section 15B in a manner that permits the Court to exercise judicial discretion when considering applications for bail made by persons detained or remanded under the Act. Accordingly, it is incumbent upon the Court to consider all relevant surrounding circumstances, including the likelihood of the suspect absconding, interfering with witnesses, or otherwise frustrating the due administration of justice, before granting bail. Hence, in the circumstances of this case, I am of the view that

the discretionary powers vested in the Court of Appeal under Section 15B of the PTA ought not to be exercised in favour of the 1st Accused.

27. Accordingly, the Bail Application of the Petitioner is dismissed. The Registrar of this Court is directed to transmit a copy of this Order to the Registrar of the High Court of Colombo and the Officer-in-Charge of the Counter Terrorism and Investigation Division forthwith.

Judge of the Court of Appeal

P. Kumararatnam, J

I agree,

Judge of the Court of Appeal