

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

**In the matter of an application for
revision under Article 138 of the
Constitution of the Democratic
Socialist Republic of Sri Lanka.**

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

Complainant

CA CPA 24/2026

High Court of Kandy
Case No. HC 295/2021

Vs.

Ekanayake Mudiyanseelage Thoradeniya
Gerada Anula Kumarihami

Accused

AND NOW BETWEEN

Wanisundara Gedara Mahinda
Priyankara Wanisundara
No. 141/22/A,
Galwala Lane,
Habarana Road,
Kekirawa.

Aggrieved Party

AND

Hitiwalawwe Jayantha Dissanayake
No. 135,
Bothata,
Medawala,
Harispaththuwa.

Petitioner

Vs,

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

Respondent

2. Ekanayake Mudiyanseelage Thoradeniya
Gerada Anula Kumarihami

Accused- Respondent

AND NOW BETWEEN

Wanisundara Gedara Mahinda
Priyankara Wanisundara
No. 141/22/A,
Galwala Lane,
Habarana Road,
Kekirawa.

Aggrieved Party-Petitioner

Vs,

1. Hitiwalawwe Jayantha Dissanayake
No. 135,
Bothata,
Medawala,
Harispaththuwa.

Petitioner-Respondent

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

Respondent-Respondent

3. Ekanayake Mudiyanseelage
Thoradeniya Gerada Anula
Kumarihami

Accused- Respondent-Respondent

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

Counsel: Dhanusha Udahawatte Instructed by Praveen Premathilake
 for the Petitioner

Supported on: 15.05.2026

Order on: 26.05.2026

Order

Amal Ranaraja. J,

1. This is an application by the aggrieved party, petitioner (hereinafter referred to as Petitioner) seeking to invoke the revisionary jurisdiction of this Court granted to it in terms of Article 138 of the Constitution.
2. The accused respondent-respondent has been indicted in the High Court of Kandy in High Court Case No. HC 295/2021, for committing offences punishable under Sections 403 and 454 of the Penal Code of Sri Lanka.
3. Upon the accused-respondent-respondent pleading guilty he has been found guilty of the offences and sentenced. The date of the particular Judgement is April 06th, 2023.
4. The accused respondent-respondent, dissatisfied with the sentencing order has filed an appeal in this Court. Following this appeal, she has also submitted an application to the High Court, requesting to be granted bail pending the appeal's hearing. The learned High Court Judge has subsequently allowed this application by his order dated October 15th, 2025.
5. The petitioner being aggrieved by the order dated October 15th, 2025, has filed the present application before this court. The petitioner has contended that there were no exceptional circumstances warranting the accused-respondent-respondent's release on bail pending appeal, and that the learned High Court Judge has disregarded this fact when granting bail.

6. Courts have long affirmed that revisionary jurisdiction is a discretionary remedy to be invoked only in exceptional circumstances. The term 'exceptional circumstances', in relation to revisionary jurisdiction, has been interpreted to include the following;

I. An obvious/clear miscarriage of justice

II. A plain error of law apparent on the face of the record
or

III. A jurisdictional defect that renders the disputed
order void

7. In the case of *Sadi Banda vs. Officer-In-Charge of Norton Bridge Police Station (2014) 1 SLR 33*, Malinie Gunaratne, J. has held,

"The revisionary power of Court is a discretionary power. This is an extraordinary jurisdiction which is exercised by the Court and the grant of relief is entirely dependent on the discretion of the Court. The grant of such relief is of course a matter entirely in the discretion of the Court and always be dependent on the circumstances of each case. Existence of exceptional circumstances is the process by which the Court should select the cases in respect of which the extraordinary power of revision should be adopted. The exceptional circumstances would vary from case to case, and their degree of exceptionality must be correctly assessed and gauged by Court taking into consideration all antecedent circumstances using the yardstick whether a failure of justice would occur unless revisionary powers are invoked."

8. Further, in the case of *Wijesinghe vs. Tharmaratnam (Srikantha Law Reports Vol. IV Page 47)*, it has been held that,

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

9. In *Vanik Incorporation Ltd. Vs. Jayasekara* (1997) 2 SLR 365, Edussuriya J, has held that,

“Revisionary powers should be exercised where a miscarriage of justice has occurred due to a fundamental rule of procedure being violated, but only when a strong case is made out amounting to a positive miscarriage of justice.”

10. In the case of *Dharmaratne and Another vs. Palm Paradise Cabanas Ltd and Others* (2003) 3 SLR 24, Gamini Amaratunga J, has held,

“Existence of exceptional circumstances is the process by which the court selects the cases in respect of which the extraordinary method of rectification should be adopted. If such a selection process is not there, revisionary jurisdiction of this court will become a gateway of every litigant to make a second appeal in the garb of a Revision Application or to make an appeal in situations where the legislature has not given a right of appeal. The practice of Court is to insist in the existence of exceptional circumstances for the exercise of revisionary powers has taken deep root in our law and has got hardened into a rule which should not be lightly disturbed.”

11. Provisions concerning the granting of bail to an appellant pending an appeal are found in Section 333(3) of the Code of Criminal Procedure Act No. 15 of 1979 and Section 20(2) of the Bail Act No. 30 of 1997.

These provisions outline the circumstances under which bail may be granted and they are as follows;

Section 333(3) of Code of Criminal Procedure Act No. 15 of 1979;

333.

(3) When an appeal against a conviction is lodged, the High Court may subject to subsection (4) admit the appellant to bail pending the determination of his appeal. An appellant who is not admitted to bail shall pending the determination of the appeal be treated in such manner as may be prescribed by rules made under the Prisons Ordinance.

Section 20(2) of the Bail Act No. 30 of 1997;

20.

(2) When an appeal against a conviction by a High Court is preferred, the High Court may subject to subsection (3) release the appellant on bail pending the determination of his appeal. An appellant who is not released on bail shall, pending the determination of the appeal be treated in such manner as may be prescribed by rules made under the Prisons Ordinance.

12. The Supreme Court in discussing the above provisions in *AG V Letchchami SC Appeal No 13/2006*, decided on 04.08.2006, Shiranee Tilakawardena J, has stated as follows,

“The presumption of innocence that inures in favour of those suspected or accused or connected with commission of an offence ceases to operate after conviction by a Court of competent jurisdiction.

Bail after conviction in the High Court referred to in Section 333(3) of the Code of Criminal Procedure Act No. 15 of 1979 has been

incorporated in verbatim in Section 20(2) of the Bail Act No.30 of 1997. The settled law on this is that where a section has been incorporated verbatim, governing principles applicable are those contained in the principal enactment. The interpretation of the principal enactment has always held that there must be exceptional circumstances.

As Section 20 of the Bail Act No.30 of 1997 is identical to that contained in the Code of Criminal Procedure, in its implementation the earlier restricted view of the convicted person having to disclose the exceptional circumstances for grant of bail must prevail.”

13. In *AG v Ediriweera SC Appeal 100/2025* decided on 04.08.2006, Shiranee Tilakawardena J has held,

a) the norm is that bail after conviction is not a matter of right but would be granted only under exceptional circumstances;

b) exceptional circumstances only exist when the facts and circumstances of the case are such that they constrain or impel the Court to the conclusion that justice can only be done by the granting of bail, then and only then should bail be granted after conviction”

...The said Bail Act has succinctly set out that more stringent standards should be considered after conviction, which are distinctly different from those considered prior to conviction. In this sense, the norm is that bail after conviction is not a matter of right, and the Court of Appeal correctly held that this principle was applicable. Therefore, after conviction, bail would be granted only under exceptional circumstances.”

14. Therefore, it is incumbent upon an appellant to satisfy the Court that exceptional circumstances, exist to warrant his release on bail pending appeal.
15. Exceptional circumstances, generally refer to unusual, unforeseen, or uncontrollable events, or situations that fall outside the typical or expected range of events. These are situations that are rare, often significant, and could not reasonably have been predicted or prevented. They are events that one could not have reasonably known about, or prepared for in advance. The individual involved typically has little or no control over the occurrence or outcome of the circumstances. They often have a substantial effect, potentially disrupting plans, causing delays or altering standard procedures. They are not everyday occurrences but rather something that deviates from what is standard, normal or expected.
16. The appellant, who is also the accused respondent-respondent, has presented two serious medical conditions as exceptional circumstances. Firstly, her own medical condition and secondly, the serious medical condition of her child, which necessitated her care. The appellant has substantiated these claims with cogent evidence.
17. Upon considering these facts, the learned High Court Judge has concluded that the appellant had indeed established the existence of exceptional circumstances, thereby granting her bail pending appeal.
18. The disputed order of the learned High Court Judge dated October 15th, 2025 is not unfair or resulted in a wrongful outcome. It has not caused injustice due to it being contrary to fundamental principles of fairness or legal process nor does it reflect a mistake in interpreting or applying legal principles, statutes or precedents to the facts of the case. It is also consistent with the facts laid before the learned High Court Judge.

19. Therefore, no exceptional circumstances exist which warrant this Court's intervention in the disputed order. Accordingly, I am not inclined to issue notice on the respondents and proceed to dismiss the application in the first instance.

20. I make no order regarding costs

Application dismissed.

21. The Registrar of this Court is directed to communicate this order to the High Court in Kandy for information.

B. Sasi Mahendran, J.
I agree.

Judge of the Court of Appeal

Judge of the Court of Appeal