

IN THE COURT OF APPEAL OF THE DEMOCRATIC SOCIALIST

REPUBLIC OF SRI LANKA

In the matter of an application for Revision under Section 20 (2) of the Bail Act No.30 of 1997 to be read with section 333 (3) of the Code of Criminal Procedure and under Article 154P of the Constitution of the Democratic Socialist Republic of Sri Lanka.

CA (PHC) APN 80/ 2020

High Court of Puttalam:

HC 49/2018

Case No. of the Magistrate Court of

Anamaduwa: **01816 /2014**

Hon. Attorney General,

Attorney General's Department,

Colombo 12.

Complainant

Vs.

Thebuwana Acharige Nishantha Udaya Kumara.

Accused

AND

Thebuwana Acharige Nishantha Udaya Kumara.

Accused – Petitioner

Vs.

Hon. Attorney General,

Attorney General's Department,

Colombo 12.

Complainant – Respondent

AND NOW BETWEEN

Thebuwana Acharige Nishantha Udaya
Kumara.

Presently held at

1713 R/C,

Floor No.08,

Negombo Prison

Accused – Prtitioner

Vs.

Hon. Attorney General,

Attorney General's Department,

Colombo 12.

**Complainant – Respondent –
Respondent**

Before – Menaka Wijesundera J.

Neil Iddawala J.

Counsel – P. Perera for the petitioner.

Chathurangi Mahawaduge SC

For the State.

Argued on – 06.12.2021

Counsel on – 14.12.2021

MENAKA WIJESUNDERA J.

The instant application has been filed to obtain bail for accused petitioner namely **Thebuwanage Acharige Nishantha Udaya Kumara** (herein after referred to as the petitioner) in terms of section 333(3) of the Criminal Procedure Code Act nu 15 of 1979 (hereinafter referred to as the CPC) and section 20 (2) of the Bail Act nu 30 of 1997.

The petitioner had been indicted in the High Court under section 365 of the Penal Code and upon conclusion of the trial the learned High Court Judge has convicted the petitioner for 8 years of rigorous imprisonment with a fine and compensation to the victim. The petitioner being aggrieved by the said order had lodged an appeal against the said judgment; pending the appeal the petitioner had made an application for bail before the same High Court.

On the 28th of January 2020 the learned High Court Judge had refused the said application and being aggrieved by the said order the instant application for revision has been filed by the petitioner 5 months later.

The main contention of the petitioner is that the learned High Court Judge has considered extraneous matters and not the merits of the case.

The counsel for the respondents averred that the merits of the case cannot be gone in to at this stage and averred further that the petitioner is guilty of lashes because the instant petitioner has filed the instant application 5 months later, which has not been explained by the petitioner.

If one considers the law governing bail pending appeal, the main objective of granting of bail pending the appeal is to ensure that the accused would attend Court to face the appeal.

Currently bail pending appeal is defined in **the Bail Act nu 30 of 1997 and in the Criminal Procedure Code.**

It is a well accepted principle that bail pending appeal would be granted only on exceptional circumstances. This principle had been followed in,

1) King vs. Keerala 48NLR 202,

2) King vs. Cooray 51 NLR 360

3) Queen vs. Ranasinghe 54 NLR 493 and many others.

If the law pertaining to bail pending appeal is analyzed the **Criminal Procedure Code section 333(3)** deals with the bail pending appeal where it has been stated that “ **when an appeal is lodged , the High Court subject subsection (4) of the Code admit the appellant to bail pending the determination of the appeal.**

The requirement of exceptional circumstances in bail pending appeal stems from the English Criminal Law in the 20th Century, where it was believed that when an accused is convicted, the probability of him or her absconding is higher than before conviction.

If one may carefully examine provisions in the **Bail Act** pertaining to bail pending appeal the statute does not say that one needs **exceptional circumstances** to obtain bail, but our Courts have strongly held that there should be exceptional circumstances for granting of bail pending appeal, may be for the reason that as stated above the probability of the convicted person absconding is higher than when he was only being accused of an offence.

In the instant matter the counsel for the accused conceded at the beginning that there were no exceptional grounds to aver but he said that the learned High Court Judge has

considered extraneous matters such as the accused having the opportunity of absconding by going overseas.

But with this position, this Court is unable to agree with the counsel for the accused, because it has been considered as set out above that when considering bail pending appeal the main objective is to ensure that the accused would return to face the appeal if enlarged on bail. Therefore the learned High Court Judge considering the possibility of the accused travelling abroad cannot be considered as being extraneous; it is one of the most relevant matters, to be considered.

This Court also observes that there is a delay of nearly five months in filling the instant application but the petitioner has not given any reason for the said delay.

Therefore upon considering the submissions of both parties it is the considered view of this Court that the petitioner has not satisfied this Court that the accused should be enlarged on bail pending the appeal.

Hence the instant application is dismissed and we affirm the order of the learned High Court Judge dated 28th of January 2020.

Judge of the Court of Appeal.

I agree.

Neil Iddawala J.

Judge of the Court of Appeal.