

**RUPATHUNGA**  
**vs**  
**ATTORNEY GENERAL AND ANOTHER**

COURT OF APPEAL

RANJITH SILVA, J.

SALAM, J.

CA PHC APN 85/08

HC PANADURA NO. 2035

FEBRUARY 13, 2009

*Bail Act No. 30 of 1997 - Section 14, Section 14(a) Section 14(1) - Section 15  
Cancellation of bail - Circumstances? - Cancellation capricious, arbitrary,  
unjust?*

The accused-petitioner was released on bail by the Court of Appeal. When the main case came up for trial an application was made by the State seeking an order of cancellation of bail in view of the fact that he had committed another offence. The bail order was cancelled. It was contended in the revision application filed by the accused-petitioner that, the High Court has not given any reason for the cancellation of the already existing bail order.

**Held:**

Per Ranjith Silva, J

“It is pathetic to note that the High Court Judge has not even been mindful of Section 14 and Section 15 of the Bail Act when she made the impugned order. These are orders which could be founded as capricious, arbitrary and unjust . . . . what shocks the conscience of this Court is that the High Court Judge has not even cared to provide an opportunity to the accused, at least to show cause as to why bail should not be cancelled instead has considered some extraneous matters which are not even covered by Section 14 and has rushed to the conclusion that bail should be cancelled which I shall say is indecent”.

- (1) With regard to the cancellation of bail the relevant Section of the Bail Act is Section 14 and under Section 15 - Court has to give reasons in writing for such refusal or cancellation or variation.

**APPLICATION** in revision from an order of the High Court of Panadura.

*Dr. Ranjith Fernando* for petitioner.

*Damithini de Silva* for respondent.

Cur.adv.vult

February 13, 2009

**RANJITH SILVA, J.**

This is an application made in revision in a matter concerning bail arising from an order made by the learned High Court Judge dated 24.09.2007

Document marked as 'g' was produced along with the petition to show that the particular accused was released on bail by this Court, in a murder case bearing No. HC Panadura 93/2007 marked as 'f'.

We notice that State Counsel is not objecting to this application for revision which is a matter of significance.

When the main case came up before the learned High Court Judge on 24.09.2007 for trial an application for a date was made on behalf of counsel for the accused Mr. Ajith Perera, Attorney-at-Law on the grounds of ill health and that application had been allowed. Thereafter the learned State Counsel on the same day had made an application before the learned High Court Judge seeking a cancellation of bail ordered on the accused, in view of the fact that he had committed another offence. (Vide. "F")

At this stage the Court notes that it is in respect of that other offence namely the murder case that this Court has made order granting bail on the accused as indicated by the document marked 'f'. On a perusal of the impugned order, at page 26, the learned High Court Judge has purported to

give her reasons for cancelling bail. The reasons assigned by the learned High Court Judge is that, as the accused was unable to remember the names of his sureties, she was proceeding to cancel the bail order. Other than that there isn't a single reason assigned by the learned High Court Judge for cancelling the existing bail.

With regard to the cancellation of bail, the relevant Section of the Bail Act is Section 14. According to Section 14, (a) Court can either refuse or cancel already existing bail for the following reasons.

Section 14 (a). That such person would

- (i) *not appear to stand his inquiry or trial*
- (ii) *Interfere with the witnesses or the evidence against him or otherwise obstruct the cause of justice; or*
- (iii) *Commit an offence while on bail; or that the particular gravity of, and public reaction to, the alleged offence may give rise to public disquiet.*

Section 15 of the Bail Act states that *where a Court refuses to release on bail any person suspected or accused of, or being concerned in committing or having committed any offence or cancels a subsisting order releasing a person on bail or rescinds or varies an order cancelling a subsisting order it shall state, in writing the reasons for such refusal, cancellation or rescission or variation as the case may be.* Therefore, it is the bounden duty of a High Court Judge to state reasons when she is cancelling an already existing bail order. The reasons are set out in Section 14 and it is for those reasons that an already existing bail order could be cancelled. On a perusal of this impugned order we find that she had not given any reason as enumerated in Section 14. Apart from what has already been stated what shocks the conscience of this Court is

that this particular learned High Court Judge had not even cared to provide an opportunity to the accused, at least to show cause as to why bail should not be cancelled instead has considered some extraneous matters which are not even covered by Section 14 and has rushed to the conclusion that bail should be cancelled which I should say is indecent. Although it is pertinent to note that the same learned High Court Judge on a subsequent date namely on 11.07.2008 when an application was made to reconsider the cancellation of bail, has made an order wherein she has stated that when she ordered a cancellation of bail she acted under Section 14 (1)(a)(3) of the Bail Act whereas she had not even mentioned that particular Section in her impugned order dated 24.09.2007. Having completely failed to refer, even in passing, to Section 14 of the Bail Act or any provision of the Bail Act, on 11.07.2008 she has stated in her order that she considered the application for bail under Section 14(1) of the Bail Act. It is pathetic to note that the learned High Court Judge has not even been mindful of Sections 14 and 15 of the Bail Act when she made the impugned order. These are orders which could be branded as capricious, arbitrary and unjust. Therefore, we set aside the said impugned order and the learned High Court Judge is directed to forthwith release the accused from remand custody. **We also direct the registrar of this Court to forward copies of this order to the Secretary to His Lordship Hon. Chief Justice and the Secretary to the Judicial Services Commission along with exhibits marked as 'f' and 'g'.**

Acting in revision we set aside the impugned order of the learned High Court Judge of Panadura dated 24.09.2007.

**SALAM, J.** - I agree

*Application allowed.*