

ATTORNEY GENERAL  
v.  
NILANTHI

COURT OF APPEAL.  
D. P. S. GUNASEKERA, J. (P/CA).  
J. A. N. DE SILVA, J.  
C.A. 158/96.  
H.C. BAIL APPLICATION 85/95.  
M.C. TANGALLA 43083.  
JANUARY 30, 1997.

*Revision – Offensive Weapons Act, No. 18 of 1966, sections 10, 12.*

*Bail – Code of Criminal Procedure Act, No. 15 of 1979, sections 115 and 136(i) – Person charged with or accused of an offence – Jurisdiction of High Court to grant bail.*

**Held:**

1. The High Court has no jurisdiction to enlarge a suspect on bail when remanded, for an offence under the Offensive Weapons Act.

Under section 10, the exclusive jurisdiction to grant bail to a suspect is with the Court of Appeal.

2. The words 'charged with' or "accused of" as contained in section 10 of the Act should necessarily be given a meaning which is akin to "suspected of."

**APPLICATION** in Revision by the Attorney-General from the Order of the High Court of Tangalle.

*Rienzie Aresakularatne, D.S.G.*, for Petitioner.

*Ms. S. Puvimanasinghe* for Suspect Respondent.

**Case referred to:**

*Tunnaya alias Gunapala v. OIC, Police Station Galewela* – [1993] 1 Sri L.R. 61.

*Cur. adv. vult.*

February 25, 1997.

**J. A. N. DE SILVA, J.**

This is an application in revision by the Hon. Attorney-General to set aside the order made by the learned High Court Judge of Hambantota in bail application bearing No. H.C. 85/95 dated 07.12.95, wherein the learned High Court Judge enlarged a suspect on bail who had been remanded for committing an offence under the Offensive Weapons Act, No. 18 of 1966.

The suspect Kankanamge Mahinda alias Priyantha was arrested by the Tangalle Police on 12.09.95 in respect of a charge of robbery. At the time of his arrest a hand bomb was recovered from his possession. Thereafter he was produced before the Magistrate of Tangalle and was remanded.

An application for bail was filed in the High Court of Hambantota and it was taken up for inquiry on 07.12.95. After Counsel made submissions the learned High Court Judge directed the suspect to be released on bail. However the learned High Court Judge's order is devoid of any reasons. Being aggrieved by this order the Hon. Attorney-General moved this Court to revise the said order on the ground that the said order of the learned High Court Judge is illegal as the High Court had no jurisdiction to enlarge a suspect on bail when remanded for an offence under the Offensive Weapons Act, No. 18 of 1966. The contention of the learned Deputy Solicitor-General was that under section 10 of the Offensive Weapons Act the exclusive jurisdiction to grant bail to a suspect is with the Court of Appeal. Section 10 of the Offensive Weapons Act, No. 10 of 1966 enacts that "notwithstanding anything to the contrary in the Code of Criminal Procedure Act or in any other law, no person charged with or

accused of an offence under the Offensive Weapons Act shall be released on bail except on the order of the Supreme Court."

The learned counsel for the respondent submitted that even though the Court of Appeal has the exclusive jurisdiction to enlarge a suspect on bail under section 10 of the Offensive Weapons Act, the section applies only to instances where a person has been 'charged with' or 'accused of' an offence under the said Act, in accordance with Chapter 14 of the Code of Criminal Procedure Act, No. 15 of 1979. She further submitted that the report that had been filed in this case is a report under section 115 of the Code of Criminal Procedure Act and therefore the suspect had not been 'charged with' or 'accused of' when the application for bail was taken up for inquiry at the High Court of Hambantota. In support of her contention she relied on the judgment in *Tunnaya alias Gunapala v. O.I.C. Police Station, Galewela*<sup>(1)</sup> and submitted that the report filed in this case did not constitute an 'institution of proceedings', as contemplated in terms of the Code of Criminal Procedure Act, No. 19 of 1979.

The learned Deputy Solicitor-General submitted that the Offensive Weapons Act, No. 18 of 1966 was enacted at the time when this type of criminal trials were taken up before the Supreme Court and Commissioners of Assize before the Assize Courts and in the District Court on indictments. He further pointed out that most of the Criminal Assizes were presided over by the Supreme Court Judges. Even then the legislature in its wisdom thought it fit to give exclusive jurisdiction to the Supreme Court to grant bail in cases where Offensive Weapons were involved. With the promulgation of the Second Socialist Republican Constitution and the establishment of the new court structure the exclusive jurisdiction that was granted to the Supreme Court was vested with the Court of Appeal. Presently High Courts are discharging functions similar to that of an 'Assize Court' in the olden days. Therefore a proper reading of the section 10 of the Offensive Weapons Act would mean that no person charged with or accused of an offence under the Offensive Weapons Act shall be released on bail except on an order of the Court of Appeal.

The Counsel contended that the words 'charged with or accused of' appearing in section 10 of the Offensive Weapons Act cannot be

given the same interpretation as in the Code of Criminal Procedure Act, No. 15 of 1979 because of the words in section 10 to the effect that 'notwithstanding anything to the contrary in the Code of Criminal Procedure Act or in any other law'.

The Deputy Solicitor-General pointed out that the words 'charged with' would literally mean the filing of a plaint in the Magistrate's Court or presenting an indictment to the High Court. Under the Offensive Weapons Act, No. 18 of 1966 a plaint cannot be filed in the Magistrate's Court for being in possession of an offensive weapon in terms of section 2(1) of the said Act. According to section 11 of the Code of Criminal Procedure Act, No. 15 of 1979 if the law does not mention a particular Court to try any offence, the offence should be tried by the High Court if the offence is punishable with imprisonment for a term exceeding two years or with a fine exceeding Rs. 1500/-. The punishment provided for in the Offensive Weapons Act for possessing an offensive weapon is imprisonment of either description not exceeding 10 years **and also** with a fine not exceeding Rs. 10,000/- and as such these offences will necessarily have to be tried upon an indictment in the High Court. Hence if a literal interpretation is given to the words 'charged with' contained in section 10 of the Offensive Weapons Act a person would be 'charged with' only with the service of an indictment in the High Court.

Counsel further argued that if a literal interpretation is given to the words 'accused of' as contained in section 10 of the Offensive Weapons Act it would mean that a person would be 'accused of' only when proceedings are instituted in terms of section 136(1) of the Code of Criminal Procedure Act, No. 15 of 1979 as decided by *Tunnaya alias Gunapala v. O.I.C. Police Station Galewela (supra)*. He pointed out that there cannot be a situation where the provisions of section 136(1) of the Code of Criminal Procedure Act could be invoked as it is purely an indictable offence. In the circumstances the words 'accused of' in section 10 of the Offensive Weapons Act would be redundant. Counsel contended that both these phrases viz. 'charged with and accused of' used in section 10 of the Offensive Weapons Act are used in a 'colloquial sense and a purposive interpretation should be given to these two phrases. Learned Deputy Solicitor-General further submitted that both these phrases are used

in section 10 to mean a person suspected of an offence. The learned Deputy Solicitor-General pointed out that if the argument of the counsel for the respondent that the Court of Appeal is not clothed with jurisdiction to grant bail until a person is 'charged with or accused of' an offence in terms of the provisions of the Act is accepted it will bring about a situation where until an indictment is presented to the High Court the Court of Appeal will have no jurisdiction to grant bail. In such a situation then the proper authority to grant bail would be the Magistrate's Court and the Magistrate could do so in terms of section 115 of the Code viz. remand a suspect for 15 days and no more. He further submitted that it would be meaningless to argue that the legislature intended to vest the then 'Supreme Court' the highest Court of the country with jurisdiction by virtue of section 10 to grant bail to an accused who has hitherto until the presentation of the indictment which could be several weeks and months, who has enjoyed freedom as a person who has been enlarged on bail by the Magistrate's Court. On the presentation of the indictment in terms of section 195 of the Code of Criminal Procedure Act, No. 15 of 1979 it is a discretionary matter to the High Court Judge either to direct the accused to execute a bond to appear in Court for his trial or by warrant addressed to the Superintendent of any prison authorise the detention of the accused pending trial. If a suspect is enlarged on bail after 15 days in terms of section 115 of the Code of Criminal Procedure Act instances where the same suspect could be remanded in terms of section 195 of the Code would be virtually nil as there would be no purpose in remanding a suspect who up to the service of the indictment has enjoyed freedom unless he has violated the terms of the Bond executed by him. Section 12 of the Offensive Weapons Act does not compel a High Court Judge to remand a person charged under that Act on the service of the indictment. Therefore it cannot be said that the legislature envisaged a situation where the jurisdiction of the Court of Appeal would depend only on what the High Court does at the time of service of the indictment.

Further it is clear that offences under the Offensive Weapons Act are serious offences where heavy punishment has been prescribed and what the legislature intended is to vest the Court of Appeal with the power to deal with the question of bail pertaining to a person

'suspected' to have committed an offence in terms of the Act at quite an early stage of the investigation for the purpose of preventing interference with witness, committing similar offences and absconding.

We are in agreement with the submission of the learned Deputy Solicitor-General that the words 'charged with' or 'accused of' as contained in section 10 of the said Act should necessarily be given a meaning which is akin to 'suspected of'. In the circumstances we set aside the order of the learned High Court Judge of Hambantota dated 7.12.95 and allow the application in revision.

We were impressed with the manner in which the young lady Attorney-at-Law who appeared for the respondent, presented her case in this Court. She urged this Court not to send the suspect back to remand custody as he has not violated the conditions imposed by the High Court and attended the Court every day to face the trial which is now pending in the High Court of Hambantota.

We have considered the submissions made by the Counsel for the respondent and direct the High Court Judge to enlarge the accused on bail on the same terms and conditions imposed on him by the High Court earlier.

**D. P. S. GUNASEKERA, J. (P/CA)** – I agree.

*Application allowed.*

*High Court directed  
to enlarge the accused on bail  
on the same terms and conditions  
imposed on him by the High Court earlier.*