

## [COURT OF CRIMINAL APPEAL]

1969

*Present: Weeramantry, J.*THE QUEEN *v.* N. L. CORNELIS SILVA

*S.C. 14/68 M.C. Gampaha, 14757/A.—In the matter of an Application for Bail in terms of Section 15 of the Court of Criminal Appeal Ordinance*

*Court of Criminal Appeal Ordinance (Cap. 7)—Section 15—Grant of bail thereunder—Requirement of exceptional circumstances—Relevancy of sentence.*

Release on bail pending appeal to the Court of Criminal Appeal will only be granted in exceptional circumstances.

Where the sentence is a long one, the mere circumstance that the hearing of the appeal is not likely to take place for a fortnight or a month is of itself no ground for the grant of bail.

APPLICATION for bail under section 15 of the Court of Criminal Appeal Ordinance.

*V. Shanmuganathan*, for the petitioner.

*S. W. B. Wadugodapitiya*, Crown Counsel, for the Crown.

*Cur. adv. vult.*

January 3, 1969. WEERAMANTRY, J.—

The petitioner in this case has been convicted on a charge of attempted murder and has been sentenced to a term of four years' rigorous imprisonment. Against this conviction and sentence he has appealed to the Court of Criminal Appeal.

The petitioner now seeks to be admitted to bail in terms of section 15 of the Court of Criminal Appeal Ordinance.

The grounds urged in support of his application are firstly that the sentence came as a surprise to him and that he therefore could not make provision for the education of his children and the other affairs of the family and secondly that he needs an opportunity to collect the necessary finances to conduct his appeal and the appeal of his eldest son who has also been convicted along with him.

It is a settled principle that release on bail pending appeal to the Court of Criminal Appeal will only be granted in exceptional circumstances. I do not think the circumstances urged are sufficient to make the petitioner's case an exceptional one.

The first of these reasons scarcely bears examination while the difficulty envisaged in the second ground is by no means extraordinary as it is one which would be common to very many accused persons.

I am informed that it is unlikely that the petitioner's appeal will be listed at the next sitting of this Court and in this connection the case of the *Queen v. Punchi Banda*<sup>1</sup> has been cited. In that case however there were additional circumstances among which was the fact that the sentence imposed was short. In the present case the sentence is a long one and the mere circumstance that the hearing is not likely to take place for a fortnight or a month is of itself no ground. I may in this connection refer to the case of the *Queen v. Perera*<sup>2</sup>. In that case it was held that delay likely to ensue in preparation of a brief owing to the production of a large number of exhibits, in a case where over 100 witnesses were examined and more than 400 exhibits were produced, was not a reason for the grant of bail. The Court in refusing bail reiterated the principle that the grant of bail by the Court of Criminal Appeal was an exceptional and unusual course.

The case of the *Queen v. Suppar Navaratnam*<sup>3</sup> has been brought to my notice as an instance in which this Court has enlarged an accused person on bail pending the decision of his appeal. In that case the appellant was indicted on a charge of attempted murder but was found guilty of the offence of voluntarily causing grievous hurt and sentenced to a term of three years' rigorous imprisonment. There were a number of grounds on which the application for bail was supported, one of which was that while the appellant was in prison his wife had given birth to her first child who was being neglected by the appellant's parents as they had disapproved of the marriage. There were also a number of other grounds urged. It is not necessary to enter upon a further examination of that case for the ground which I have already referred to was an exceptional circumstance which was sufficient to justify the order of this Court.

A perusal of the decided cases would appear to indicate that the requirement of exceptional circumstances has been strictly insisted on and in my view no sufficient case of exceptional circumstances as understood by this Court has been made out.

I have accordingly refused the application and now set out my reasons for doing so.

*Application refused.*

<sup>1</sup> (1950) 62 C. L. W. 15.

<sup>2</sup> (1958) 62 N. L. R. 238.

<sup>3</sup> S. C. 11/M. C. Jaffna 22586/Criminal Appeal No. 138 of 1962.