

YOOSUF
v
ATTORNEY-GENERAL

COURT OF APPEAL
FERNANDO, J.
EDIRISURIYA, J.
CA PHC (APN) 64/2002
H.C. 139/93
DECEMBER 4, 2002
JANUARY 7, 24, 2003

Poisons, Opium and Dangerous Drugs Ordinance – Amended by Act, No. 13 of 1954 – S. 52(b), and 54(a), (c), (d) – Code of Criminal Procedure – S. 333(3) – Granting of Bail by Court of Appeal – After conviction pending appeal – Court has jurisdiction?

The accused-appellant moved the Court of Appeal for bail. It was contended that section 83 of the Poisons, Opium and Dangerous Drugs Ordinance gives the power to release on bail only persons suspected or accused of an offence under section 54A, section 54B and the Ordinance is silent as regard to bail in respect of convicted persons.

Held:

- i) In the absence of specific provisions taking away the jurisdiction of the High Court to grant bail in respect of persons convicted under section 54A and section 54B, section 333(3) of the Code of Criminal Procedure would apply and hence the High Court has the jurisdiction to consider applications for bail pending appeal in respect of an appellant convicted of the said offence.

APPLICATION for Bail pending appeal.

Mohan Peiris for petitioner.

Ms Anoop de Silva S.C., for respondent.

April 3, 2003

RAJA FERNANDO, J.

This is an application for bail pending appeal. The accused- 01
petitioner was charged before the High Court of Negombo on four
counts:

- (a) Importation of 34.6 gr. of Heroin
- (b) Importation of 13.8 gr. of Heroin
- (c) Possession of 34.8 gr. of Heroin
- (d) Possession of 13.8 gr. of Heroin

under section 54(A) (c) and (d) of the Poisons, Opium and
Dangerous Drugs Ordinance, as amended by Act, No. 13 of 1954.

After trial the accused-petitioner was convicted of all charges 10
by the High Court Judge and sentenced to life imprisonment on
each of the charges on 5.4.2002.

Being aggrieved by the said conviction and sentence the
accused-petitioner has preferred an appeal to the Court of
Appeal.

It is contended on behalf of the accused-petitioner that at the
trial inadmissible evidence was permitted to be led and that the
trial was rife with infirmities and misdirections.

Learned counsel for the respondents submitted to court that
this court should reject this application as there is no averment 20
that the accused-appellant has made an application for bail to the
High Court and it has been refused by the High Court Judge.

Counsel for the petitioner submits that the present applica-
tion to the Court of Appeal is not to revise the order of the learned
High Court Judge refusing bail pending appeal but a direct applica-
tion made to this Court to grant bail to the accused-appellant
pending appeal.

It is the position of the counsel for the petitioner that in terms
of section 83 of the Poisons, Opium and Dangerous Drugs
Ordinance the High Court has jurisdiction to release on bail only 30
persons suspected or accused of an offence under section 54 A

or 54 B of the Poisons, Opium and Dangerous Drugs Ordinance. The said Ordinance is silent with regard to bail in respect of convicted persons.

However it is our view that in the absence of specific provisions taking away the jurisdiction of the High Court to grant bail in respect of persons convicted under section 54A or 52B of the Poisons, Opium and Dangerous Drugs Ordinance section 333(3) of the Criminal Procedure Code shall apply and hence the High Court has the jurisdiction to consider application for bail pending appeal in respect of an appellant convicted of such offence. 40

We uphold the objection of the respondent that the accused-appellant in this case should have made his application for bail pending appeal before the High Court.

On this ground alone this application must fail.

Where specific provision is made in any statute to meet a situation this Court will not exercise its inherent/revisionary jurisdiction unless on exceptional grounds.

We do not see such exceptional grounds for this petitioner to have by-passed the High Court and come to the Court of Appeal seeking bail in this application. 50

The application is accordingly refused.

EDIRISURIYA, J.

I agree.

Application refused.