

[IN THE COURT OF CRIMINAL APPEAL]

1958 *Present*: Basnayake, C.J. (President), Sansoni, J., and Sinnetamby, J.

THE QUEEN *v.* B. RUPASINGHE PERERA

IN THE MATTER OF AN APPLICATION UNDER SECTION 15 (1) OF THE
COURT OF CRIMINAL APPEAL ORDINANCE, NO. 23 OF 1938

S. C. 1 (2nd Western Circuit 1958)—M. C. Colombo 19177

*Court of Criminal Appeal Ordinance, No. 23 of 1938—Section 15 (1)—Admission of
appellant to bail.*

Bail is not granted by the Court of Criminal Appeal unless there are
exceptional circumstances.

APPLICATION for bail.

Colvin R. de Silva, with *W. P. N. de Silva*, for 3rd Accused-Appellant.

N. Tittawella, Crown Counsel, for Attorney-General.

July 7, 1958. BASNAYAKE, C.J.—

This is an application for bail by the 3rd accused-appellant in *S. C. 1/M. O. Colombo 19177* which came up for trial at the Criminal Sessions of the Second Western Circuit 1958.

Learned counsel submitted that he was aware that bail is not usually granted pending the hearing of an appeal and that it is granted in only exceptional circumstances. He submitted that this was a case of exceptional circumstances.

The chief ground urged in support of the application is that the hearing of the appellant's appeal is likely to be delayed as the preparation of the transcript of the shorthand note of the proceedings is likely to take more than the usual time owing to the length of the trial in the course of which over 100 witnesses were examined and more than 400 exhibits were produced. It was also urged that owing to the large large number of exhibits and the complicated nature of the facts counsel would need the assistance of the appellant.

Learned counsel for the applicant referred us to the case of *Rex v. Cooray*¹ in which a single Judge of this Court had allowed bail on the ground that exceptional circumstances had been established. He also referred us to the case of *Rex v. Keerala*² and the English cases of *Frederick Newbery and Burnett Leon Elman*³, *Alexander Davidson Stewart*⁴, and *William Harding and two others*⁵.

Learned counsel for the Crown submitted that out of the 400 documents involved not more than 50 documents touched the case of the applicant and that although the facts proved in the case ranged over the period December 1953 to 11th June 1955 the applicant came into the picture only on or about the 22nd April 1955. Learned counsel for the Crown also referred us to the cases of *Edgar Gordon*⁶, *John William Gott*⁷, *Edward Fitzgerald*⁸ and *Richard William Starkie*⁹ in which bail has been refused.

The power to admit an appellant to bail pending the determination of his appeal is vested in this Court by section 15 (1) of the Court of Criminal Appeal Ordinance. That provision reads :

“The Court of Criminal Appeal may, if they think fit, on the application of an appellant, admit the appellant to bail pending the determination of his appeal.”

In the first of the cases cited by learned counsel for the appellant the learned Judge observed : “Release on bail will only be granted in cases pending appeal in exceptional circumstances. Having considered this matter carefully, I consider that there are in this case exceptional circumstances where I am justified in granting the application”. In the second case cited by him bail was refused on the ground that there were no

¹ 51 N. L. B. 360.

² 48 N. L. B. 202.

³ 23 Cr. App. R. 66.

⁴ 23 Cr. App. R. 68.

⁵ 23 Cr. App. R. 143.

⁶ 7 Cr. App. R. 182.

⁷ 16 Cr. App. R. 86.

⁸ 17 Cr. App. R. 147.

⁹ 24 Cr. App. R. 1.

exceptional circumstances. The other cases cited by him are decisions of the Court of Criminal Appeal in England. In the case of *Newbery and Burnett Leon Elman (supra)* no reasons why bail was granted are stated.

The applicant has not satisfied us that this is a case in which we should take the exceptional and unusual course of granting bail. The application is therefore refused.

Application refused.
