Ref. 1/02/2005

Bail Act Offences against Public Properties Act

The Magistrate should not have issued notice in the first instance as the offence disclosed in the application for anticipatory bail is not a non-bailable offence - the suspect is not entitled to obtain anticipatory bail since he is suspected to have committed an offence under the Offences against Public Property Act, No.12 of1982 as amended.

C.E.Widisinghe ASP and another vs. S.Ravindra Karunanayake, C/A (M.C.Revision) Application No.05/2004, M.C.Fort No.60956, Decided on 13.1.2005 by Saleem Marsoof P.C. (P.C/A) & S.Sriskanadarajah J.

To exclude a written law from the application of the Bail Act as provided under Section 3 of that Act that written law should provide express provision in respect of the release on bail of persons accused or suspected of having committed, or convicted of, offences under that written law.

The release of persons on bail for an offence committed or suspected to have committed under Offence against Public Properties Act in view of the provisions in Section 3(2) of the Bail Act. The Bail Act is a general Act in relation to Bail which provides for the procedure, the conditions and the court by which a person could be released on bail but Offences against Public Properties Act is a special Act in relation to specific offences. Therefore the condition that a suspect or an accused could be released on bail only on exceptional circumstances shall prevail. This condition in the said Act is not in conflict with the provisions of the Bail Act.
S.Sriskandarajah J.

This is an application filed by the 1st and 2nd Respondents-Petitioners (hereinafter referred to as the Petitioners) to revise an order of the learned Magistrate, Colombo Fort dated 6.7.2004 granting anticipatory bail to the Petitioner-Respondent (hereinafter referred to as the Respondent) under Section 21 of the Bail Act, No.30 of 1977.

Petitioners urged several grounds in their petition to revise the said order of the learned Magistrate, but learned Additional Solicitor General relied only on two grounds at the time of arguing this application. Firstly; that the Magistrate should not have issued notice in the first instance as the offence disclosed in the application for anticipatory bail is not a non-bailable offence. Secondly; the Respondent is suspected to have committed an offence under the Offences against Public Property Act, No.12 of1982 as amended and therefore he is not entitled to obtain anticipatory bail.

The learned Additional Solicitor General in his written submissions restricted his submissions to the second of the aforesaid grounds to revise the order of the learned Magistrate and did not pursue the first ground. He submitted that the Respondent was suspected to have committed an offence defined under the Offences against Public Property Act. As this Act makes express provision in respect of the release on bail of persons accused or suspected of having committed an offence, the Bail Act has no application to the offences under this Act. Therefore he submitted that the Magistrate had erred in resorting to the provisions of the Bail Act to grant anticipatory bail to the respondent.

Learned Additional Solicitor General submitted that `any other written law' which is specified in Section 3(1) of the Bail Act means any written law which has express provisions pertaining to the release on bail of persons accused or suspected of having committed or convicted of offences under such written law. Petitioners also submitted that the ejusdm generis rule has no application to any other written law' for the reason that in this section after referring to Prevention of Terrorism Act. Regulations made under Public Security Act and "any other written law" the sentence did not come to an end but it continued by describing the necessary requirements or qualifications that are mentioned in the sentence are namely; "which makes express provision in respect of the release on bail of persons accused or suspected of having committed, or convicted of, offences under such other written law" He submitted that the criteria spelt out in this sentence should be applied to ascertain whether a particular Act falls within `any other law'.

Learned Solicitor General submitted that the Bail Act deals with persons accused or suspected of having committed or convicted of offences. That is, the Act contemplates three categories of persons namely; suspects, accused and convicted persons. He further submitted that the Prevention of Terrorism Act, Emergency Regulations and Offences against Public Property Act have express provisions pertaining to granting of bail to all the said three categories of persons. Therefore the Offences against Public Properties Act is a written law that is contemplated in section 3 of the Bail Act and as provided by this section it is excluded from the application of the Bail Act. The Petitioners also contended that as the applicability of the Bail Act is excluded for Offences against Public Property Act, Section 3(2) of the Bail Act also has no application to this Act. For these reasons the petitioners submitted that the Magistrate could not have granted anticipatory bail under Section 21 of the Bail Act to the respondent against whom there is an allegation that he is suspected to have committed an offence under the Offences against Public Properties Act.

Learned President's Counsel for the Respondents relied on the judgment of Justice Gamini A.L.Abeyratne in U.J.Thilanga Sumathipala vs. The Inspector General of the Police and three others C.A. (B.A.) Application No.171/2004 C.A.Minutes 18.6.2004, when interpreting Section 3 of the Sinhala text of the Bail Act which prevails over the English text of the Bail Act, his lordship had held that "any other written law" in section 3 of the Bail Act refers to the Prevention of Terrorism Act and the Public Security Ordinance and no other written law is contemplated by that section.

The learned Additional Solicitor General submitted that it appears that there is a discrepancy between the Sinhala text and the English text and the Sinhala text should prevail over the English text. But this difference is mainly due to the grammatical variations and the different method of constructing

sentences in the Sinhala and English languages. This ambiguity could be resolved by interpreting the section in a manner that will manifest the intention of the legislature. He urged that the court could resort to exceptional construction method to resolve this problem. He relied on the passage in Rupert Cross in his book on Statutory Interpretation (1976 pp 84-98) which states thus:

> "The judge may read in words which he considers to be necessarily implied by words which are already in the statute, and he has a limited power to add to, alter or ignore statutory words in order to prevent a provision from being unintelligible or absurd or totally unreasonable unworkable or totally irreconcilable with the rest of the statue"

The learned Additional Solicitor General further submitted that the court in an appropriate case could add words or substitute words to give effect to the purpose of the statute. Section 3 of the Official Secrets Act of 1920 prohibit persons "In the vicinity of" any, prohibited place from impeding sentries. The accused pleaded that although he was within the perimeter of a Royal Air Force Station, he had not literally been in the vicinity of to give effect to object of the statute. In the same way Court had corrected statues by substituting 'and' for 'or' or vice versa. Therefore the petitioners submitted in the same way the word 'or' (in Sinhala 'හෝ') which causes the ambiguity could be resolved and the proper construction of that section would be that in addition to Prevention of Terrorism Act and the Regulations under Public Security Ordinance other written laws such as the Offences against Public Properties Act are also contemplated.

> In this context the question arises as to whether it is legitimate to have regard to the proceedings in Parliament which preceded the enactment of the legislation in question in order to understand the intention of Parliament. The traditional view that prevailed in the United Kingdom was that a court of law will not generally look at the proceedings in Parliament to ascertain the meaning of enacted legislation. In accordance with this view, in Davis vs.Johnson (1978) 1 All ER 132 Viscount Dilhorne referred to the well established and well known rule that "Counsel cannot refer to Hansard as an aid to the construction of the Statute". In Escoigne Properties Ltd. vs. I.R.C. (1958) AC 549 at page 566 Lord Denning said:
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> "....in this country we do not refer to the legislative history of an enactment as they do in the United States of America. We do not look at the explanatory memoranda which preface the Bills before Parliament. We do not have recourse to the pages of Hansard. All that the courts can do is to take judicial notice of the previous state of the law and of the other matters known to well-informed people."

Consistently with this approach, our courts too have shown considerable reluctance to use speeches made in parliament for the determination of the intention of the Parliament. In Sirisena and Others v Kobbekauwa, Minister of Agriculture and Lands 80 N.L.R. 1, the Supreme Court was invited to look at the Hansard particularly at the Minister's speech and ascertain the intention of Parliament. Vytilingam J. in what may be considered the majority judgment in the case, shoed some reluctance to do so, and observed at page 71 that

> "For my part I am of the view that we ought not to do so unless there is such great ambiguity in the words that looking at Hansard alone would be decisive."

In Manawadu v Attorney-General (1987) 2 Sri LR 30 when a similar invitation was made, Sharvananda C.J. preferred to apply accepted canons of interpretation of statutes to ascertain the intention of Parliament, although Seneviratne J in his dissenting judgment relied on the views expressed by the Minister in Parliament to interpret the legislation in question.

However, it is noteworthy that in J.B.Textiles Ltd v Minister of Finance (1981) Sri LR 156 Samarakoon, CJ expressed the view that Hansards are admissible to prove the course of proceedings in the Legislature in terms of Section 57(4) of the Evidence Ordinance, and that they constitute evidence of what was stated by any speaker in the Legislature.

The above dictum of Smarakon CJ was quoted with approval by Mark Fernando J in the majority judgment in Jeyaraj Fernandopulle v De Silva and others (1996) 1 Sri LR at page 34. In Pepper v Hart (1993) 1 All ER 42 the House of Lords shifted from the traditional approach and permitted the use of the Hansard to ascertain the intention of the legislature where the very issue of interpretation which the Court was called upon to resolve had been addressed in the Parliamentary debate and the promoter of the legislation had made a clear statement on the very issue.

The stages in which a person could be released on bail enumerated in the long title of the Bail Act and the stages provided in section 3 of the Bail Act are similar. The Bail Act, the Prevention of Terrorism Act and the Emergency regulation (which was in force) provided for the procedure, forum and the conditions for the release of a person at the time of investigation, at the time of trial and after conviction. Therefore by necessary implication the written law mentioned in Section 3 of the Bail Act should also provide for the procedure, forum and the conditions for the release of a person at the time of investigation, at the time of trial and after conviction.

In my view to exclude a written law from the application of the Bail Act as provided under Section 3 of that Act that written law should provide express provision in respect of the release on bail of persons accused or suspected of having committed, or convicted of, offences under that written law. This is similar to the long title of the Bail Act which reads as "An Act to provide for release on bail of persons suspected or accused of being concerned in committing or having committed as Offence". Chief Justice Sarath N Silva in Anuruddha Ratwatte and 4 others vs Attorney-General S.C.Appeal Nos.02/2003 to 16/2003 (TAB) S.C.Minutes of 11th July 2003 observed:

The Bail Act No.30 of 1997 was passed by Parliament as stated in the long title to "provide for release on bail of persons suspected or accused of being concerned in committing or of having committed an offence.." A person is considered as being suspected of having committed an offence at the stage of investigation and he would be considered as an accused after he is brought before a court on the basis of specific charge that he committed a particular offence. He would remain an value of the subject matter in respect of which the offence committed exceeds Rs.25000/= then that person should be released on bail only on exceptional circumstances. The provisions in this Act clearly show that these provisions are not self-contained to release a suspect or accused on bail and it categorically states that in relation to bail Code of Criminal Procedure Act shall apply.

Section 8(1) of the Offences against Public Properties Act as amended provides...

The provisions laying conditions to release a suspect or accused on bail embodied in the above section was enacted before the enactment of the Bail Act. The Bail was enacted to have a clear policy and to lay guide lines to bail. Section 3(2) of the Bail Act provides....

Therefore the release of persons on bail for an offence committed or suspected to have committed under Offence against Public Properties Act in view of the provisions in Section 3(2) of the Bail. Act has to be read with the Bail Act. The court that releases a person on bail in considering the condition laid down in Offences against Public Properties Act cannot act in isolation of the Bail Act as it provides not only the procedure but also other restrictions under Section 14 for the release of a person on bail.

The Bail Act is a general Act in relation to Bail which provides for the procedure, the conditions and the court by which a person could be released on bail but Offences against Public Properties Act is a special Act in relation to specific offences. Therefore the condition that a suspect or an accused could be released on bail only on exceptional circumstances shall prevail. This condition in the said Act is not in conflict with the provisions of the Bail Act. Even though the guiding principles of the Bail Act is that the granting bail shall be regarded as the rule and the refusal to grant bail as exception. The specific circumstances of exceptions to refuse bail are given in Section 14 of the Bail Act. Section 15 of the Bail has also laid down provisions empowering Court to refuse bail after giving reasons for the refusal. One of the reasons for which a bail could be refused to a person who is suspected or accused of having committed an offence under the Offences against Public Properties Act is the absence of exceptional circumstances.

Under these circumstances the submission of the Petitioners that the Bail Act is not applicable to the Offences against Public Properties Act cannot be accepted. The Petitioners did not peruse any other grounds to challenge the order of the learned Magistrate in granting anticipatory bail. This court after careful consideration of the judgment of the Magistrate has decided not to interfere with the order of the Magistrate as there is no illegality in the order. Therefore this Court dismiss the application of the Petitioners.

Ref. 2/02/2005

Criminal Law

Conspiracy accomplices Confessions.

Anura Weerawansa and two others vs. Attorney-General, S.C.Appeal No.17/2003 (TAB), H.C.Colombo No.836/2002, Decided by Hector Yapa J., T.B.Weerasuriya J., Nihal Jayasinghe J., N.K.Udalagama J. and Raja Fernandon J. on 24.11.2004.

The evidence of accomplices or co-conspirators who have given evidence under a conditional pardon could be accepted and acted upon, provided their evidence has been carefully and cautiously considered and found to be convincing.

Hector Yapa J.

At the conclusion of the Trial at Bar, three accused were convicted on all counts in the indictment and were sentenced to death. This is an appeal filed in terms of Section 451(3) of the Code of Criminal Procedure Act No.15 of 1979 as amended by Act No.21 of 1988, against the conviction and sentence imposed on the accused appellants (accused).

In a charge of conspiracy it is always open to the prosecution to lead evidence of ... isolated acts in order to establish the commencement or the formation of the conspiracy.

An agreement could either be express or implied and it could be proved by direct or circumstantial evidence.

The evidence of fellow conspirators or accomplices is of course tainted and suspect, especially when they admit their own complicity. Therefore, it is seen that the evidence of accomplices or co-conspirators who have given evidence under a conditional pardon could be accepted and acted upon, provided their evidence has been carefully and cautiously considered and found to be convincing.

When the evidence of an accomplice is independently corroborated in material particulars, a court could act on such evidence with confidence.

It would appear that the Trial at Bar was very much mindful of the higher standard of proof required in the case of an accomplice who has received a conditional pardon, when it referred to the judgment in Liyanage's (Liyanage vs.Queen) case stated thus "The referable course is for the court to consider it carefully, even cautiously and to accept it only when it is corroborated and found to be convincing.

...error of memory, faulty observations, and even exaggerations must be distinguished from deliberate falsehood....the Judge or jurors have to decide for

JUDGEMENTS TO BE CITED

themselves whether that part of the testimony which is found to be false taints the whole or whether the false can safely be separated from the true.

Confession is a species of admission. On the other hand Justice Mark Fernando in Nagamani vs.AG CA No.208/95 decided on 6.7.1999, referred to the evidentiary value of confessions and accepted the position that solely on a confession an accused could be convicted.

It would not be reasonable to hold that the Trial at Bar had misdirected itself with regard to the standard of proof required in a criminal case....the contention that the Trial at Bar has failed to judicially evaluate...circumstantial evidence cannot succeed.

There is no merit in the submissions advanced by learned counsel on behalf of the accused appellants. In the circumstances, we affirm the conviction and the sentence imposed on the accused appellants and dismiss this appeal.

FURTHER LIST OF TIDAL WAVE VICTIMS

NAMES OF BASL MEMBERS WHOSE HOUSES / PERSONAL BELONGINGS ARE DESTROYED

Branch Association	Name of Member	Contact Details	Details of Damage		
			House	Office Equipment	Personal Belongings Destroyed
Bandarawela (House at Ambalangoda)	Ms. Charundi R Ranagama		Yes		Washed away
Balapitiya	Mr. S. L. De Silva		Yes Completely Washed away.		
Balapitiya	Mr. W. N. De Silva		Yes Completely.		Yes. Including electrical equipment
Batticaloa	Mr. U. Balasubramaniyam				Yes. Including furniture; electrical Items, documents, Valuable clothes
Batticaloa	Mr. M. I. M. Noordeen	131, Jaamiul - laafireen Road, Kattankudy.	Yes. Including boundary wall		Personal belongings washed away.
Colombo	Mr. A. S. R. De Silva		Fully damaged.		
Colombo	Mr. Dharmatilleke Gamage				
Colombo	Mr. M. M. Abdul Kalam (House at Muruthamanai)		Yes.		
Panadura	Ms. W. G. M. I. S. Perera		Completely washed away. Boundaries cannot be identified.		
Embilipitiya	Ms. B. Bhadranee Jayaweera	Tissa Road, Tangalle.	Partly damaged Boundary wall & 2 gates	Library, Office equipment. Books fully damaged.	Lost husband, Electrical & furniture fully damaged.
Hikkaduwa	Mr. C. P. Keerthisinghe		Completely washed away. (worth of Rs.8 Mn)	Law Books & office equipment	
Hikkaduwa	Mr. D. T. N. R. Silva	Tharanga Sevana, Kariyawatta, Seenigama, Hikkaduwa.	House damaged.	Office equipment & documents damaged.	

Cont'd on page 11