

IN THE COURT OF APPEAL OF THE DEMOCRATIC SOCIALIST
REPUBLIC OF SRI LANKA.

In the matter of an application for revision under article 138 of the constitution of the democratic socialist republic of Sri Lanka read with section 404 of the code of criminal procedure Act No: 15 of 1979.

ATTORNEY GENERAL

Vs.

1. Lanumodarage Nishanthi
2. S.H. Suminda Sadeep

AND NOW

CA(PHC)APN - 48/2014
HC Panadura - HC 3006/2013

Labynidarage Nishanthi
#177/03, Perakum Mawatha,
Dehiwala.

Petitioner

1. Officer In Charge
Police Narcotic Bureau
Colombo - 01.
2. Hon. Attorney General,
Attorney General's Department,
Colombo - 12.

RESPONDENTS

Lanumodarage Nishanthi

1st Accused in HC 3006/2013

(Currently Languishing in the
Remand Prison, Welikada)

Before : W.M.M.Malanie Gunarathne, J
: P.R.Walgama, J

Counsel : Mr. Tenny Fernando for the Petitioner.
: Ms. H.Jayanetti, SC for the state.

Argued on : 29.06.2015

Decided on : 20.07.2015

CASE- NO- CA(PHC) APN- 48/2014- ORDER 20/07/2015

P.R.Walgama, J

The instant application by the Petitioner is made sequent to the order dated 13.11.2013, by the Learned High Court Judge of Panadura in the case bearing No. HC 3006/2013, in the High Court of Panadura.

The 1st Accused-Petitioner, stood indicted for having committed an offence under Section 54 A of the Poisons, Opium and Dangerous Drugs Ordinance as amended by Act No. 13 of 1984. The Petitioner has invoked the revisionary jurisdiction of this court in terms of Section 404 of the Criminal Procedure Code to have the order dated 13.11.2013, of the Learned High Court Judge to set aside in the afore mentioned case for refusing to grant bail to the Petitioner.

Section 404

“the amount of every bond executed under this chapter shall be fixed with due regard to the circumstances of the case and shall not be excessive; and notwithstanding anything to the contrary in this Code or any other law the Court of Appeal may in any case direct that any person in custody be admitted to bail or that bail fixed by the High Court or Magistrate be reduced or increased, or that any person enlarged on bail by a Judge of the High Court or Magistrate to be remanded to custody.”

The Petitioner in the instant case was indicted in terms of Sections 54 A (c) and 54 A (b) for possessing and trafficking a kilo gram 637.9 of heroin, punishable under scheme iii of the said Act.

The Learned High Court Judge in the said impugned order has adverted to the following issues,

That the position taken by the petitioner as to the difference of the quantity of heroin, when the petitioner was arrested, and the quantity that was sent to the Government Analyst. Therefore it is contended by the Petitioner that the said fact should be considered as an exceptional circumstances in granting bail in terms of Section 83 of Dangerous Drugs and Opium Act.

Section 83

“No person suspected or accused of an offence under Section 54 A or 54 B of this Ordinance shall be released on bail, except by the High Court in exceptional circumstances.”

Therefore the Learned High Court Judge was of the view that the afore said ground does not establish an exceptional ground for the purpose of releasing the petitioner on bail. The Learned High Court Judge has also taken in to consideration the nature of the offence, the evidence that will be establishing the alleged offence and the sentence that has to be imposed if the Petitioner is found guilty to the charge.

It also salient to note that the Learned High Court Judge was mind full of the fact that the gravity of the charge is so sever and sentence to be imposed is death penalty.

Hence in the above setting it is abundantly clear that the Learned High Court Judge adverted her mind to the aforementioned reasons in refusing the application for bail for the petitioner.

It is trite law that any accused or suspect of having charged under the above act, will be admitted to bail only in terms of Section 83 of the above Act and only on exceptional circumstances. Nevertheless it is intensely relevant to note, the term "exceptional circumstances" has not been explained or defined in any of the Statutes. Judges are given a wide discretion in deciding in what creates, a circumstance which is exceptional in nature.

There are plethora of cases in the legal parlor which had identified what creates an "exceptional circumstances" in relation to granting bail. In the benchmark decision in the case of RAMU THAMODARAMPILLAI .VS. THE ATTORNEY GENERAL,(2004)3 SRI.L.R. 180 has dealt with the identical issue, and had observed thus;

"the decision must in each case depend on its own facts and circumstances. But, in order that like cases will be decided alike, there should be uniformity of decisions, it is necessary that guidance should be laid down for the exercise of that discretion".

The principle that was observed in the case of *Mohomed Shiyam .vs. Attorney General* - decided on 29.03.2006 held that for a offence committed under Section 54A and 54 B of the above Act, it is Section 83 of the said Act will be applicable, and only on exceptional circumstances the court can admit the accused to bail. In this matter when the petitioner came by way of revision to revise the order of the Learned High Court Judge, the threshold issue was when an accused is charged under the afore said Dangerous Drugs and Opium Act, whether the bail should be granted under the Section 3 of the Bail Act or under Section 83 of the said Act. The determination of Their Lordships were, that it is the Section 83 of the above Act will apply, which means the bail could be granted only on exceptional circumstances. But it is viewed, that in the above case Their Lordships analyzed what forms an exceptional circumstance as postulates in Section 83 of the Dangerous Drugs and Opium Act. Therefore it is obvious that the Legislature has recognized the unfettered discretion vested in court in deciding what constitute exceptional circumstances in granting bail to an Accused charged under the above Act.

Thus considering the rationale observed by our Superior Courts, in granting bail to an accused charged under the said Act, it is abundantly clear, that the court is empowered to use its discretion in doing so.

It is contended by the Petitioner, that her husband is in remand, who was the paramour and had later produced a marriage certificate and contended that they have a child of 12 years of age. The Learned High Court Judge has not considered the said ground as an exceptional circumstance, and had refused to admit the accused to bail.

Hence, this court see no reason to interfere with the determination of the Learned High Court Judge, and as such, the petitioner's application in revision is dismissed, without costs. Application is dismissed.

JUDGE OF THE COURT OF APPEAL

W.M.M.Malanie Gunarathne, J

I agree,

JUDGE OF THE COURT OF APPEAL