

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

Anishika Nishani Hettiarachchi,

Petitioner

**Court of Appeal Case No.
CA (PHC) APN 68/2015**

**High Court Negombo
Case No. HCBA 211/2014**

On behalf of W.A. Danush Dihara
Perera.

8th suspect

Vs.

The Hon. Attorney General,
Attorney General's Department,
Colombo 12.

Officer in Charge,

Police Narcotic Bureau,

Colombo 1

Complainant – Respondents

Before : P.R.Wlgama J.

: L.T.B. Dehideniya J.

Counsel : Tenny Fernando for the Petitioner

S. Jayanetti SC for the Complainant - Respondent

Argued on : 08.03.2016

Decided on : 12.07.2016

L.T.B. Dehideniya J.

This is a revision application against an order of the Learned High Court Judge of Negombo. The Petitioner presented an application for on behalf of the 8th suspect in a case before Magistrate Court of Neogmbo where he was remanded for the suspicion of trafficking 30 Kilograms of Heroin. The Learned High Court Judge first ordered bail but two days after he reconsidered the order and canceled the bail. The Petitioner being aggrieved by the said order, this revision application was presented.

The learned State Counsel objected to this application firstly that there are no exceptional circumstances to act in revision and secondly no exceptional circumstances to grant bail under section 83 of the Poison, Opium and Dangerous Drugs Ordinance as amended by Act no. 13 of 1984. The learned SC further contended that this is a very large quantity of Heroin, amounting to 30 kilograms.

I will consider whether the Petitioner can have and maintain this revision application first.

The order of the Learned High Court Judge refusing bail is a final order within the meaning of the Criminal Procedure Code. It has been observed by Eric Basnayake J. in the case of Cader (On behalf of Rasheed Kahan) Officer In Charge Narcotic Bureau [2006] 3 Sri L R 74 that *"the orders refusing to grant bail are considered as final orders which appeals lie."* The Petitioner, as of a right, would have appealed against the order of the Learned High Court Judge, but have opted to petition this Court to invoke the revisionary jurisdiction.

The Petitioner's contention is that the cancellation of bail by the Learned High Court Judge is bad in law. If it is so, the appeal is available

as of a right. The Petitioner has opted to wait until the Learned High Court Judge who made the order is transferred and attempted to obtain bail before his successor but has failed. Thereafter, the Petitioner presented this application that is after one year from the order.

The revisionary power of this Court is very wide and the Court is not precluded from exercising revisionary jurisdiction even if the alternative remedy of appeal is available; if exceptional circumstances warrant the intervention of Court. Revision is basically a discretionary remedy. The one, who moves Court to exercise this discretionary remedy, must aver and establish that there are exceptional circumstances for the Court to intervene. It has been held in the case of *Rustem v. Hapangama* [1978-79-80] Sri L R 352 that;

The trend of authority clearly indicates that where the revisionary powers of the Court of Appeal are invoked the practice has been that these powers will be exercised if there is an alternative remedy available, only if the existence of special circumstances are urged necessitating the indulgence of this Court to exercise its powers in revision.

The appellant has not indicated to Court that any special circumstances exist which would invite this Court to exercise its powers of revision, particularly since the appellant had not availed himself of the right of appeal under section 754(2) which was available to him.

The only exceptional ground that the Petitioner submits is that the Learned High Court Judge's order is bad in law. After a period of one year from the impugned order, the Petitioner cannot come before this Court and submit that the order is bad in law.

As I pointed out, the quantity of the Heroin involved in this case is 30 kg. The suspect was handling a large amount of money exceeding 120 million rupees within a short period of time and has direct links with the main suspects of this case. It is reported by the police that the 8th suspect is also involved in the monetary transactions in relation to the Heroin deals. Under these circumstances, even if no Heroin is recovered from the possession of the 8th suspect, charge of trafficking can be maintained against him. Therefore, non recovery of Heroin from the 8th suspect is not an exceptional ground to consider bail.

There are no exceptional circumstances established by the Petitioner to invoke the revisionary jurisdiction of this Court and to consider bail.

The application dismissed. No costs.

Judge of the Court of Appeal

P.R. Walgama J.

I agree.

Judge of the Court of Appeal