

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

**Court of Appeal Case No.  
CA (PHC) APN 134/2015**

**High Court Colombo  
Case No. 7301/2014**

Ranil Charuka Kulathunga,  
(Presently at the Colombo Remand  
Prison)

**2<sup>nd</sup> Accused - Petitioner**

**Vs.**

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

**Complainant –  
Respondents**

**Before** : P.R. Wlgama J.  
: L.T.B. Dehideniya J.

**Counsel** : R. Arsakulathunga PC for the 2<sup>nd</sup> Accused Petitioner  
Varunika Hettige SSC for the Complainant - Respondent

**Argued on** : 23.05.2016

**Decided on** : 01.07.2016

**L.T.B. Dehideniya J.**

The 2<sup>nd</sup> Accused Petitioner (hereinafter called and referred to as the Petitioner) was arrested for trafficking and possession of 62.847 grams of

cocaine and was remanded on 20.10.2013. The Petitioner, with another person, were indicted before the High Court of Colombo under and in terms of section 54 A (c) of the Poison Opium and Dangerous Drugs Ordinance as amended by Act no. 13 of 1984. After serving the indictment, the Petitioner has made an application to release him on bail has been refused by the Learned High Court Judge on 26.09.2014. Thereafter, the case was fixed for trial. After several trial dates, on 01-09-2015 another application was made to grant bail which was also refused by the Learned High Court Judge on 18-09-2015. The Petitioner presented this revision application pleading that the said order dated 18.09.2015 be set aside and he be enlarged on bail. 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.

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] 3Sri 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, but has failed or neglected to submit any reason as to why he choose to invoke the revisionary jurisdiction, which is a discretionary remedy of Court, instead of exercising his right of appeal.

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 Petitioner submits several grounds as exceptional grounds to consider bail. The Petitioner states that he is a married person with two school going children. A person getting married and having children is not an exceptional ground. It is the normal day to day life of the people. The Petitioner further states that his elder child is studding in a private school and due to his long term incarceration, it has become impossible to pay the school fees and therefore, the education of the child has come to a standstill. The Learned High Court Judge did not accept this as an exceptional ground. I totally agree with the Learned High Court Judge on

this issue. The government is providing free education to children of this country. If a person decides to go for private education, it is his choice. His inability to pay the fees, for whatever the reason, is not an exceptional ground because the free education is available in this country up to the bachelor degree in any stream of study.

The trial has already begun in the High Court. Several trial dates were adjourned on the application of the Petitioner. On 15.10.2004 the Counsel moved for a date on personal grounds, 12.12.2014 Counsel was not well and moved out. The trial commenced on 08.05.2015. Now the Petitioner cannot complain that he is in remand for no fault of him.

The quantity of cocaine involved in this case is 62.847 grams, which is a commercial quantity. If Petitioner is convicted, the punishment is death or life imprisonment. Under these circumstances, it is prudent to conclude the trial early while the Petitioner is kept in custody.

I direct the Learned High Court Judge to conclude the trial as early as possible and to consider the possibilities of hearing the case day to day.

Accordingly, I dismiss the application without costs subject to the above direction.

Judge of the Court of Appeal

**P.R. Walgama J.**

I agree.

Judge of the Court of Appeal