

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

*In the matter of an Application for
Revision in the terms of Article 138 of
the constitution of the Democratic
Socialist Republic of Sri Lanka, read
with Section 364 of the Code of
Criminal Procedure Act No. 15 of
1979 (as amended).*

Maddepolage Nanda Malani Perera
24/150, D/4/22
Gothamipura Housing Complex,
Borella.

Petitioner

Court of Appeal Revision

Application No:

CA (PHC) APN 50/2015 Vs.

1. The Officer-in-Charge
Police Narcotics Bureau
New Secretariat Building
Colombo 01.

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

Respondents

Vs.

Hettiarachchige Anuruddha
Priyankara Kularatne (Presently at
Remand Prison Negambo)

Suspect – Respondent

**Before : P.R. Walgama, J
: L.T.B. Dehideniya, J**

**Council : Ananda Hettiarachchi with Nalin Ferando for
the Petitioner.**

: Varunika Hettige, SSC for the Respondent.

Argued on : 03.06.2016

Decided on : 03.08.2016

CASE- NO – CA (PHC) APN - 50/ 2015- ORDER- 03.08. 2016

P.R. Walgama, J

The instant application lies against the order of the Learned High Court Judge dated 23.04. 2015, for refusing the application of the Petitioner to grant bail, for her son the Accused – Respondent.

The Petitioner is the mother of the Accused – Respondent, who is in remand for the last 2 years and 10 months.

The Accused – Respondent was indicted for possessing and trafficking of 130.28 grams of heroin. The Accused was arrested on 14.07.2012 by the police , on the charge of possessing of 600 grams purported to be heroin.

The Petitioner applied for bail on behalf of the Accused which was refused by the Learned High Court Judge by the said impugned order on the basis that no exceptional circumstances has been established by the Petitioner for the release of the Accused.

Being aggrieved by the said order the Petitioner has come by way of revision and urged for the release of the Accused.

The Counsel for the Respondent has tendered the Statement of Objections and had stated the following;

That this court can exercise revisionary jurisdiction only if exceptional circumstances exist. It is contended by the Counsel for the Respondent that Petitioner has failed to aver the exceptional circumstances as required by law.

Further it is alleged by the Respondent that the Petitioner has not come with clean hands as she has failed to disclosed the fact that the Accused is facing another similar charge of being in possession of 1500 grams of heroin and being tried in the Magistrate Court of Maligakanda in the case bearing No. 68387/12.

Therefore it is the categorical position of the Counsel for the Respondent that there do not exist exceptional circumstances which warrant this Court to

intervene to set aside the order of Learned High Court Judge and grant bail to the Accused. It is also been noted that the Petitioner has not tendered a copy of the said impugned order of the Learned High Court Judge and the medical certificate as a proof of the terminal decease of the Petitioner.

In addition it said that the trial will be commenced on the next occasion, (on 12.10.2016) and the Petitioner's sickness is no ground for the granting of bail.

The counsel for the Respondent had adverted to the case of CARDER .VS. OFFICER IN NARCOTIC BUREAU SLR- 2006 VOL 3 PAGE 74, which was observed thus;

“ orders refusing to grant bail are considered as final orders against which appeals lie. No appeal was filed in these cases and no reasons are given why he did not lodge an appeal. The petition was filed four months and twenty days after the High Court pronounced its order and no exceptional circumstances have been mentioned.”

“Revision like an appeal is directed towards the correction of errors, but it is supervisory in nature or solely the relevancy of grievances of a party. Revisionary powers should be exercised where a miscarriage of justice has occurred due to a fundamental rule of procedure being violated, but only

when a strong case is made out amounting to a positive miscarriage of justice” (emphasis added)

In encapsulating the above it abundantly clear that the instant application for bail should fail for the reasons as stated below.

That the failure on the part of the petitioner to establish existence of exceptional circumstances to enable this Court to exercise the revisionary jurisdiction. That the Petitioner lacks uberrima fides as she failed to disclose the fact that there is a pending case which the accused is charge with the similar offence,

That the petitioner has failed to adhered to rule 3 (1) (a) of the Court of Appeal, as per Appellate Procedure Rules of 1990. In that the Petitioner has not tendered any document to prove the fact that, she is the mother of the accused.

It is also considered vital to consider the out come of the case of SHIYAM .VS. OFFICER IN CHARGE OF NARCOTIC BUREAU- (2006) 2- Sri .L.R- 159 which held thus;

“hence section 3(1) of the Bail Act had no effect on persons accused of offences under the Poisons, Opium and Dangerous Drugs Act which deals with a different subject.”

Therefore it is crystal clear that an accused charged under Poisons, Opium, and Dangerous Drugs Act, could be released on bail not in terms of Section 3(1) of the Bail Act, but only in terms of Section 83 of the said Act. It is explicitly stated thus;

“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 High Court in exceptional circumstances”.

Hence for the above compelling reasons this Court will dismiss the application of the petitioner.

Accordingly application is dismissed without costs.

JUDGE OF THE COURT OF APPEAL

L.T.B. Dehideniya, J

I agree.

JUDGE OF THE COURT OF APPEAL