

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

Labukola Ange Wisin Gedara Ashani  
Dhanushshika,  
No. B 44, Bandaranayakepura, Rajagiriya.

**Petitioner**

Court of Appeal Case no.

04/2016 / CA / PHC / APN

High Court Panadura Case no.

BA 70/2014

Magistrate Court Panadura

Case no. 22400

Vs.

01. The officer in Charge,

Division Crime Investigation Unit,

Police Superintendent Office, Panadura.

02. The Hon. Attorney General,

Attorney General's Department,

Colombo 12.

**Respondent.**

Kusiyage Nissanka Hemantha De Costa,

(Presently at remand prison, Kaluthara)

**Suspect Respondent**

**Before** : H.C.J.Madawala J.

: L.T.B. Dehideniya J.

**Counsel** : Anada Hettiarachchi for the Petitioner.

: Varunika Hettige SSC for the Respondent.

**Argued on** : 29.08.2016

**Decided on** : 06.10.2016

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

This is a revision application from the High Court of Panadura. The history of this application is along these lines.

The Petitioner filed an application for bail on behalf of the Suspect Respondent who was in remand on suspicion of having possession of heroin. The Petitioner being the wife of the Suspect moved for bail. The learned High Court Judge decided that there are no exceptional circumstances and refused bail. Being aggrieved by the said decision, the Petitioner moved in revision stating that the Suspect was in remand for nearly two years, there is a discrepancy of the quantity of heroin in the Government Analyst report and the police report, the B report does not disclose where the heroin was found from the Suspect and the heroin was not in actual possession of the Suspect are exceptional grounds to grant bail. The 1<sup>st</sup> and 2<sup>nd</sup> Respondents raised several preliminary objections; firstly that the Petitioner has failed to avert the exceptional circumstances to invoke Revisionary Jurisdiction of this Court and secondly that the Petitioner has no locus standi. On conclusion of the argument, the Respondents brought to the notice of Court that the indictment was dispatched to the relevant High Court and the status of the suspect was changed. Under the new circumstances, the suspect became an accused and he can make an application for bail afresh but the Petitioner did not respond.

The order on a bail application in High Court is considered as 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) v. 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. When the right of appeal is available, the revisionary jurisdiction is exercised by the appellate courts to prevent the miscarriage of justice. It has been held in the case of Vnik Incorporation Ltd. v. Jayasekara [1987] 2 Sri L R 365 that;

*In Perera v. Muthalib (supra) Soertsz, J. set out that the revisionary powers of the Supreme Court are not limited to those cases in which no appeal lies or in which no appeal has been taken for some reason and that the Court would exercise revisionary powers where there has been a miscarriage of justice owing to the violation of a fundamental rule of procedure, but that this power would be exercised only when a strong case is made out amounting to a positive miscarriage of justice. In that case the bond of surety had been forfeited without an inquiry.*

*In the case of Attorney-General v. Podi Singho (supra) Dias, J. held that even though the revisionary powers should not be exercised in cases when there is an appeal and was not taken, the revisionary powers should be exercised only in exceptional circumstances such as (a) miscarriage of justice (b) where a strong case for interference by the Supreme Court is made out or (c) where the applicant was unaware of the order. Dias, J. also observed that the Supreme Court in exercising its powers of revision is not hampered by technical rules of pleading and procedure.*

*That was a case where a sentence below the minimum sentence prescribed by law had been imposed.*

*Although both those cases were decided long before the present Constitution was promulgated (incorporating Article 145) and the*

*amendment to section 753 of the Civil Procedure Code in 1988, the Supreme Court expressed the view that its revisionary powers should be exercised where a miscarriage of justice has occurred due to a fundamental rule of judicial procedure being violated, but only when a strong case is made out amounting to a positive miscarriage of justice.....*

The revisionary jurisdiction of this Court is not hampered by the availability of the right of appeal, but the courts are slow in exercising the discretionary jurisdiction unless there are exceptional circumstances.

*Bank of Ceylon V Kaleel and others [2004] 1 Sri L R 284*

*(1) The court will not interfere by way of revision when the law has given the plaintiff-petitioner an alternative remedy (s.754(2)) and when the plaintiff has not shown the existence of exceptional circumstances warranting the exercise of revisionary jurisdiction.*

*Per Wimalachandra, J.*

*"In any event to exercise revisionary jurisdiction the order challenged must have occasioned a failure of justice and be manifestly erroneous which go beyond an error or defect or irregularity that an ordinary person would instantly react to it - the order complained of is of such a nature which would have shocked the conscience of court."*

*Dharmaratne and another V Palm Paradise Cabanas Ltd and others [2003] 3 Sri L R 24*

*Per Amaratunga, J.*

*"Existence of exceptional circumstances is the process by which the court selects the cases in respect of which the extraordinary method of rectification should be adopted, if such a selection process is not*

*there revisionary jurisdiction of this court will become a gateway of every litigant to make a second appeal in the garb of a Revision Application or to make an appeal in situations where the legislature has not given a right of appeal."*

*The practice of Court to insist on the existence of exceptional circumstances for the exercise of revisionary powers has taken deep root in our law and has got hardened into a rule which should not be lightly disturbed. The words used by the legislature do not indicate that it ever intended to interfere with this 'rule of practice'.*

In the present case the Petitioner has failed to establish any exceptional circumstances warranting this Court to exercise the revisionary jurisdiction. The Petitioner's first point is that the suspect is in remand nearly for two years. The intention of the Legislature is to keep in remand any person who is suspected of or accused of possessing or trafficking heroin until the conclusion of the case. The section 83(1) of the Poisons, Opium, and Dangerous Drugs Ordinance express the intention of the Legislature. It is enacted by the Parliament that "*No person suspected or accused of an offence under section 54A or section 54B of this Ordinance shall be released on bail, except by the High Court in exceptional circumstances.*" The suspect in the present case has been previously convicted on similar offences. Therefore, remanding itself, of a person of this caliber cannot be an exceptional circumstance to grant bail.

The second point of the Petitioner is that the quantity of heroin stated in the police report is different from the quantity stated in the government analyst report. The government analyst reports the amount of pure heroin after analyzing the substance but the police measure it with all the impurities. Therefore, it is natural to have a difference in quantity between these two reports. The third and the fourth points raised by the Petitioner as

exceptional grounds are that the B report does not disclose where the heroin was found from the Suspect and the heroin was not in actual possession of the Suspect. These two are matters that have to be established by the prosecution at the trial.

The points raised by the Petitioner cannot be considered as exceptional grounds to grant bail. The learned High Court Judge correctly refused bail.

We see no reason to interfere with the learned High Court Judge's finding. The application dismissed. We order no costs.

Judge of the Court of Appeal

**H.C.J.Madawala J.**

I agree.

Judge of the Court of Appeal