

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

In the matter of an application for Revision in terms
of Article 138 of the Constitution of the Democratic
Socialist Republic of Sri Lanka read with section
404 of the Criminal Procedure Code Act No. 15 of
1979

Court of Appeal case no. CA/PHC/APN/ 17/2015

H.C. Colombo case no. HC 7494/2014

M.C. Maligakanda case no. B 83173/2012

Meringga Danasiri,
No. 276/7/D/1, Saranapalahimi Mawatha,
Borella, Colombo 8.

Accused Petitioner

Vs.

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

Respondent.

Before : H.C.J.Madawala J.
: L.T.B. Dehideniya J.

Counsel : Nalin Weerakoon for the Accused Petitioner.
: D.S. Soosaitas SSC for the Attorney General.

Argued on : 05.12.2016

Decided on : 23.01.2017

L.T.B. Dehideniya J.

This is a revision application from the High Court of Colombo.

The Accused Petitioner was indicted in the High Court of Colombo on for committing offences punishable under Poison Opium and Dangerous Drugs Ordinance where he could be released on bail only on exceptional circumstances under sec 83 (1) of the Ordinance. The Petitioner made an oral application before the learned High Court Judge for bail and was dismissed. This revision application is against the said order of dismissal.

The learned Counsel's contention is that the learned High Court Judge has determined that exceptional circumstances exists but has refused bail. He argues that if the Court holds that the exceptional circumstances exist, the Court has no alternative but to release the accused on bail.

The learned High Court Judge in her order dated 12.09.2014 stated that the accused has submitted that the long period of incarceration, the illness of his wife and having two children as exceptional circumstances. The learned High Court Judge has considered these factors and decided not to grant bail. In her order she has stated "though the exceptional circumstances were submitted" (කුඩාමේ කරනු ලැබුවත් කලඳ). The Counsel for the Petitioner argues that it means that the learned High Court Judge has decided that the exceptional circumstances exist, but it really means that certain facts have been submitted as exceptional circumstances and the Court has considered them and come to the finding that the accused should not be granted bail. Therefore, the argument that the Court has decided that the exceptional circumstances exist, cannot stand.

The learned Counsel for the Petitioner submits that the Petitioner was in the remand custody for a long time. This fact alone cannot be considered as an exceptional circumstance under the Ordinance because

intention of the Legislature is to keep a person accused or suspected of for an offence of this nature in remand until the case is concluded unless no exceptional circumstances to grant bail. Not having exceptional circumstances for a certain period of time itself cannot be an exceptional circumstance to grant bail. Another ground submitted is that the wife of the Petitioner was a sick person. He submitted a Diagnosis Ticket issued by the NHSL in 2013 marked as P 9. The patient was referred to the OPD requesting to arrange a medical clinic to follow up. No document submitted to establish that she is unable to take care of the children at the time of making the application for bail.

The Petitioner having two children is not an exceptional ground to consider bail.

The learned High Court Judge's decision not to grant bail is well founded and I see no reason to interfere with.

The application dismissed.

Judge of the Court of Appeal

H.C.J.Madawala J.

I agree.

Judge of the Court of Appeal