

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 and section 404 of
the Code of Criminal Procedure Act No
15 of 1979.

CA (PHC)APN 45/2016
HC Negombo Case No- HC 357/2014
MC Case No: 313/2013

Herath Mudiyanseelage Dilruk Sanjeewa
16/3, Meethotamulla, Wellampitiya
(Now in remand prison)

Accused

Vs.

1. The Officer-In-Charge,
Police Narcotic Bureau,
Colombo 01.

Complainant

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

Respondent

And Between

Herath Mudiyanseelage Dilruk Sanjeewa
16/3, Meethotamulla, Wellampitiya
(Now in remand prison)

Petitioner

Vs.

1. The Officer-In-Charge,
Police Narcotic Bureau,
Colombo 01.

Complainant-Respondent

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

Respondent-Respondent

**Before : H.C.J. Madawala , J
&
L.T.B. Dehideniya, J**

**Counsel : Deshapriya Liyanage with Nalin Weerakoon for the Accused-Petitioner
Susaitas, SSC for the State**

Argued On : 14 /12 /2016

Written Submissions On : 18 /01 /2017

Decided on : 25 / 01 /2017

H. C. J. Madawala , J

The Petitioner-Accused Herath Mudiyanseelage Diluk Sanjeewa has filed this Revision application to set aside the order of the Learned High Court Judge refusing to enlarge the Petitioner on bail and to order the suspect Petitioner be enlarged on bail. The Petitioner who is the Accused of the High Court of Negombo case No HC 357/2014 was indicted on 29th September 2014 for the offences of trafficking and possessing 6.61 grams of Heroin.

The Petitioner made an application for bail which was refused by the Learned High Court Judge who after considering the application refused and fixed the case for trial on 12th March 2015. The trial commenced on 14th September 2015 and postponed to 17th December 2015, due to the request of the prosecution even without concluding the evidence in chief of the 1st witness.

The Petitioner made a further application for bail on 15th September 2015 which was also refused by the Learned High Court Judge only stating non-existence of the exceptional grounds. Further another application was made to the Learned High Court Judge on 3rd February 2016 which was also refused for the non-existence of exceptional circumstances.

Being aggrieved by the order dated 3rd February 2016 the Petitioner urged to set aside the order dated 2nd February 2016 on the following exceptional grounds. Namely,

- (i) That the Learned High Court Judge failed to consider that the Petitioner was incarcerated for almost 3 years.

- (ii) That the refusal of granting bail by the Learned High Court Judge is Ex facie illegal and was not based on non-existence of exceptional circumstances.
- (iii) That the Learned High Court Judge failed to consider that the Petitioner is the father of 5,8 years old daughters and 10 year old son and his wife is not in a position to look after the said children in a possession.

The Counsel for the Respondent raised the preliminary objections in that the Petitioner has failed to specifically aver the existence of exceptional circumstances in the petition and affidavit and thereby denied the right to invoke the revisionary jurisdiction of this court. As the failure to aver the existence of exceptional circumstances is fatal in an application for revision of this nature, the petition of the Petitioner may be dismissed in limine.

Further it was submitted that the suspect was arrested on 30/3/2013 for possession and trafficking of Heroin of 25 g and 300mg, by the Police Narcotic Bureau, which is an offence under the Poisons, Opium and Dangerous Drugs Ordinance as amended by Act No 13 of 1984. The report issued by the Government Analyst Department dated 5/8/2013 the pure quantity of the said Heroin weighed 6.61g. The Petitioner was indicted in the High Court of Negombo, in terms of section 54 A (b) and 54 A (c) for trafficking and possession of 6.61g of Heroin, punishable under scheme iii of the said Act. The trial has commenced on 14/9/2015 with evidence of PW1.

We have considered the submission made by both parties. Firstly the Petitioner has submitted that he has subject to long period of incarceration. In the Court of Appeal case No CA (PHC) APN 81/2016 it has been stated that Ranjith Silva J, held in the case of CA(PHC) APN 64/09 where the Accused was charged for possession of Heroin over 2 grams where the sentence is life imprisonment or death sentence, that keeping the Accused in remand for over 3 years for not having exceptional circumstances will not constitute exceptional circumstances. His Lordship held that “if that is treated as an exceptional circumstance, in my view it would be an anomaly because the fact that there aren’t any exceptional circumstances becomes a qualification after 3 years” My view is that this judgment explains the law clearly. The Legislature in their wisdom thought it fit to keep a person suspected or Accused of an offence under section 54 A or 54 B of the Ordinance, in remand unless there are exceptional circumstances to release on bail. What is expected is to keep him in remand until the conclusion of the case unless there are exceptional circumstances to release on bail. Therefore, the time period of incarceration alone would not constitute exceptional circumstances because the law expects to keep him in remand until the case is concluded.”

In the present case as there are no exceptional circumstances the Learned High Court Judge has quite correctly dismissed the said revision application. We find that there isn’t any illegality or impropriety in the said impugned order. The revision application does not contain any exceptional circumstances which is acceptable to court. The Petitioner has failed to establish exceptional circumstances.

In **Attorney General Vs. Gunawardene (1996) 2 SLR 149** a bench of five judges of the Supreme Court decided: “Revision like an appeal is direct toward the correction of errors but it is supervisory in nature and its object is the due administration of justice and not preliminary or solely relieving of grievances of a party.”

In **Wijesingha Vs. Tharmaranam (4 Sri Kantha Law Report Page 47)** it was held that revision will not be available unless the application discloses circumstances which shock the conscience of the court.

The facts he has having children and that his wife in unable to support and look after the family does not amount to exceptional circumstances. In this case the evidence of main Investigation Officer who is PW1 has been led to a great extent and the trial is in progress. We are of the view that the Learned High Court Judge has arrived at a correct decision when he refused granting bail.

In **Ramu Thamodararampillai Vs. Attorney General SC application 141/75**, where the Accused had 6 children who were sick, it is again fair and just that the Learned High Court Judge had not considered these grounds as creating an exceptional circumstance.

The judicial decision is authority to say that this grounds only constitutes a personal circumstances, but not an exceptional one that qualifies the Accused to rely on and seek bail.

Section 83 of the 1984 Act of the Poisons, Opium and Dangerous Drugs Act stated that “ No person suspected or accused of an offence under section 54A or 54 B of this Ordinance shall be released on bail, except by the High Court in exceptional circumstances.’ Keeping the Accused in remand until the conclusion of the trial is the rule unless the Accused fail to show the exceptional circumstances. Exceptional circumstances must be pleaded and established.

Accordingly we uphold the objection of the Respondent and dismiss this Petitioner’s application in limine. We affirm the order of the Learned High Court Judge dated 02/02/2015 and dismiss this Revision Application without cost.

Judge of the Court of Appeal

L.T.B.Dehideniya, J

I agree.

Judge of the Court of Appeal