

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

An application for (Bail) revision in terms of Article 138 of the Constitution of the Democratic Socialist Republic of Sri Lanka.

**CA (PHC) APN 92/2016**

**High Court Jaffna**

**Case No-832/15**

**M.C. Mallakam Case No-**

**BR 677/ODD/15**

Officer-In-Charge,  
Department of Police,  
Police Station of Illavalai,  
Illavalai.

**Complainant**

Vs.

Subair Mohamed Riyas  
Pattanichuchur,  
Vavuniya.

**2<sup>nd</sup> Suspect**

**(Presently retained in Remand Custody)**

And between

Saiyadhu Mohamed Mum dai Begam  
No. 52/27, 02<sup>nd</sup> Lane,  
Pattanichchur,  
Vavuniya.

**Petitioner-Petitioner**

Vs.

- 1- Officer-In-Charge,  
Department of Police,  
Police Station of Illavalai,  
Illavalai.

**Complainant-Respondent-  
Respondent**

- 2- Hon. Attorney General,  
Attorney General Department,  
Colombo 12.

**Respondent-Respondent**

- 3- Subair Mohamed Riyas,  
Pattanichuchur,  
Vavuniya.

**2<sup>nd</sup> Suspect-Respondent-  
Respondent**

**(Presently retained in Remand Custody)**

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

**Counsel : A. Ihalavithana for the Petitioner.  
D.S. Susaithas SSC for the Respondent**

**Argued On : 19 /01/2017**

**Written Submissions On : 20 /02 /2017**

**Decided on : 31 / 03 /2017**

## **H. C. J. Madawala , J**

This revision application is preferred to set aside the order dated 14.06.2016 of the Learned High Court Judge to grant Bail to the 2<sup>nd</sup> Suspect of Saiyadhu Mohamed Mum dai Begam and for cost on 31<sup>st</sup> August 2015 and the 2<sup>nd</sup> Suspect was arrested by the Officer-in-Charge of the Police Station Illavalai and produced before Mallakam Magistrate Court and remanded. The allegation levelled against the 2<sup>nd</sup> Suspect was illegal transport of Cannabis indica in weight of 40 kilos and 192 grams.

The 2<sup>nd</sup> Suspect deny that allegation levelled against him. The 2<sup>nd</sup> Suspect is the father of five children and the sole bread winner of his family and the detention of the suspect has severely affected his family. The 2<sup>nd</sup> Suspect has neither any previous conviction nor any pending cases. The 2<sup>nd</sup> Suspect has preferred an application for a bail under and in terms of section 83(1) of the Poisons, Opium and Dangerous Drugs Ordinance.

Being aggrieved by the order of the Learned High Court Judge the petitioner preferred this application.

The Learned SSC raised a preliminary objection as to the maintainability of this action in that the Petitioner has no locus standi to present this application and does not have any locus standi to maintain this revision application and moved to dismiss this application in limine. He also contended that there are no exceptional grounds for this court to act in revision.

We have considered the application of the Petitioner who is the wife of the 2<sup>nd</sup> Suspect. However we find that the Petitioner has no locus standi to make this application since she has not tendered her marriage certificate and has not tendered any valid proof that she is an aggrieved party. Further there are no exceptional circumstances pleaded in the petition.

In the case of **Senatilake Vs. AG 1998 2 SLR 290** the court held that the father of the accused has no locus standi to maintain a revision application or challenge a conviction.

In the case of **Sonali Fernando Vs. A.G. CA(PHC) APN 144/07** is a revision application filed by the wife of the convict to quash and reverse the conviction. The Court held that the wife has no locus standi to prosecute the application.

In the case of CA(PHC) APN No. 64/09 held that period of remand cannot be considered as an exceptional circumstance.

*“If an accused cannot assign exceptional circumstances he will have to keep on remand and when an accused had been in remand for 03 years, because he had no exceptional circumstances will that by itself constitute exceptional circumstances. 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.”*

In the case of CA (PHC)APN 63/2015 L.T.B. Dehideniya J, stated that;

*“The Petitioner's argument that a long period of incarceration can be considered as an exceptional circumstance cannot be applied to a case under this ordinance. Section 83 of the Ordinance made it mandatory to keep an accused person or a person suspected for an offence of this nature in remand custody until the conclusion of the case unless there are exceptional circumstances to release on bail.*

*Therefore, long period of remanding does not contribute to constitute exceptional circumstances.”*

Likewise family commitments also cannot be considered as an exceptional circumstance. The accused is a father of six children and his children are still attending school was not considered as exceptional circumstance. Vide: **Ramu Thamtharampillai Vs. AG(SC 141/75)**

No previous conviction cannot be considered as an exceptional circumstance. Vide: **Ramu Thamotharampillai Vs. AG(SC 141/75).**

As such we are of the view that there is no reason as to why we should interfere with the order of the learned High Court Judge.

Hence we dismiss this revision application with costs.

Judge of the Court of Appeal

L.T.B.Dehideniya, J

I agree.

Judge of the Court of Appeal