

**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 Code of  
Criminal Procedure Act No. 15 of  
1979.

The Hon. Attorney General  
Attorney General's Department,

Complainant

Vs

CA (PHC) APN: 85/2016

HC Panadura HC 3006/2013

1. Lanumoderage Nishanthi

2. S.H.Suminda Sadeep

And Now

Lanumoderage Nishanthi

(Presently in the Remand Prison,  
Welikada)

Petitioner

Vs

The Hon. Attorney General  
Attorney General's Department,

Complainant Respondent

Before: K.K.Wickremasinghe J.

P.PADMAN Surasena J.

COUNSEL : AAL Tenny Fernando for the Petitioner

DSG Varunika Hettige for the Respondent

ARGUED ON: 03/07/2017

DECIDED ON:13/09/2017

## ORDER

The Petitioner in this case is the Accused of the partly heard trial in High Court Panadura Case No. 3006/2013.

The Petitioner has been Indicted in the High Court of Panadura for an offence punishable under sections 54 A (c) and 54 A (b) for possessing and trafficking of 637.9 grams of heroin.

The Learned High Court Judge had pronounced the order dated 28<sup>th</sup> March 2016 refusing to grant bail on the Accused Petitioner. Being aggrieved by the said order made by the Learned High Court Judge, the Petitioner has filed this application for revision in this court.

Learned Counsel for both parties were heard in support of their respective positions. The Learned Counsel for the Accused Petitioner states that the aforesaid order is illegal, wrongful and contrary to law and /or unreasonable for any one or more of the following reasons:-

1. The learned High Court Judge has failed to give due consideration to the ground that the petitioner is in the incarceration for over 4 years up to now, and has no means of bringing down the evidence to support the defense.
2. Learned Trial Judge failed to give due consideration to the fact that the petitioner is a mother of a child who has no protection, which should have been considered as an exceptional ground to grant bail.
3. The learned High Court Judge has failed to consider the submissions made by the counsel made for the first accused and erred in evaluating the version of the suspect in this matter including her family background and the pathetic situation faced by her child. Therefore, further states that the impugned order of the learned High Court Judge should allow to be sustained.
4. Learned High Court Judge has failed to consider that keeping a person in custody for an uncertain period of time would infringe the fundamental rights of that person, and after a trial if acquitted so violated fundamental rights of that person could not be compensated by any means and there by the accused should have been released on bail.
5. Learned High Court Judge failed to consider the fact that the accused should be given the fullest opportunity to fight for her case allowing her to bring witnesses on her behalf and when refusing bail even at the trial stage amounts to handicap the accused and thereby she is denied a fair trial.

6. Learned High Court Judge even after concluding that the time period the petitioner spent in the custody is quite excessive and then and then considering the amount of heroin involved in the case is quite high, has decided to refuse bail which is erroneous basis to refuse bail when there is exceptional ground has emerged and thereby causing miscarriage of Justice.
7. Learned High Court Judge has failed to consider the fact that the petitioner has no previous conviction or any pending cases against her, except for the present case which should have been considered in favour of the petitioner.
8. Learned High Court Judge has failed to be mindful of the fact that the second accused who faces charges as severe as the petitioner is on bail and he attends to court without fail, clearly indicating that the punishment for the charges will not affect or will be reason to jump from bail or none compliance with conditions of the bail order if any event the court pleased to grant bail.

The Learned counsel for the Petitioner states that the matters set out in above mentioned paragraphs constitute exceptional circumstances, which warrant exercising revisionary jurisdiction of this court. Learned counsel for the Petitioner further states that the Petitioner has previously invoked the jurisdiction of this court in respect of this matter in case no. CA (PHC) APN 48/2014.

Considering the above submissions made by the learned counsel for the petitioner it is evident that the above mentioned grounds does not constitute exceptional circumstances for the purpose of releasing the petitioner on bail. The Learned High Court Judge has already taken into consideration the above mentioned facts, specially the nature, gravity of offence and the quantity of heroin alleged to have been in possession of the petitioner. The Learned High Court Judge has amply demonstrated reasons for the said order and also mindful of the fact that the gravity of the offence is sever and the sentence to be imposed will be the death penalty if convicted.

In the bench mark decision in the case of **Ramu Thamodarampillai Vs the AG (2004) 3 Sri L.R. 180** has dealt with the identical issue and had observed thus; *"the decision must be in each case depend on its own facts and circumstances. But, in order that like cases will be decided alike, there should be uniformity of decisions, it is necessary that guidance should be laid down for the exercise of that discretion"*.

In the case of **Mohamed Shiyam** it was held that for an offence of committed under the above act it is section 83 of the said act will be applicable and according to section 83, bail will be granted only on exceptional circumstances.

Therefor considering the rationale observed by our superior courts, in granting bail to an accused charged under the said act, it is abundantly clear, that Learned High Court Judge was correct in refusing to enlarge the accused on Bail.

Hence, this court sees no reason to interfere with the findings of the Learned High Court Judge and thereby the application for revision is hereby dismissed without costs.

JUDGE OF THE COURT OF APPEAL

**P.Padman Surasena J**

I agree,

JUDGE OF THE COURT OF APPEAL

Cases Referred to:

1. Ramu Thamodarampillai Vs the AG (2004) 3 Sri L.R. 180
2. Mohamed Shiyam Vs Attorney General decided on 29.03.2006