

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

In the matter of an Application for
Revision made under Article 138 of
the Constitution of the Democratic
Socialist Republic of Sri Lanka.

C.A. Revision Application No:
CA (PHC) APN 57/2017

H.C. Gampaha Bail Application
No: BA/139/2016

Saranya Lakshman Jayasundara
No. 328/26/1, Aluth Mawatha,
Walls Lane,
Colombo 15.

Petitioner

Vs.

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

02. OIC,
Police Narcotics Bureau,
Colombo 01.

Respondents

Welu Yogendran

(Currently in Mahara Remand
Prison)

Suspect

AND NOW BETWEEN

Welu Yogendran of No. 219/T/27,
Ferguson Road, Colombo 15.

(Currently in Mahara Remand
Prison)

Suspect-Petitioner

Vs.

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

02. OIC,
Police Narcotics Bureau,
Colombo 01

Respondents - Respondents

BEFORE : K. K. Wickremasinghe, J.
Janak De Silva, J.

COUNSEL : AAL Kamal S. Perera with AAL Sumudu
Ediriweera for the Suspect-Petitioner
Nayomi Wickramasekara, SSC for the
Respondents-Respondents

INQUIRY ON : 30.05.2018

WRITTEN SUBMISSIONS : The Suspect-Petitioner- On 20.06.2018
The Respondents-Respondents - On
02.07.2018

DECIDED ON : 20.07.2018

K. K. WICKREMASINGHE, J.

The Suspect-Petitioner has filed this revision application seeking to set aside the order of the Learned High Court Judge of Gampaha in Case No. Bail/139/2016 dated 22.02.2017, refusing to enlarge the petitioner on bail. At the stage of inquiry,

it was agreed by both parties to file written submissions on the legal ground of the requirement of exceptional circumstances.

Facts of the Case:

The Suspect-Petitioner (hereinafter referred to as the Petitioner) was arrested with another on 27.05.2016, and had found 50g of heroin in his possession. The team of Police officers who arrested these suspects had subsequently searched the house of the Petitioner and nothing was found in the said search. Second suspect was a driver of a company that operated a Taxi service who was driving the vehicle at the time of arrest. Investigation notes indicated that these two suspects were arrested on the information received from one Pallewela Wasantha, a suspect, who was arrested on the same day by the same police team.

Thereafter the suspects were produced before the Learned Magistrate of Gampaha and had been kept in remand. Two separate bail applications were filed by the said driver and the Petitioner in the High Court of Gampaha and the driver was released on bail under the Bail application No. 135/2016. The Petitioner had filed the Bail application No. 139/2016 and the Learned High Court Judge of Gampaha had refused to grant bail since there were no exceptional circumstances. Being aggrieved by the said order dated 22.02.2017, the Petitioner preferred a revision application in this court seeking to set aside the said order and to enlarge the Petitioner on bail.

In the case of **Lunumoderage Nishanthi v. AG [CA (PHC) APN 48/2014]**, it was held that,

“It is trite law that any accused or suspect having charged under the above act will be admitted to bail only in terms of section 83(1) of the said Act and it is only on Exceptional circumstances...”

According to Section 83 of the Poisons Opium and Dangerous Drugs [amendment] Act No.13 of 1984, the intention of the legislature can be construed as to keep the suspects under the said Act, in remand unless exceptional circumstances are demonstrated.

In the benchmark decision of **Ramu Thamothersampillai v Attorney General (2004) 3 Sri. L.R 180**, it was held that,

“The decision must in each case depend on its own peculiar facts and circumstances. But in order that like cases may be decided alike and that there will be ensured some uniformity of decisions it is necessary that some guidance should be laid down for the exercise of that discretion...”

The Learned Counsel for the Petitioner has submitted that the Petitioner was in remand for over two years and that itself should be considered as an exceptional circumstance. The Learned Counsel further submitted that the Petitioner is a father of two children aged 4 and 3 years now.

However in the case of **Ranil Charuka Kulathunga v. AG [CA (PHC) APN 134/2015]**, it was held that,

“The petitioner submits several grounds to consider bail. The Petitioner states that he is a married person with two school going children. The persons getting married and having children is not an exceptional ground. It is the normal day to day life of the people.”

In the above mentioned case, it was further held that,

“The quantity of cocaine involved in this case is 62.847 grams, which is a commercial quantity. If Petitioner is convicted, the punishment is death or

life imprisonment. Under these circumstances, it is prudent to conclude the trial early while the Petitioner is kept in custody..."

In the case of **Labukola Ange Wisin Gedara Ashani Dhanushshika v. AG [CA (PHC) APN 04/2016]**, it was held that,

"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 Learned Counsel for the Petitioner further submitted that the Police team who arrested the Petitioner had failed to state the time they returned to Headquarters of Police Narcotic Bureau (PNB), and that was a vital omission in this kind of a raid and the Police had suppressed the fact that the house of the Petitioner was searched and nothing was recovered. Accordingly, the Learned Counsel has averred to consider these two grounds as exceptional circumstances in order to invoke the revisionary jurisdiction of this court.

However we hold that these matters related to the raid should be considered at the stage of trial in the High Court.

In the case of **CA Revision (PHC) APN 145/2009**, it was held that,

...in a drug case, the fact that there isn't a prima facie case against the suspect, does not constitute exceptional circumstances in order to grant bail..."

Further we observe that the Learned High Court Judge of Gampaha has considered that the Petitioner had two previous convictions of similar nature and the Petitioner was given a suspended sentence for one offence. At the page 3 of the Judgment, it was stated that the Petitioner was involved in the instant offence during the operative period of the said suspended sentence.

In the above mentioned case of CA (PHC) APN [04/2016], it was further held that,

“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...”

Considering the gravity of the offence and the sentence to be imposed if convicted is either death penalty or the life imprisonment, and the existence of previous convictions of similar nature against the Petitioner, we affirm the order of the Learned High Court Judge of Gampaha dated 22.02.2017.

Accordingly the revision application is dismissed without costs.

The Respondent is advised to take necessary steps immediately to consider forwarding the indictment as mentioned at stage of the inquiry.

JUDGE OF THE COURT OF APPEAL

Janak De Silva, J

I agree,

JUDGE OF THE COURT OF APPEAL

Cases referred to:

- 1) Lunumoderage Nishanthi v. AG [CA (PHC) APN 48/2014]
- 2) Ramu Thamothearampillai v. Attorney General (2004) 3 Sri. L.R 180
- 3) Ranil Charuka Kulathunga v. AG [CA (PHC) APN 134/2015]
- 4) Labukola Ange Wisin Gedara Ashani Dhanushshika v. AG [CA (PHC) APN 04/2016]
- 5) CA Revision (PHC) APN 145/2009