

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

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

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

Complainant

Vs.

1. Warnakulasooriya Tiran Terison
Tisera alias Chaminda
2. Manikkam Suresh

Accused

AND NOW BETWEEN

Karmathil Manikkam Suresh,
No. 7A/12, Kirimatiyana Watta,
Lunuwila.
(Presently in Negambo remand
prison)

2nd Accused-Petitioner

Vs.

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

Complainant-Respondent

C.A. Revision Application No:
CA (PHC) APN 153/2017

H.C. Negambo Case No: **HC 311/14**

M.C. Negambo Case No: **B 80/13**

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

COUNSEL : Shanaka Ranasinghe, PC with AAL
Sandamali Peiris for the Accused-Petitioner
Nayomi Wickremasekara, SSC for the
Complainant-Respondent

ARGUED ON : 28.06.2018

WRITTEN SUBMISSIONS : The 2nd Accused-Petitioner– On 03.09.2018
The Complainant-Respondents – On
06.08.2018

DECIDED ON : 21.09.2018

K.K.WICKREMASINGHE, J.

The Accused-Petitioner has filed a revision application in this court seeking to set aside the order made on 14.12.2016, by the Learned High Court Judge of Negambo, refusing to enlarge the 2nd Accused-Petitioner on bail.

Facts of the Case:

The 2nd Accused-Petitioner (hereinafter referred to as the “Petitioner”) was indicted with 1st Accused, in the High Court of Negambo on two counts for trafficking and possession of 244.09g of Heroin under Case No. HC 311/14. The indictment was read over to the Petitioner on 03.09.2014 and he had pleaded not guilty to Count 01. The Counsel appearing for the Petitioner in High Court had made an application for bail and the Learned High Court Judge of Negambo had rejected the same. The case was fixed for trial on 16.02.2015 and on that day the Counsel for the Accused had moved for a date.

Thereafter, another bail application was made on behalf of the Petitioner (2nd Accused) on 14.12.2016 and the Learned High Court Judge had rejected that application due to absence of exceptional circumstances. Being aggrieved by the said refusal, the Petitioner has preferred a revision application to this court.

Section 83 of the Poisons Opium and Dangerous Drugs [amendment] Act No.13 of 1984 states that *"No person suspected or accused of an offence under section 54A or section 54B of this ordinance shall be released on the bail, except by the High Court in exceptional circumstances."*

In the case of **Labyndarage Nishanthi V. Attorney General [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. Nevertheless it is intensely relevant to note, the term "exceptional circumstances" has not been explained or defined in any of the Statutes. Judges are given a wide discretion in deciding in what creates a circumstance which is exceptional in nature..."

Accordingly the intention of the legislature is to keep the suspects and accused under the said Act in remand unless exceptional circumstances have been proved.

The Learned President's Counsel for the Petitioner has submitted that failure to expedite and commence the trial when an Accused is in remand custody should be considered as an exceptional circumstance. The Learned President's Counsel has submitted the case of **Subramaniam Saraswathi V. Attorney General [CA (PHC) APN 36/2010]**, in support of his contention, in which it was held that,

“If the accused is on remand, it becomes the duty of the learned trial Judge to expedite and conclude the case without delay but the Learned Judge instead has postponed the case by a period of 01 year and 04 months...”

However the facts of the two cases are manifestly different. Upon perusal of the journal entries of the instant trial we find that the case was postponed due to the absence of witnesses and on request of the counsels for the two Accused. We observe that after refusing the application for bail, the Learned High Court Judge had fixed the trial for 04.04.2017 and 06.04.2017. However on 04.04.2017, the Counsel for the 1st Accused has moved for further date.

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06/04/2017 දිනය අවලංගු කළා.” (Page 17 of the brief)

Accordingly the trial was re-fixed for 02.08.2017. Thereafter the trial was postponed to 29.11.2017 as there were several partly heard cases. On that day trial was again postponed due to the assigned Learned High Court Judge was not available since he was in High Court of Chilaw.

In the benchmark decision of **Ramu Thamothearampillai 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...”

Accordingly this court is of the view that it is mandatory to demonstrate exceptional circumstances to grant bail for an offence committed under the Poisons Opium and Dangerous Drugs Act as stipulated in section 83 of said Act.

In the case of **Attorney General V. S.R. Dammika Gunawardene [CA (PHC) APN 151/2016]**, it was held that,

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

*In the case of **CA (PHC) APN 110/2009** a case where the quantity was 4.7 gms. It was held that “the first ground the fact that the suspect had been on remand for over 4 years cannot be taken as constituting the exceptional circumstance in view of the punishment that could be imposed for an offence of this nature where the charge carries a sentence of life imprisonment or death...”*

Also in the case of **Labukola Ange Wisin Gedara Ashni Dhanushika V. AG [CA (PHC) APN 4/2016]**, it was held that,

“In the present case the petitioner 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 or accused of possessing or trafficking heroin until the conclusion of the case. The section 83(1) of the Act expresses the intention of the legislature...”

Further we observe that the quantity of heroin in the instant case is 244.09g, which in fact, is a commercial quantity.

In the case of **Ranil Charuka Kulathunga v. AG [CA (PHC) APN 134/2015]**, it was 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...”

Considering above, we are of the view that the Petitioner has failed to demonstrate exceptional circumstances to the satisfaction of this court to invoke the revisionary jurisdiction.

We direct the Learned High Court Judge of Negambo to consider the possibility of hearing this case on day to day basis.

The revision application is hereby dismissed without costs.

JUDGE OF THE COURT OF APPEAL

Janak De Silva, J.

I agree,

JUDGE OF THE COURT OF APPEAL

Cases referred to:

1. Labyndarage Nishanthi V. Attorney General [CA (PHC) APN 48/2014]
2. Subramaniam Saraswathi V. Attorney General [CA (PHC) APN 36/2010]
3. Ramu Thamothersampillai V. Attorney General (2004) 3 Sri. L.R 180
4. Attorney General V. S.R. Dammika Gunawardene [CA (PHC) APN 151/2016]
5. Labukola Ange Wisin Gedara Ashni Dhanushika V. AG [CA (PHC) APN 4/2016]
6. Ranil Charuka Kulathunga v. AG [CA (PHC) APN 134/2015]