

**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.

Officer in Charge,  
Police Station,  
Bandaragama.

**Complainant**

Vs.

C.A. Revision Application No:  
**CA (PHC) APN 81/2018**

H.C. Panadura Case No: **HC 70/2018**

M.C. Panadura Case: **26964/2017**

Bintotage Tilak Wasantha,  
Delgaswatta, Temple Road,  
Weedagama, Bandaragama.

**First suspect**

**AND BETWEEN**

Wanigarathna Badalge Chishani  
Michel,  
Delgaswatta, Temple Road,  
Weedagama, Bandaragama.

**Petitioner**

Bintotage Tilak Wasantha,  
Delgaswatta, Temple Road,  
Weedagama, Bandaragama.

**First suspect**

Vs.

Officer in Charge,  
Police Station,  
Bandaragama.

**Complainant-Respondent**

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

**Respondent**

**AND NOW BETWEEN**

Wanigarathna Badalge Chishani  
Michel,  
Delgaswatta, Temple Road,  
Weedagama, Bandaragama.

**Petitioner-Petitioner**

Bintotage Tilak Wasantha,  
Delgaswatta, Temple Road,  
Weedagama, Bandaragama.

**First suspect**

**Vs.**

Officer in Charge,  
Police Station,  
Bandaragama.

**Complainant-Respondent-  
Respondent**

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

**Respondent-Respondent**

BEFORE : K. K. Wickremasinghe, J.  
Mahinda Samayawardhena, J.

COUNSEL : AAL Udaya Bandara for the Petitioner-  
Petitioner  
Nayomi Wickremasekara, SSC for the  
Respondent-Respondents

ARGUED ON : 22.01.2019

WRITTEN SUBMISSIONS : The Petitioner-Petitioner – On 30.10.2018  
The Respondents-Respondents – On  
30.10.2018

DECIDED ON : 06.03.2019

**K. K. WICKREMASINGHE, J.**

The petitioner has filed this revision application seeking to set aside the order of the Learned High Court Judge of Panadura dated 08.05.2018, in Bail Application No: 70/2018.

**Facts of the case:**

The first suspect was arrested along with two other suspects on or about 27.06.2017 with a gross quantity of 4.1g of heroin. According to the Government Analyst's report the pure amount of heroin is 0.298g.

The petitioner-petitioner (hereinafter referred to as the 'petitioner') is wife of the first suspect and she has made an application for bail on behalf of the first suspect before the Learned High Court Judge of Panadura which was refused on 08.05.2018 due to lack of exceptional circumstances.

Being aggrieved by the said refusal, the petitioner preferred a revision application to this Court.

The Learned Counsel for the petitioner has submitted several grounds of appeal in the petition. It is pertinent to note that the instant application is an application for revision. In the body of the petition it is submitted as follows;

*“(17) Being aggrieved by the said order dated 08.05.2018 of the Provincial High Court of Western Province holden at Panadura, the petitioner seek to Appeal Your Lordship’s court on the following among other grounds to be raised at the hearing of this application.*

*(a) Did his Lordship of the High Court error in law in failing to access and evaluate the document submitted before the High Court?” (Paragraph 17 of the petition)*

Thereafter the petitioner sets out five more errors of law that the Learned High Court Judge ought to have committed. However the petitioner has not prayed to revise or to set aside the aforesaid order of the Learned High Court Judge dated 08.05.2018. Therefore we are of the view that considering the legality of the order of the Learned High Court Judge will be pointless in the absence of a prayer to revise the same. Any petitioner who seeks to invoke the revisionary jurisdiction of this Court should act promptly and make a proper prayer since revision is a discretionary remedy. Further we are of the view that it was a mistake on the part of the petitioner to aver grounds of appeal instead of exceptional circumstances.

It is mandatory to demonstrate the existence of exceptional circumstances in an application for revision.

In the case of **Dharmaratne and another V. Palm paradise Cabanas Ltd and others (2003) 3 Sri L.R 24**, it was held that,

*“Existence of exceptional circumstances is the process by which the court selects the cases in respect of which the extraordinary method of rectification should be adopted. If such a selection process is not there revisionary jurisdiction of this court will become a gateway of every litigant to make a second appeal in the garb of a Revision application or to make an appeal in situations where the legislature has not given a right of appeal...”*

In the case of **Vanic Incorporation Ltd V. Jayasekara [1997] 2 Sri L.R 365**, it was held that,

*“In the case of Attorney-General v. Podi Singho (supra) Dias, J. held that even though the revisionary powers should not be exercised in cases when there is an appeal and was not taken, the revisionary powers should be exercised only in exceptional circumstances such as (a) miscarriage of justice (b) where a strong case for interference by the Supreme Court is made out or (c) where the applicant was unaware of the order. Dias, J also observed that the Supreme Court in exercising its powers of revision is not hampered by technical rules of pleading and procedure...”*

In light of the above, it is understood that demonstrating the exceptional circumstances is a pre-condition in a revision application.

Further, section 83(1) of the Poisons, Opium and Dangerous Drugs Ordinance (as amended) requires an accused or a suspect under the said Act to demonstrate exceptional circumstances to the satisfaction of Court in order to get released on bail.

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.*

*There are plethora of cases in the legal parlor which had identified what creates an "exceptional circumstances" in relation to granting bail...”*

The Learned Counsel for the petitioner further contended that according to Bail Act No. 30 of 1997, grant of bail shall be regarded as the rule and refusal as exception. However in the case of **Shiyam V. OIC, Narcotics Bureau and another (2006) 2 Sri L.R. 156**, it was held that,

*“...Therefore, even if I am to agree with the submissions of the learned President’s Counsel for the appellants, yet the provisions of section 83(1) of the Poisons, Opium and Dangerous Drugs Act would be applicable and the proper forum for making an application for bail when a person is suspected or accused of an offence under section 54A or 54B of the Poisons, Opium and Dangerous Drugs Act would be the High Court where such bail would be granted only in exceptional circumstances. The criteria therefore set out by section 3(1) of the Bail Act for exclusions are clearly dealt with by the provisions contained in section 83(1) of the Poisons, Opium and Dangerous Drugs (Amendment) Act, No. 13 Of 1984...I hold that the provisions in the*

*Bail Act would have no application to the Poisons, Opium and Dangerous Drugs Act...*”

In the case of **W.R.Wickramasinghe V. The Attorney General [CA (PHC) APN 39/2009]**, it was held that,

*“When Section 3 of the Bail Act is considered it is seen that the Bail Act shall not apply to a person accused or suspected of having committed or convicted of an offence under*

- 1. The Prevention of Terrorism (Temporary Provisions) Act No 48 of 1979,*
- 2. Regulations made under the Public Security Ordinance, or*
- 3. Any other written law which makes express provision in respect of the release on bail of persons accused or suspected of having committed, or convicted of, offences under such other written law.*

*It is therefore seen that when the legislature enacted the Bail Act it was not the intention of the legislature to release each and every suspect who has been on remand for a period exceeding 24 months.”*

Therefore it is well settled law that the principles governing bail under the Poisons, Opium and Dangerous Drugs Act are manifestly different from the general principles of bail under the Bail Act.

We observe that the petitioner has submitted about an illness of a child as a ground of revision to the High Court as well as this Court.

In the case of **Cader (On behalf of Rashid Khan) V. Officer-In-Charge Narcotics Bureau [2006] 3 Sri L.R 74**, it was held that,

*"Revision like an appeal is directed towards the correction of errors, but it is supervisory in nature and its object is due administration of justice and not primarily or solely the relevancy of grievances of a party. Revisionary powers should be exercised where a miscarriage of justice has occurred due to a fundamental rule of procedure being violated, but only when a strong case is made out amounting to a positive miscarriage of justice..."*

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."*

The Learned High Court Judge was correct in refusing to consider the illness of the child to be an exceptional circumstance. Further we observe that the Learned SC for the respondent has submitted to the High Court that the first suspect has 03 previous convictions under possession of Cannabis and 08 convictions with regard to illicit liquor. Additionally there is a pending trial of murder against the first suspect in the High Court of Pandaura. Therefore the Learned High Court Judge, in refusing to enlarge the suspect in bail, has considered the probability of committing further offences by the first suspect.

In the case of **Labukola Ange Wisin Gedara Ashani Dhanushshika V. Attorney General [CA (PHC) APN 04/2016]**, 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... 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 above, we are of the view that this application should have been dismissed *in limine* due to the failure to aver exceptional circumstances in the petition. Nevertheless we have considered even the merits of the case and we see no reason to grant bail to the first suspect.

Therefore we affirm the order of the Learned High Court Judge dated 08.05.2018 and refuse to enlarge the first suspect on bail.

This revision application is hereby dismissed without costs.

JUDGE OF THE COURT OF APPEAL

**Mahinda Samayawardhena, J.**

I agree,

JUDGE OF THE COURT OF APPEAL