

**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 154(P) of the Constitution of the Democratic Socialist Republic of Sri Lanka read with Section 5(2) of the High Court of the Provinces (Special Provisions) Act, No. 10 Of 1996.*

**CA Revision Application :**  
CA(PHC) APN 79/2020

**High Court Panadura:**  
HCBA 95/2019

**Magistrate Court Moratuwa**  
B 2221/2018

**Vs.**

The Officer-in-Charge  
Police Station  
Angulana

**Complainant**

Wanni Aarachchige Dinersh Perera  
alias Sana  
No. 30/18, Podujaya Mawatha,  
Angulana  
Moratuwa

**Suspect**

**And**

Prathapasinghe Arachchilage  
Asangika Madumali  
No. 30/18, Podujaya Mawatha,  
Angulana  
Moratuwa

**Petitioner**

**Vs.**

1. The Officer-in-Charge  
Police Station  
Angulana
2. The Hon. Attorney General  
Attorney General's Department  
Colombo 12.

**Respondents**

**And now between**

Prathapasinghe Arachchilage Asangika  
Madumali  
No. 30/18, Podujaya Mawatha,

Angulana  
Moratuwa

**Petitioner-Petitioner**

**Vs.**

1. The Officer-in-Charge  
Police Station  
Angulana
2. The Hon. Attorney General  
Attorney General's Department  
Colombo 12

**Respondents-Respondents**

**BEFORE** : Menaka Wijesundera J.  
Neil Iddawala J.

**COUNSEL** : L.B.G Perera for the Petitioner  
Shainee Weerasuriya, State Counsel for the  
respondents

**Argued on** : 22.06.2021

**Decided on** : 13.07.2021

**Iddawala- J.**

The petitioner has invoked the revisionary jurisdiction of this Court conferred under Article 138 of the Constitution seeking to set aside an order of the learned High Court Judge of Panadura dated 02.07.2020 in Bail Application HCBA 95/2019.

The petitioner is the wife of the suspect of the Case No. B2221/18 in the Magistrate's Court Moratuwa and she was the petitioner of above bail application. The suspect of the case has been arrested at his home at the above address on 07.11.2018 allegedly for possession of heroin by the Walana Anti-Corruption Unit and handed over to

Angulana Police. He was produced before the Magistrate on 14.11.2018 and had been held in remand custody. According to the B Report by the Police the suspect had 5200mg of heroin (diacetylmorphine) in his exclusive possession and 69930 mg in his almirah. According to the Report of the Government Analyst filed (marked as X 2) in the appeal brief the pure quantity of heroin (diacetylmorphine) is 3.249g and 6.735g respectively.

A bail application was filed on behalf of the suspect in the High Court of Panadura in terms of Section 83 (1) of the Poisons, Opium and Dangerous Drugs Ordinance as amended by Act, no 13 of 1984 and it was refused by the Order of the Learned High Court dated 02.07.2020.

Being aggrieved by the said Order, the petitioner preferred a revision application to this Court pleading that the Order be set aside and the suspect be enlarged on bail.

The 1<sup>st</sup> and 2<sup>nd</sup> respondents have objected to this application on the grounds, *inter alia*, that there are no exceptional circumstances to invoke the revisionary jurisdiction in terms of the Section 83 (1) of the Poisons, Opium and Dangerous Drugs Ordinance as amended by Act No 13 of 1984 and there is an unreasonable and unexplainable prolonged delay in filing the revision application since the date of the impugned Order of the High Court.

It has been well established in many reported cases that the Orders refusing to grant bail are considered as final Orders for which appeal is available. This contention has been discussed at length in the cases Anuruddha Ratwatte and Others vs. The Attorney General 2003 2 SLR 39 and in Cader vs. Officer - In - Charge Narcotics Bureau 2006 3 SLR 74.

However, in this instant case, no appeal against the Order of the High Court was filed by the suspect. Instead of filing an appeal, this present revision application was filed on 24.07.2020, that is precisely after three weeks from the date the High Court pronounced its Order. On the other hand, the petitioner does not disclose any reasons as to why the suspect did not exercise the appellate jurisdiction of this court.

However, in terms of *Section 364 of the Criminal Procedure Code Act, No. 15 of 1979*, this Court has power to call for and examine the record of any case which has been already tried or pending in the High Court or Magistrate's Court. Section 364 states:

*“The Court of Appeal may call for and examine the record of any case whether already tried or pending in the High Court or Magistrate's court, for the purpose of satisfying itself as to the legality or propriety of any sentence or order passed therein or as to the regularity of the proceedings of such court.”*

The revisionary power of this Court is discretionary and when a party files a revision application, he must satisfy the court that there are exceptional circumstances which shock the conscious of Court. In such “exceptional circumstances”, the revisionary power of the Court can be exercised for the following purposes as discussed extensively in *Attorney General vs. Ranasinghe and others 1993 2 SLR p 81 @ p 85* :

- 1) To satisfy this court as to the legality of any sentence or order passed by the High Court or Magistrate's Court.
- 2) To satisfy this court as to the propriety of any sentence or order passed by such court.

3) To satisfy this court as to the regularity of the proceedings of such court.

1<sup>st</sup> and 2<sup>nd</sup> respondents raised a preliminary objection in their statement of objections that there is an unreasonable and unexplainable prolonged delay of 5 months in filing the revision application since the date of the impugned order of the High Court. This “delay” factor has been decided in the case of Gnanapandithen V. Balanayagam (1998) 1 SLR 391 where G.P.S. de Silva CJ decided that; *“The question whether delay is fatal to an application in revision depends on the facts and circumstances of the case”*.

In this instant case the impugned order of the learned High Court Judge was delivered on 02.07.2020 and this revision application was filed on 24.07.2020. Accordingly, the Court cannot observe any substance in the preliminary objection raised by the 1<sup>st</sup> and 2<sup>nd</sup> respondents in their statement of objections dated 21.01.2021.

In the present application, the petitioner has submitted as exceptional circumstances, the following: -

- i. The order of the learned High Court Judge is contrary to law.
- ii. There is no likelihood of charges being framed against him in near future.
- iii. The suspect has no previous convictions but has one pending case.
- iv. The suspect has been in remand for this case from 7<sup>th</sup> November 2018.
- v. The present situation of COVID-19 pandemic has created a risk situation for the suspect to be kept in the remand prison.

The suspect being in remand for a long period of time has made the suspect's children helpless financially.

Consideration of bail with regard to persons suspected or accused of offenses involving the manufacturing, trafficking, importing or exporting or possession of heroin, cocaine, morphine or opium is set out in section 83 (1) of the Poisons, Opium and Dangerous Drugs Ordinance as follows:

*"No person suspected or accused of an offence under Section 54A or Section 54B of this Ordinance shall be released on bail, except by the High Court, in exceptional circumstances"*

A close examination of this section makes it very clear that the provisions of the Bail Act, No. 30 of 1997 has no application under this law of Poisons, Opium and Dangerous Drugs Ordinance.

This contention has drawn the attention of the Court in several reported cases. In *Shiyam v Officer-in-Charge, Police Narcotics Bureau & another* (2006) 2 Sri L.R. 156, the Supreme Court held:

*".....that the provisions in the Bail Act, No. 30 of 1997 would have no application in relation to the suspects or accused who have been alleged to have committed an offence under Poisons, Opium and Dangerous Drugs Ordinance. ...."*

Therefore, this Court has no doubt that only the provisions of the section 83 (1) of the Poisons, Opium and Dangerous Drugs Ordinance is applicable in granting bail for offences which fall under sections 54A and 54B of this Ordinance. Hence, the grounds for consideration of granting bail under the Bail Act may not necessarily be

grounds/exceptional circumstances considered for granting bail under the Section 83 (1) of Poisons, Opium and Dangerous Drugs Ordinance. Therefore, it should be carefully considered whether the above reasons constitute to be exceptional circumstances.

‘Exceptional circumstances’ is very subjective, and cannot be given a firm description. It depends and varies on the circumstances of each case and an exceptional circumstance in one case might not constitute an exceptional circumstance in another case.

In the case of Ramu Thamodarampillai Vs. The Attorney General 2004 3 SLR 180 observed thus:

*"..... the decision must 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" (emphasis added)*

Petitioner has averred that the financial hardships his family are being faced as an exceptional circumstance. However, a person having children or being a sole bread winner, in other words, leading a family life, are a part of a normal life style of a normal person which is banal in nature and not uncommon to be considered as exceptional. The hardships that imprisonment might impose on a suspect’s family is not an exceptional circumstance by itself.

The petitioner has also averred not having previous conviction as an exceptional ground. This has been considered in the case of Cader Vs Officer - In - Charge Narcotics Bureau (supra) where Basnayake J observed that:

*“When a person is found guilty of possessing heroin, anything more than 2 grams, the mandatory punishment is either death sentence or life imprisonment”*

*“Therefore, I am of the view that not having previous convictions and not having any cases pending cannot be considered as grounds when considering bail”*

Further petitioner has submitted that the COVID-19 has created a risk situation to the petitioner. While it is understood without a doubt that COVID-19 has imposed a significant effect specifically on the populations that live in close proximity like in prisons, this risk factor is common to every person held in custody and not exceptional to the petitioner. Therefore, while the effect of COVID-19 should be considered as a unique factor, that alone would not constitute to be an exceptional circumstance to enlarge the petitioner on bail in this instance case.

When carefully examining the previous Orders, in general, when there is no *prima facie* case against the accused /suspect or if there is an inordinate delay in the process which cannot be explained or justified, they had been considered as exceptional circumstances depending on the nature of the case.

There is a series of reported cases which had identified the "exceptional circumstances" in relation to granting bail under Section 83(1) of the Poisons, Opium and Dangerous Drugs Ordinance.

In C.A. (PHC) APN No 16/12- CA minutes dated 14.06. 2012 the allegation levelled against the suspect was that she was in possession of 3.59 grams of heroin. The suspect was in remand over a period of one year after the issuing of the Government Analyst Report without



being indicted. This fact and other reasons like the suspect not having pending cases or previous convictions and she being a widow were considered in this case. On these circumstances suspect was enlarged on bail by the above order of His Lordship Sisira de Abrew J.

Besides, in CA Application No 44/2002 CA minutes dated 06.03.2003 the petitioner was enlarged on bail considering his remand period of one year and ten months even after serving of indictment on him.

In this instant application the petitioner was arrested on 07.11.2018 and remanded on 14.11.2018. Accordingly, he has been held in remand custody for more than two years. The Government Analyst Report in relation to the case was issued on 30.05.2019 but no indictment has been served on the petitioner even after a lapse of 2 years since the issuance of the report. Even at the inquiry there was no indication from the respondents as to when the indictment will be served and no explanation or justification was given for the prolonged delay. While it is understood that delays occur due to the volume of investigations, institutions of cases, workload of trial courts and the congestion in remand prisons etc. an inordinate delay is different from a plausible delay that is foreseeable due to different reasons.

The punishments for offenses committed under section 54A and 54B of the above Ordinance are either death sentence or life imprisonment. Thus, it should be assured that the proceedings with regard to such serious offences are carried out without any unreasonable delay or at least a proper justification is indicated for any such delay in order to ensure the effective administration of justice which guarantees the safeguarding of rights of all parties.

Therefore, considering the above reasons, in the interest of justice, this court inclines to enlarge the suspect on bail subject to the following conditions: -

1. A cash bail of Rs. 200,000/-.
2. Surety bail of Rs. 500,000/- each with two sureties acceptable to the learned Magistrate.
3. The suspect is directed to report to the Officer in Charge of the Police Station in Angulana on every Sunday between 8:30 am to 12:30 pm.
4. Passport or any travel document belonging to the petitioner should be surrendered to the Magistrate Court Moratuwa.
5. Violation of any condition amounts to the cancellation of the bail granted.

Registrar of this Court is directed to send copies of this bail order to the learned High Court Judge, Panadura, to the learned Magistrate, Moratuwa and to the relevant authorities.

**Judge of the Court of Appeal**

**Menaka Wijesundera – J**

I agree.

**Judge of the Court of Appeal**