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

Officer-in-Charge
Police Station
Marawila

Complainant

Vs.

Court of Appeal
Revision Application No :
CA/ PHC/APN 134/20

High Court of Chillaw
Case No : BA 83/20

Magistrate's Court Marawila
Case No : B2106/2018

Warnakulasuriya Dileepa Belan Sumedha
No 10/E, Dematapitiya
Bangadeniya

Suspect

And

Weerasinghe Arachchilage Deepa Nandani,
No 10/E, Dematapitiya
Bangadeniya

Petitioner

Vs.

1. Officer-in-Charge
   Police Station
   Moratuwa

2. Hon. Attorney General
   Attorney General's Department
   Colombo 12

Respondents

Warnakulasuriya Dileepa Belan Sumedha
(Presently at Remand Prison, Negombo)

Suspect

And now between

Weerasinghe Arachchilage Deepa Nandani,
No 10/E, Dematapitiya
Bangadeniya

Petitioner-Petitioner

Vs.

1. Officer-in-Charge
   Police Station
   Marawila

2. Hon. Attorney General
   Attorney General's Department
   Colombo 12

Respondents-Respondents

Warnakulasuriya Dileepa Belan Sumedha
(Presently at Remand Prison, Negombo)

Suspect

BEFORE	:	Menaka Wijesundera J Neil Iddawala J
COUNSEL	:	Anil Silva P.C. with Nandana Perera for the petitioner. Priyani Abeygunawardena, State Counsel for the respondents.
Argued on	:	29.06.2021
Decided on	:	20.07.2021

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 Chilaw dated 07.08.2020 in Bail Application BA 83/20.

The petitioner is the wife of the suspect of the Case: B2106/2018 in the Magistrate's Court of Marawila. The suspect of the case has been arrested on 06.11.2018 by the Police at the Marawila Bus Stand for the alleged possession of heroin. Accordingly, he was produced before the Magistrate of Marawila under case No. B2106/2018 for allegedly committing offences under Section 54A of the Poisons, Opium and Dangerous Drugs Ordinance as amended by Act, No 13 of 1984.

The first bail application on behalf of the suspect was filed in the High Court of Chilaw in terms of Section 83 of the above Ordinance on 09.12.2020 bearing case no. AB 75/ 19. The learned High Court Judge has refused to issue notice stating that the relevant documents have not been annexed to the bail application.

Thereafter, a second bail application was filed bearing case no BA 06/2020 in the High Court of Chilaw and that was refused by the Order dated 03.02.2020 on the ground that no exceptional circumstances have been averred.

Then the third bail application, which is the related matter to this instant case, was filed bearing case no BA 83/20 and the learned High Court Judge of Chilaw has refused to issue notice by the Order dated 07.08.2020 on the grounds that an Order in a bail application by a High Court is an 'appealable final Order', an avenue of appeal the petitioner has not resorted to. He has further held that filing of another bail application subsequent to the refusal of the previous application is an abuse of the process of court and a waste of time.

Being aggrieved by the said Order on 07.08.2020 in the case BA 83/20, the petitioner preferred the instant revision application to this Court pleading that the said Order be set aside and the suspect be enlarged on bail.

As such there are two main issues that must be dealt with by this Court:

1. Does the Petitioner have *locus standi* to maintain the present application?
2. Are there grounds for the Court of Appeal to exercise its revisionary jurisdiction and if so, can the suspect be enlarged on bail?

Turning to the first issue, the respondents-respondents (hereinafter referred to as the respondents) have filed their statement of objections and objected to this application on the grounds, *inter alia*, that petitioner has no *locus standi* to maintain this revision application and 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 0f 1984.

Additionally, the respondents in their statement of objections submitted that neither the petition nor the affidavit of the petitioner avers to the manner in which she derived *locus standi* to file the present application. They have further submitted that in light of the decision of Senathilake v AG (1998) 3 SLR 290, petitioner has no *locus standi* to maintain the same.

From a close perusal of the Appeal Brief it is evident that the basis upon which the petitioner Weerasinghe Arachchige Deepa Nandani filed the Bail Application in the High Court and the present revision application in the Court of Appeal, is the fact that she is the wife of the suspect-respondent. The petitioner has submitted a copy of the Marriage Certificate as part of P1 (page 42 of the Appeal Brief) to buttress this rationale.

Neither the Bail Act No 13 of 1997 nor the Poisons Opium and Dangerous Drugs Ordinance as amended by Act No 13 0f 1984, provide any provision as to who should make a bail application or a revision application in such a situation. Even the Criminal Procedure Code does not specify provisions to this effect. However, section 16 (1) of the Judicature Act, No. 2 of 1978 as amended provides that an aggrieved person in a criminal case can file an appeal and section 16(2) has interpreted who amounts to be person aggrieved.

Section 16 of the Judicature Act reads as follows.

> (1) ***A person aggrieved*** *by a judgment, order or sentence of the High Court in criminal cases may appeal to the Court of Appeal with the leave of such court first had and obtained in all cases in which the Attorney-General has a right of appeal under this Chapter.*
>
> *(2) In this section* ***"a person aggrieved"*** *shall mean any person whose person or property has been the subject of the alleged offence in respect of which the Attorney-General might have appealed under this Chapter and shall, if such person be dead, include his next of kin namely his surviving spouse, children, parents or further descendants or brothers or sisters.*

3) Nothing in this section shall in any way affect the power of the Court of Appeal to act by way of revision in an appropriate case.
(Emphasis added)

As such, it is evident that when considering the matter of *locus standi* in the instant case, Section 16(3) of the Judicature Act is of assistance as the revisionary power of this Court is safeguarded by it.

The respondents have referred to Senathilake v AG (supra) in defence of the argument that the petitioner lacks *locus standi* to maintain the present application. Though Section 16 of the Judicature Act is not referred to in the Senathilake case, it primarily dealt with ascertaining whether the petitioner-father of the suspect has *locus standi* to maintain a revisionary application. As such, I now turn to examine the judgement of Senathilake to gauge the principles related to *locus standi* enunciated by this court.

In Senathilake case, the accused was convicted and sentenced but did not appeal against the conviction and the sentence. The father of the accused filed a revision application against the conviction and the sentence. His Lordship Justice Jayasuriya observed that it was a belated application. The accused in Senathilake's case who was granted bail did not face the trial and after an inquiry under section 241 of the Criminal Procedure Code, the learned trial Judge proceeded with the trial and convicted the accused.

Senathilake case refers to the South African case of AG of Gambia v Pierre Sarr N'Jie (West Africa) [1961] AC 617 at 634. This case dealt the matter of interpreting what constitutes an 'aggrieved party' in the context of Section 31 of the West African (Appeal to Privy council) Order in Council 1949, in deciding *locus standi*. It held that the words 'persons aggrieved' are of wide import and should not be subjected to a restrictive interpretation:

"*They do not include, of course, a mere busy body who is interfering in the things which did not concern him; but they do include a person who has a*

genuine grievance because an order has been made which prejudicially affects his interest."

Similarly, Senathilake case referred to the Supreme Court decision in The Ceylon Mercantile Union v The Insurance Corporation of Sri Lanka 80 NLR 309 where His Lordship Justice Sharvananda (as he was then) held, in relation to deciding whether a Trade Union had *locus standi*, *"the plaintiff -union has no direct interest in the said dispute. In the circumstances, it has no locus standi at all and is not entitled to come to court for any relief based on the contracts of its members…"*.

In Senathilake case, His Lordship Justice Jayasuriya at p.293 observed as follows:

"The present application is an application in revision. This is an extraordinary jurisdiction which is exercised by the Court of Appeal and the grant of relief is entirely dependent on the discretion of the Court. Here the accused's father is seeking discretionary relief from the Court of Appeal and in considering the grant of discretionary relief the Court will closely examine the conduct of the accused person. In the exercise of a discretion the Courts scrupulously looks in the conduct of the ultimate party who is deriving benefit from the orders to be made by the Court in revision. Besides, this application has been preferred with undue and unreasonable delay. The application is refused."

As such, it is evident that the Senathilake case does not declare that fathers of suspects lack *locus standi* to maintain a revisionary application for the granting of bail. Rather, the discretionary power of the court has been emphasized allowing the court to decide the matter of *locus standi* depending on the circumstances of each case.

This contention is further buttressed by the subsequent case of Lansage Basil v. Attorney General SC Appeal 20/2017 SC minute dated 03.07.2020. In the Lansage Basil case (supra) the Court of Appeal decided that the father of the accused has no *locus standi* following the decision of Senathilake's case (supra).

However, as observed in its appeal at Supreme Court against the decision of the Court of Appeal, His Lordship Justice Sisira J. De Abrew held that dismissal of the revision application of the petitioner-appellant by the Court of Appeal on the basis that he has no *locus standi* by relying on the decision of Senathilake should be set aside as the facts of the two cases are quite different from each other.

In Lansage Basil case His Lordship Justice Sisira J. De Abrew considered the case of Senathilake and opined:

> *"It is seen that the above case, the Court of Appeal after considering the conduct of the accused and the belatedness of the revision application refused to exercise the extraordinary jurisdiction and discretion of the Court of Appeal. His Lordship Justice Jayasuriya in the above case* ***has not expressed a general view*** *that the father of an accused in each and every case has no locus standi in maintaining a revision application.*

(Emphasis Added)

Hence, concerning the first issue of whether the petitioner has *locus standi* to maintain the present application, this court must use its discretionary power vested under its revisionary jurisdiction to decide the same, from the facts and circumstances of the case. The provisions of section 16(3) of the Judicature Act emphasizing the wide powers conferred in the Court of Appeal will apply in similar circumstances. It is the duty of the Court to consider the revision applications using its discretion judiciously.

In the celebrated case R. v. Wilkes (1770) Burr. at p.253 Lord Mansfield C.J. made the following well known pronouncement regarding judicial discretion.

> *"It is indeed in the discretion of the Court to bail a person so circumstanced. But discretion when applied to a Court of Justice, means sound discretion guided by law. It must be governed by rule, not by humour, it must not be arbitrary, vague and fanciful but legal and regular."*

Lord Denning in Ward v. James (1965) 1AER at p.571 stated that

> *"From time-to-time consideration may change as public policy changes and so the pattern of decision may change. This is all part of the evolutionary process."*

In the case of Roberts v. Hopwood and others (1925) AC 578 at p. 613 Lord Wrenbury expressed his opinion on the manner in which discretion should be exercised.

> *"The person in whom is vested a discretion must exercise his discretion upon reasonable grounds. A discretion does not empower a man to do what he likes merely because he is minded to do so - he must in the exercise of his discretion do not what he likes but what he ought. In other words, he must by use of his reason ascertain and follow the cause which reasons direct. He must act reasonably."*

In this instant case the suspect has been held in remand custody since 6.11.2018. The situation prevailed during the submission of the bail application and the revision application, restricted most of the day-to-day activities in the country. In these circumstances, it may not be appropriate to deny the right of a wife to submit an application on behalf of her husband.

In this context, the preliminary objection raised by the respondents that the petitioner lacks *locus standi* is rejected. In answering the first issue, this court decides that the petitioner of the present revision application has *locus standi* to file a revision or bail application on behalf of her husband.

Now I would like to deal with the second issue which is, are there grounds for the Court of Appeal to exercise its revisionary jurisdiction?

As observed earlier, the first bail application to the Chilaw High Court was submitted on the grounds of illness of the suspect-respondent which was refused on 09.12.2019 for non-submission of any document as proof of such illness.

The second bail application was submitted to the same High Court on the ground that he has been in remand custody for one year and 3 months but even after the receipt of the report of the Government Analyst the indictments were not served. The said application was refused on 03.02.2020 by the learned High Court Judge on the basis that the grounds submitted by the petitioner do not constitute exceptional circumstances.

The instant bail application was refused without issuing notice to the respondents on 07.08.2020 by the learned High Court Judge on the basis that refusal of a bail application is a final order against which an appeal is available and the re-submission of a bail application on the same grounds is a misuse of the process of justice. This instant revision application is submitted concerning above decision on the bail application.

This Court accepts the fact that orders refusing to grant bail are considered as final orders against which an appeal is available. This has been established by authorities such as Anuruddha Ratwatte v. Attorney General (2003) 2 SLR p.39 and in Cader v. Officer in charge Narcotics Bureau (2006) 3 SLR p.74. This contention was relied upon both by the High Court Judgment in its refusal to issue notice on the third bail application and the respondent's statement of objection in the instant case.

Despite the fact that a refusal to grant bail is a final order, in the event 'changed circumstances' present itself during the course of the proceedings, our law does not bar, abridge or restrict the right of a suspect or an accused to file subsequent application/s requesting to enlarge him on bail. As long as such a suspect or an accused establishes a change of circumstance in support of a subsequent bail application, any number of such applications may be made. Similarly, it is a well-established norm in jurisprudence of this nature that the revisionary jurisdiction of this Court can be invoked under exceptional circumstances despite the fact that an appeal has not been submitted prior.

However, in this instant case no appeal against any order given by the High Court was filed by the petitioner. Instead of filing an appeal this revision application was filed on 22.10.2020 against the impugned order dated 07.08.2020. The petitioner does not disclose any reason as to why the appellate jurisdiction of this Court is not tried.

As decided in Rasheed Ali v. Mohamed Ali and Others (1981) 1 SLR 262, the Supreme Court held that "*the power of revision vested in the Court of Appeal are very wide and the Court can in a fit case exercise that power whether or not an appeal lies."*

Kulatilake v Attorney General (2010) 1 SLR 212 p. 215 held that "*Court would exercise the revisionary jurisdiction, it being an extraordinary power vested in Court specially to prevent miscarriage of justice being done to a person and or for the due administration of justice"*

As enunciated in Attorney General vs. Ranasinghe and others (1993) 2 SLR p.81, the revisionary power of the Court can be exercised for the following purposes

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 proprietary of any sentence or order passed by such Court.*
3. *To satisfy this Court as to regularity of the proceedings of such Court.*

In the case of Bank of Ceylon v Kaleel and Ors (2004) 1 SLR 284 p.287, His Lordship Justice Wimalachandra pronounced that

> "*in any event to exercise revisionary jurisdiction the order challenged must have occasioned a failure and manifestly erroneous which go beyond an error or defect or irregularity that an ordinary person would instantly react to it – the order complained is of such a nature which would have shocked the conscience of court"*

In Lansage Basil case (supra) (SC) His Lordship Justice Sisira J. De Abrew remarks thus;

> "*It must be noted that revisionary power of the Court of Appeal is exercised in order to correct the errors of mistakes of judgements or orders of the Court of first instance. When an illegality or error of a judgement/order of the Court of the first instance is brought to the notice of the Court of Appeal, the Court of appeal can on its own motion call for the record of the Court of first instance and give directions to correct such errors or set aside such illegal judgements/orders."*

In the case of Attorney General vs. Gunawardena (1996) 2 SLR 149 p.156 & p. 158 five Judges of the Supreme Court held that:

> "*Revision like an appeal is directed toward the correction of errors but it is supervisory in nature and its objects is the due administration of justice and not primarily or solely the reliving of grievances of a party."*
>
> *".....In exercising the powers of revision this Court is not trammelled by technical rules of pleadings and proceedings. In doing so this Court has power to act whether it is set in motion by a party or not and even ex-mero-motu."*

A perusal of the above judgements make manifestly clear the unique nature of the discretionary powers of this court when exercising its revisionary jurisdiction. As such, if facts reveal a miscarriage of justice hindering the due administration of justice, illegality of an order, irregularity in procedure or even go beyond and shocks the conscience of court, this court can use its discretion and intervene under the revisionary jurisdiction.

Section 364 of the Criminal Procedure Code reinstates this wider discretion of the Court of Appeal. It endows this court with the power to call for and examine the record of any case which has been 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."

Additionally, Section 365 (Power of Court on Revision) of the Criminal Procedure Code states that

(1) The Court of Appeal may in any case the record of the proceedings of which has been called for it by itself or which otherwise comes to its knowledge in its discretion exercise any of the powers conferred on its by Chapter XXVIII

(2) Any order under this section shall not be made to the prejudice of the accused unless he has had the opportunity of being heard either personally or-by attorney-at-law in his own defence.

(3) Anything in this section shall not be deemed to authorize the Court of Appeal to convert a finding of acquittal into one of conviction

In interpreting these sections, reliance can be made to sections 356 and 357 of the Ordinance No 15 of 1898 which are similar to sections 364 and 365 of the current Criminal Procedure Code Act No. 15 of 1979. At that time, the Supreme Court was vested with the revisionary powers in the absence of a Court of Appeal, and as such, for the purpose of this discussion, the terms Supreme Court and Court of Appeal may be used interchangeably. Dias commenting on sections 356 and 357 of Ordinance No 15 of 1898 opined that:

"*unless the Supreme Court* (Court of Appeal under the present Criminal Procedure Code) *of its own knowledge call for a record under Sec 356, some person must bring the alleged irregularity committed by the lower court to the notice of the Supreme Court. This is usually done by a party complaining against the order by filing a motion and affidavit praying for the exercise of the revisional powers of the Supreme Court… The Supreme Court has full*

powers of revision in all criminal cases, and the power is not limited to those cases in which either no appeal lies, or for some reason or rather an appeal has not been taken"

(Commentary on the Ceylon Criminal Procedure Code Vols 2 (253 -445) R. F. Dias under Ordinance No. 15 of 1898 at p. 999)

In Punchi Mudiyanse v. Jayasuriya 41 NLR 431 it was held that:

"The powers of revision vested in the Supreme Court under sec.357 of the Criminal Procedure Code are not limited to cases where there is no appeal or where no appeal has for some reason or other not been taken."

Accordingly, the powers of revision vested with this Court are wide and the court has the discretion to exercise such powers irrespective of the fact that an appeal had been made or not. Further reinforcing the above provisions of the Criminal Procedure Code and the Attorney General vs. Ranasinghe and others (supra) in the cases Ranasinghe v Henry 1 NLR 303 and Mallika de Silva v Gamini de Silva (1999) 1 SLR 85 the courts have taken the stance that where the order of court is wrong ex-facie it would be quashed by way of revision even though no appeal may lie against such order. In the case of Sabapathy v Dunlop 37 NLR 113 it was decided that the interest of justice demand the courts that it would not hesitate to act in revision.

Based on the above discussion I now turn to the facts of the instant case to ascertain whether the revisionary jurisdiction can be invoked.

The Order of the learned High Court Judge to refuse the bail application relating to this revision application must be carefully considered in this regard. According to Cader v. OIC Narcotics Bureau (supra) re-making a bail application on the same ground is not allowed. This Court however learns that the grounds pleaded in the second and third (impugned order) are not, in fact, similar. The learned High Court Judge without going into the merits of the application refused to issue even notices which is not legal but arbitrary and has no standing in law.

A bail application is an ongoing process until its end result, the enlargement of a suspect on bail. Circumstances under which a petitioner apply for bail could change constantly, and if circumstances change it is the right of the suspect to apply for bail. The Fundamental Rights entitled to any citizen as provided by the Constitution further strengthens this notion where in the Article 13 (4) it is guaranteed that, "*The arrest, holding in custody, detention or other deprivation of personal liberty of a person, pending investigation or trial, shall not constitute punishment* while Article 13 (5) emphasizes that *"every person shall be presumed innocent until he is proved guilty".*

Accordingly, it is the duty of the court to consider the position of a bail application with proper deliberation, carefully examining the details and the circumstances related to it. While it is understood that if circumstances of one application is similar to the subsequent application, or they are vexatious or frivolous in nature the courts can reject the application *in limine,* if such circumstances are different, then the courts are bound to consider that in order to exercise proper administration justice. In either instance, the Judge making such an order must set out the reasons for the conclusions he has arrived.

In such a context it is manifestly evident that the High Court Order amounts to a miscarriage of justice preventing the due administration of justice. Hence, in my opinion this revision application should be allowed as it satisfies, *inter alia*, the questioning of the legality and the propriety of the order of the High Court.

Having thus decided that there are grounds for the invocation of this court's revisionary jurisdiction, I now turn to examine whether the petitioner has submitted to the satisfaction of this Court, exceptional circumstances which warrant to enlarge the suspect on bail. As observed earlier, the revisionary power of this Court is discretionary and when a party files a revision application, he or she must satisfy this Court that there are exceptional circumstances which shock the conscience of Court.

As discussed previously the extraordinary power entrusted upon this Court on revisionary jurisdiction is a discretionary power that shall be exercised with utmost care and caution. The extent and the purpose of such powers are limited to the rectification of any illegality, irregularity, impropriety, or mistake appeared on any sentence or order pronounced by the courts of first instance, where such revisionary powers shall be exercised according to circumstances of each individual case.

If this case is referred back to the High Court to consider the bail application, the process may consume a long period of time and cause an unfair delay in justice. In terms of Section 16(3) of the Judicature Act and Section 364 of the Criminal Procedure Code, this Court is of the opinion that this is the right instance to exercise the discretionary power of the Court of Appeal.

Over and above, as decided in the case of Gunaratne v. Commissioner of Excise (1987) 1 SLR 284 at p.287, in the special circumstances of a case and in the interests of justice this Court may exercise its revisionary powers in an appropriate case in terms of Article 145 of the Constitution - *"The Court of Appeal may, ex mero motu or on any application made, call for, inspect and examine any record of any Court of First Instance and in the* ***exercise of its revisionary powers may make any order thereon as the interests of justice may require."*** (emphasis added)

In this petition, briefly the following factors are *inter-alia* the exceptional circumstances averred by the petitioner –

- the suspect has no previous conviction or pending cases
- the suspect is a father of 3 children
- the suspect is the sole breadwinner of his family
- the suspect's 14 years old daughter is suffering from a serious skin disease, which requires the father's presence for medical treatments
- the suspect has been in remand custody since 06.11.2018

- the report of the Government Analyst dated 29.05.2019 had been received but so far indictment has not been served

The suspect has been arrested on 06.11.2018 on allegation of possessing 4 grams of heroin. Later 18 grams of heroin had been found in the backyard of suspect's residence. According to the Government Analyst's report filed in p.37 of the appeal brief the pure quantity of heroin is 1.192 grams and 5.181 grams respectively.

Granting of bail to the persons suspected for offences committed under sections 54A and 54B of the Poisons Opium and Dangerous Drugs Ordinance should be only done under exceptional circumstances as set out in the Section 83(1) of the above Ordinance. *"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"*

This Court wish to draw the attention to the cases which identified the exceptional circumstances in relating to granting bail under Section 83(1) of the Poisons Opium and Dangerous Drugs Ordinance on similar situations.

In CA (PHC) APN No.16/2012 CA minute dated 14.06.2012 the allegations levelled against the suspect was that she was in possession of 3.59 grams of heroin. The suspect was in remand for over one year after issuing the Government Analyst's Report without being indicted in the High Court. In addition, the facts that the suspect has no previous conviction or pending cases and she is a widow, were also considered and the suspect was enlarged on bail.

In the case of Gurusamy v. Ramalingam CA 119/2000, HC Colombo 3222/02 facts are briefly as follows. The suspect arrested in possession of 6.2 grams heroin and he had been in remand for 23 months. Though the Government Analyst's report was received the indictment had not been filed. There were no pending cases nor convictions against the suspect. The Court of Appeal in their Order did not refer to any of the above facts constituting exceptional

circumstances, but suspect was enlarged on bail "considering the long period of remand".

In CA application No,44/2002 CA minute dated 06.03.2003 the petitioner was enlarged on bail considering his remand period of one year and ten months even after serving of indictments on him.

A perusal of the above cases reveals that the threshold of what amounts to 'Exceptional Circumstances' varies with each case. A demarcation of the boundaries of an exceptional circumstance is purely a subjective exercise and as such it cannot be given a rigid interpretation. What is recognized as an exceptional circumstance in one case may not be so in another. As such, the facts of each case must be carefully examined in deciding whether or not the circumstances presented are exceptional.

In this instant case, the suspect has been in remand custody since 06.11.2018. The Government Analyst's Report dated 29.05.2019 has been received by the Magistrate's Court. Even after a lapse of two years from issuing the Government Analyst's Report steps have not been taken to serve the indictments. While it is understood that plausible delays could occur in such processes, it was apparent from the documents filed in the appeal brief pertaining to the investigation, the matters involved in this incident are neither complex nor time consuming compared to the other matters in similar nature. Therefore, such an inordinate delay shows a clear lapse in the process of administration of justice which constitute an exceptional circumstance to enlarge the suspect on bail. In the above reported cases the Court considered not only the delay occurred in the process, but the relatively low quantity of drugs involved when compared to the large volume of other cases pertaining to similar offences. While it is emphasized the alleged offence, if proved, amounts to be a serious crime punishable by death sentence or life imprisonment, it is equally important to conclude cases involving such serious offences with adherence to the proper administration of justice without any irrational delays.

In that context, even though the exceptional circumstances averred by the petitioner may not constitute exceptional when considered singularly, the reasons set out above, the strength of the application due to the erred order of the learned high Court Judge and other surrounding circumstances are considered collectively they would amount to be exceptional circumstances which warrant the suspect to be enlarged on bail.

For the above reasons, this Court inclines to set aside the order of the learned High Court Judge Chilaw 07.08.2020 which is arbitrary and directs that the suspect be enlarged on bail subject to following conditions.

1. A cash bail of Rs. 200,000/-
2. A surety bail of Rs. 500,000/- each with sureties acceptable to learned Magistrate of Marawila
3. The suspect is directed to report to the Officer-in-Charge of the Police Station of Marawila on every Sunday between 8:30 a.m. and 12:00 noon.
4. Passport or any travel documents belonging to the petitioner should be surrendered to the Court.
5. Violation of any condition would amount to the cancellation of the bail granted.

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

JUDGE OF THE COURT OF APPEAL

Menaka Wijesundara J.

I agree.

JUDGE OF THE COURT OF APPEAL