

IN THE COURT OF APPEAL OF THE DEMOCRATIC SOCIALIST

REPUBLIC OF SRI LANKA.

In the matter of an application for Revision under and in terms of Article 138 of the Constitution of the Democratic Socialist Republic of Sri Lanka from the Order of the High Court of Negombo dated 22.07.2020.

The Democratic Socialist Republic of Sri Lanka.

CA (PHC) APN No: 92/2020

HC Negombo Case No: HC 1189/19

Complainant.

Vs.

Yugeeth Ibrahim (Maldivian National)

Accused.

AND NOW BETWEEN

Yugeeth Ibrahim

Atithari, G A Villingili,

Maldives.

(Presently at Mahara Prison)

Accused – Appellant

Vs.

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

Complainant – Respondent

Before – Menaka Wijesundera j.

Neil Iddawala J.

Counsel – Shavindra Fernando,PC

with Umayangi Wijayasuriya for
the petitioner.

Chathurangi Mahawaduge, SC
for the state.

Argued On – 28.04.2021

Decided On – 11.05.2021

MENAKA WIJESUNDERA J.

The instant application for revision has been filed to set aside the order dated 22.7.20 of the learned High Court Judge of Negambo.

The provisions pertaining to revision applications have been set out under chapter xxix of the Code of Criminal Procedure Code Act no 15 of 1979. (Hereinafter referred to as the CPC)

Under section 164 of the CPC, three grounds to be complied in revision applications has been set out, and they are as follows,

1. Legality of any order or sentence,
2. Propriety of any order or sentence,
3. Regularity of any proceeding.

The above provisions have been considered in **Attorney General vs. Ranasinghe and others 1993 (2) Sri.L.R.81.**

In the instant application the petitioner who is a Maldivian national has been taken into custody at the Katunayake air port on 22,5,2018 for being in possession of heroin more than two grams.(the gross quantity).

Upon conclusion of the investigations the petitioner had been indicted under the Poisons Opium and Dangerous Drugs Ordinance nu 13 of 1984 as amended.

The indictment had been served on the petitioner and the case had been fixed for trial on 13th July 2021. The petitioner had made an application for bail before the learned High Court Judge and the said application has been refused, and being aggrieved by the said order the petitioner has filed the instant application. The petitioner urged

before this court the following grounds upon which this petitioner should be enlarged on bail.

1. The petitioner had been in remand since 2018,
2. The petitioner being a foreign national is facing difficult situation inside the prison,
3. The discrepancies in the investigations,
4. The petitioner volunteering to produce two, Sri Lankan nationals as sureties.

It is very clear under the provisions of the act under which the petitioner was arrested that if a suspect taken in to custody under the above mentioned act the said person has to urge exceptional circumstances to obtain bail. In the case of **CA (PHC) APN147/2017** it has been decided very clearly that “facts of the case’ do not constitute exceptional circumstances and those need to be addressed at trial stage, time period of remand also has been considered in the same order and it has been decided that it cannot be considered as exceptional, and the said order has gone on to consider case law pertaining to the same issue.

When an application of this nature has been filed what this court must consider according to the provisions of the CPC as stated above, the illegalities and the irregularities of the impugned order and non-compliance of the same warrants dismissal, which makes it very clear that the ground analysis should be as with regard to the situation at the time of the impugned order and not in the present context.

Anyhow the provisions of the Act under which the petitioner had been taken in to custody it is very clear that a suspect should be kept in remand until the conclusion of the trial except in exceptional circumstances which shocks the conscious of court in the impugned order.

But in the impugned order the petitioner has urged that the learned High Court Judge has not considered the Indian Judgment cited by him, and the learned High Court Judge has cited case law which was not cited by the petitioner. But this court observes that the learned High Court Judge has considered the provisions of the relevant act and has considered case law which he has thought to be appropriate which in the view of this court it is the discretion of the bench and not otherwise.

The reasons adduced by the petitioner as being exceptional is not exceptional as stated above in the case law decided by the previous benches of this court who has held them to be otherwise.

Therefore it is the considered view of this court that there are no irregularities or improprieties of the order of the learned High Court Judge. Hence the instant application for revision is hereby dismissed.

Judge of the Court of Appeal.

I agree.

Neil Iddawala J.

Judge of the Court of Appeal.