

**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 the Article 138 of the Constitution read together with the Section 404 of the Code of Criminal Procedure Act No. 15 of 1979 against the order dated 19.08.2020 of refusing to grant bail by the Hon. High Court of Colombo.

Case No. of the Court of Appeal:

CPA 132/2020

The Democratic Socialist Republic of Sri Lanka

Case No. of the High Court of Colombo:

HC 613/19

Complainant

Vs.

Madapathage Dona Thilaka Alias Shyamali

(Currently Incarcerated in the Remand custody)

Accused

AND NOW BETWEEN

Madapathage Dona Thilaka Alias Shyamali.

(Currently incarcerated in the Remand

Custody)

Accused Petitioner

Vs.

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

Complainant – Respondent

Before – Menaka Wijesundera J.

Neil Iddawala J.

Counsel – Tenny Fernando for the
Petitioner.

Maheshika Silva, SSC for
the respondent.

Argued On – 04.05.2021

Decided On – 19.05.2021

MENAKA WIJESUNDERA J.

The instant application for revision has been filed to set aside the order dated 19 .8.2020 of the learned High Court Judge of Colombo.

In the instant application the suspect has been taken in to custody for 120 grams of gross quantity of heroin on 2.2.2018, later the Government Analyst revealed it to be 43 grams of heroin. However the Attorney General has indicted the suspect for the same in the High Court.

The petitioner sates that he made an application for bail and the learned High Court Judge refused the same on the basis that there were no exceptional circumstances. The counsel for the petitioner urged before this court that the learned High Court Judge has failed to consider that the chief investigative officer and the officers who helped him to conduct the raid are now in remand for similar offences with greater quantity of heroin and that the credibility of them as witnesses for the prosecution case creates a serious doubt in the case for the prosecution and in such a situation the incineration of the petitioner is not fair and justifiable.

The contention of the learned sate counsel is that the petitioner was taken into custody while she was serving a suspended sentence for a similar offence and such details the petitioner has failed to adduce in the petition; hence he has not come to court with clean hands.

The petitioner has been taken in to custody under the Poisons Opium and Dangerous Drugs Ordinance and she has been indicted under the

same ordinance. Hence an accused who is incarcerated under the said act must furnish exceptional circumstances to obtain bail.

In the instant application the exceptionality the petitioner has urged is the fact that since the officers who conducted the raid is currently incarcerated for similar offences committed while on duty as with regard to the productions pertaining to their investigations, the truthfulness of the investigation is in serious doubt. But of course the learned High Court judge has disregarded the same stating that they were not accused of the instant case.

Upon consideration of the submissions of both counsels it is very clear that the petitioner has failed to state the previous convictions, which this court is unable to endorse. This court also observes that the High Court Judge has stated that the officers who conducted the raid being accused in other cases of similar nature is not a ground for the petitioner to be enlarged on bail which this court does not see as being very correct because it causes a serious doubt in the investigations conducted by these officers as to the truthfulness of the same, therefore the question arises whether it is morally correct to keep an accused in remand until the conclusion of the trial under those circumstances.

But on the other hand it has been decided by the previous benches of this court that facts of the case need not be considered for bail. In the instant case the law pertaining to the instant case calls for exceptional reasons for a suspect or accused to be enlarged on bail.

Upon consideration of the submissions made this court is of the opinion that although the trial has commenced the current corona situation in the country which has affected the smooth running of the judicial system might delay the conclusion of the trial hence in view of the exceptional behavior of the investigative officers, this court decides to enlarge the petitioner on bail.

Hence instant application for revision is allowed and the petitioner is enlarged on bail on the following conditions,

- 1) On a cash bail of Rs one million,
- 2) With surety bail of two million each,
- 3) The petitioner to surrender her passport to the relevant High Court, and the Registrar of this court to inform the Director of Immigration and Emigration not to allow the petitioner to leave the country
- 4) The petitioner to report to the police Narcotics Bearue on every Sunday of the month.

The Registrar of this court to convey the instant order to the relevant High Court.

Judge of the Court of Appeal.

I agree.

Neil Iddawala J.

Judge of the Court of Appeal.