

**IN THE COURT OF APPEAL OF THE DEMOCRATIC SOCIALIST**

**REPUBLIC OF SRI LANKA.**

In the matter of an application for Revision  
of the Order dated 11.02.2020 of the High  
Court of the North Western Province  
Holden in Chilaw.

Officer – in – Charge,

Police Station,

Dankotuwa.

CA (PHC) APN No: **108 / 20 (Revision)**

Chilaw PHC Bail Application No:

**BAL / 07 / 20**

Marawila Magistrate's Court No:

**B/ 1235 / 18**

**Complainant**

**Vs.**

Udugampolage Nimesh Dhanushka  
Fernando,

No. 185, Nainamadama West,

Nainamadama,

Wennappuwa.

(At present in the Remand Prison,  
Negombo)

**Accused**

**AND NOW**

Warnakulasooriya Calista Malini Kunnga,

756/3, Ekamuthu Mawatha,

Wennappuwa South,

Wennappuwa.

**Petitioner**

**Vs.**

1. Officer – in – Charge,  
Police Station,  
Dankotuwa.

**Complainant – Respondent**

2. Hon. Attorney General,  
Attorney General’s Department,  
Colombo 12.

**Respondent**

**AND NOW**

1. Warnakulasooriya Calista Malini  
Kunnga,  
759/3,  
Ekamuthu Mawatha,  
Wennappuwa South,  
Wennappuwa.

**Petitioner**

**Vs.**

1. Officer – in – Charge,  
Police Station,  
Dankotuwa.

**Complainant – Respondent – Respondent**

2. Hon. Attorney General  
Attorney General’s Department,  
Colombo 12.

**Respondent – Respondent**

Before – Menaka Wijesundera J.

Neil Iddawala J.

Counsel – Srinath Perera A.A.L for the Petitioner Instructed by P.D.P Pathiraja.

S.C Ms. Chathurangi Mahawaduge for the State.

Argued On – 19.07.2021

Decided On – 27.07.2021

**MENAKA WIJESUNDERA J.**

The instant application for revision has been filed to set aside the order dated 11.02.2020 of the learned High Court Judge of Chilaw for being in possession of 20 grams of heroin , pure quantity of 6.539 grams of heroin on 19.07.2018 and in remand since 20.07.2018.

The grounds pleaded by the accused are that,

- 1) He has been in remand for a period of nearly 3 years ,
- 2) The learned High Court Judge has even failed to issue notices on the respondents in the High Court, which is not fair and just by the accused.

The position of the respondents are that the

- 1) Accused has not come with clean hands to Court because he has not divulged the previous convictions and the pending case in his petition to this Court,
- 2) The learned High Court Judge has justified his order for refusal to issue notices to the respondents,
- 3) The indictment against the accused is due to be served on the accused on 27.07.2021 in the Chilaw High Court.

According to the provisions of the Code of Criminal Procedure Act nu 15 of 1978 section 364 three grounds have been identified very clearly which should be considered in a revision application, they are,

- 1) The legality of the impugned order,
- 2) The propriety of the order,
- 3) Any irregularity in the proceedings in Court.

The above mentioned principles have been discussed in the case of **Attorney General vs. Ranasinghe and others 1993 (2) SLR81.**

As such in the instant order we note that the accused has been in remand for nearly three years up-to-date. It is also noted that the accused has been produced and kept in remand under the provisions of the Poisons Opium And Dangerous Drugs Act 13 of 1984, and according to the said Act, section 83 (1), bail can be considered only upon exceptional circumstances.

The said exceptional circumstances have been discussed widely in many a decided cases and it has been said that exceptional circumstances needs to be considered according to the facts of each case.

In the instant case the learned High Court Judge has refused to issue notices to the respondents purely on the ground that the intention of the legislature was to keep suspects produced under the provisions of the above mentioned Act in remand until the conclusion of the trial except in exceptional circumstances.

But we also not that if the legislature has provided for the suspect produced under this Act to be in remand until the conclusion of the trial except in exceptional circumstances then the accused in the instant case should also have been given a chance to demonstrate exceptional circumstances at the inquiry stage in Court, but by refusing to notice the respondents the accused has been denied the opportunity to demonstrate exceptional circumstances if any before the learned Judge, which the legislature has provided for.

At this stage this Court also takes in to consideration the principles laid down in CA 44/02 decided on 06.03.2003, in which the period in remand has been considered even after the indictment has been served.

Therefore upon considering the order of the learned High Court judge, it is the considered view of this Court, that, the accused should have been given a chance to demonstrate the exceptional circumstances at the inquiry stage which is what the legislature has provided for. Therefore this Court considers the instant application is exceptional enough to revise the order of the learned High Court Judge dated 11.02.2020 and enlarge accused on bail on the following grounds,

- 1) Cash bail of Rs 1000000/
- 2) Two sureties to the value of Rs 500000/ each,
- 3) The accused to report to the relevant police station on every Sunday of the month.
- 4) The accused to surrender his passport to the relevant registrar of the High Court.

The registrar of this Court is hereby directed to convey this order to the relevant High Court.

**Judge of the Court of Appeal.**

**I agree.**

**Neil Iddawala J.**

**Judge of the Court of Appeal.**