

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 read with the Section 404 of the Code of Criminal Procedure Act No 15 of 1979.

The Democratic Socialist Republic of Sri Lanka.

Complainant.

Case No of the Court Of Appeal:

CPA/ 05/2021

Case No of the High Court of
Negombo: **HC 215 / 20**

Vs.

Kanapathi Ramesh Kumar Alias
Manthree Kanna.

Accused

AND NOW BETWEEN

Jazeema Abdul Raheem
Randiya Uyana Flats,
Henamulla Modara,
Colombo 15.

Petitioner

On behalf of

Kanapathi Ramesh Kumar Alias
Manthreekanna.

Languishing in Remand Prison
Kaluthara (D 21264)

Accused

Vs.

The. Hon Attorney General,
Attorney Generals Department,
Colombo 12

Complainant – Respondent

Before – Menaka Wijesundera J.

Neil Iddawala J.

Counsel – Tenny Fernando with

Prashani Matharage

For the petitioner.

Priyani Abeygunawardana

S.C for the A.G

Argued On – 27.07.2021

Decided On – 03.08.2021

MENAKA WIJESUNDERA J.

The instant application for revision has been filed to set aside the order dated 10.9.2020 of the learned High Court Judge of Negambo.

In the instant application the accused has been taken in to custody by the Police Narcotics Bureau on 25.3.2016 for being in possession of 5kg and 240 grams of heroin gross weight. Subsequently he was indicted for 2kg and 723 grams of the same on 10.9.2020.

The position of the accused is that he is denying the allegation and he has been in remand custody since the date of arrest up to date which totals up to more than five years which is not fair and just especially in view of the fact that some of the officers in the team who arrested him are now incarcerated for similar offences committed while in office. Therefore the accused further stated that if so the integrity of the officers who arrested and incarcerated him is in serious doubt therefore whether it is fair and just for him to be in remand for nearly five years for an incident of that nature?

The position of the respondents is that the credibility of the witnesses should be decided at trial stage.

In the instant case the accused has been indicted and arrested under the provisions of the Poisons and Opium and Dangerous Drugs Act nu 13 of 1984, under which Act according to section 83(1) a person indicted under sections of 54A and 54B of this Ordinance can be enlarged on bail only on exceptional conditions.

The term exceptional has been defined in many places in our legal history and finally it has been decided that the exceptional conditions should be decided

according to the facts of each case ,as well said in **Ramu Thamodarumpillai vs. Attorney General 2004 3 SLR 180.**

This Court also note the provisions of the Code of Criminal Procedure Act nu 15 of 1979 , under section 364, three aspects have been defined as important to be considered in revision applications and they are ,

- 1) Illegality of any order,
- 2) The impropriety of any order,
- 3) The irregularity of any order.

The above aspects have been discussed in **Attorney General vs. Ranasinghe and others 1993 (2) SLR81.**

In the instant application this Court observes that the Chief investigative officers who have conducted the raid to arrest the accused are now in remand for acts of similar nature committed while on duty, therefore then the question arises as to the credibility of the investigations conducted by such officers and whether it is fair to incarcerated a person for nearly five years on material collected during such investigations.

It is the contention of the learned State Counsel that the credibility of any witness should be decided at trial stage and not in an application for bail, but this Court observes that at trial stage what is considered is the guilt of an accused based on the authenticity and the acceptability of evidence of witnesses, but at the stage of a bail application what a Court decides is whether it is fair and just to incase rate an accused before conviction or acquittal if the other party is alleging an irregularity or unusual circumstance which warrants the interfevention of Court, and this instance this Court observes to be one such deserving instance, in

fact before conviction or acquittal an accused should enjoy the benefit of the presumption of innocence laid down in the law of evidence and his personal liberty should be hampered only on suitable grounds.

Therefore the position taken up by the respondents that the credibility of the witnesses should be considered only at trial stage, this Court is unable to accept. The learned Counsel for the respondents has cited a decided case by Wengappuly J, but in the said judgment what has been considered is bail upon conviction, which is not the situation in the instant application.

The respondents have further alleged that the accused has previous convictions of similar nature and that the order of the learned Judge does not carry any material to invoke the revisionary jurisdiction of this Court.

Upon considering the submissions of both parties it is the considered view of this Court that it is only fair and just to revise the order of the learned High Court Judge in view of the questionable investigations which has been conducted against the accused.

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

- 1) A cash bail of Rs 2 million,
- 2) Two sureties to the value of Rs 1 million each,
- 3) The accused to report to the police Narcotics Beruea, on every Sunday of the month
- 4) The accused to surrender his passport to the registrar of the relevant 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.