

**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 365 and 404 of the Code of Criminal Procedure Act No. 15 of 1979 against the order dated 07.12.2020 of refusing to grant bail by the Hon. High Court of Colombo.

Case No. of the Court of Appeal:

CPA 22/2021

Case No. of the High Court of

Colombo: **HC 164/2019**

The Democratic Socialist Republic of Sri Lanka.

Complainant

Vs.

1. Don Thushara Dhanushka Athapattu.

2. Warnakulasooriya Arachchige Ruchira Lankangani Fernando.

(Currently incarcerated in the remand custody)

Accused

AND NOW BETWEEN

1. Don Thushara Dhanushka Athapattu.

(Currently incarcerated in the remand
custody)

Accused – Petitioner

Vs.

Hon. Attorney General

Attorney General's Department

Colombo 12.

Complainant – Respondent

Before – Menaka Wijesundera J.

Neil Iddawala J.

Counsel – Tenny Fernando for the

Petitioner.

Kanishka Rajakaruna SC for

the Respondent.

Argued On – 12. 10. 2021

Decided On – 26.10.2021

MENAKA WIJESUNDERA J.

The instant application for revision has been filed to set aside the order dated 17.12.2020 of the learned High Court Judge of Colombo.

In the instant application the accused petitioner (hereinafter referred to as the petitioner) has been travelling in a three wheeler with his wife on 16.6.2016 when they were taken in to custody by the police for allegedly being in possession of 27.75 grams of heroin concealed in the waist of the petitioner.

The Government Analyst report has been received on 30.11.2016, and the petitioner and his wife had been indicted in the Colombo High Court and the wife of the petitioner had been enlarged on bail.

The Counsel for the petitioner had moved the High Court for bail on the basis that the petitioner is mentally sick due to depression and anxiety which had been treated by the remand hospital, and the learned High Court Judge had refused bail, and being aggrieved by the said order the instant application for bail has been filed.

The Counsel for the petitioner urged the following grounds on behalf of the petitioner,

- 1) His mental illness,
- 2) His wife being granted bail,
- 3) The petitioner being in remand since 2016
- 4) Pandemic situation in the country.

The State Counsel appearing for the Attorney General sated that the Counsel for the petitioner has not urged any exceptional ground, therefore, for the application to be dismissed.

Upon considering the submissions of both sides it is the considered view of this Court, that according to the provisions of the Poisons Opium and Dangerous Drugs Ordinance amended by Act nu 13 of 1984, section, 83 (1) states as,

“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 on exceptional grounds”.

The above mentioned exceptional grounds have been defined in many a legal authorities in our country and in the case of CA Revision Application nu **CA(PHC) APN 147/17 Wickramasinghe J** had carefully analyzed the term exceptional circumstances in a similar case.

In the instant application the mental illness referred to by the petitioner has been treated by the remand hospital and has been referred to a physician and the physician had said that he had not seen the petitioner but the mother of the petitioner had briefed him ,therefore the physician had recommended a review of his case, but this Court observes that the petitioner had not taken steps to make an application to the relevant authorities for necessary action. Hence it is the view of this Court that the medical condition of the petitioner is not worsened by his incarceration and it can be redressed by making the relevant application to the relevant authorities, therefore this Court has to decide that the condition referred to by the petitioner can be attended to in the remand hospital.

The Counsels submission that the wife of the petitioner being enlarged on bail who is supposed to have aided and abetted the petitioner, cannot be considered in favor of this suspect because the petitioner had exclusive possession of the heroin at the time of arrest, prima facially as per the objections of the

Respondents which the petitioner had not denied, furthermore he had committed the instant offence while being on bail for a similar offence.

Thirdly the pandemic situation in the country cannot be considered as exceptionally if it is not supported by other suitable grounds as held by this Court in a previous application of similar nature.

Therefore upon considering the gravity of the offence and the sentence involved if the petitioner is found guilty at the trial ,the petitioner failing to appear in Court to, face the trial ,upon bail granted is very high according to the considered view of this Court. Therefore the fact that the trial has not commenced even though the indictment has been served this Court is unable to endorse,hence this Court directs the Hon Attorney General to take steps to expedite this trial in view of the period of incarceration of the petitioner since his arrest.

Therefore as such this Court, sees no exceptionality in the grounds urged by the petitioner, 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.