

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

**REPUBLIC OF SRI LANKA.**

In the matter of an Application for bail  
in terms of section 83 (1) of the  
Poisons, Opium, and Dangerous Drugs  
Ordinance.

Meettage Piyaseeli,  
114, Rathna Udagama,  
Boossa,  
Galle.

Court of Appeal Case No:

**CPA/ 63 / 21**

High Court Colombo Case No:

**HC / BAL/680/20/6**

Magistrate's Court Colombo Case No:

**B 28390/01/20**

**Petitioner**

**Vs.**

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

2.Officer-in-Charge,  
Police Narcotics Bureau,  
Colombo 01.

**Respondents**

Wijayamuni Priyantha De Silva alias  
Wijemuni Priyantha De Silva,  
Remand Prison

**And Now**

In the matter of an application for revision in terms of Article 138 of the Constitution read with the High Court of the Provinces (Special Provisions) Act No. 19 of 1990.

Meettage Piyaseeli,  
114, Rathna Udagama,  
Boossa,  
Galle.

**Petitioner – Petitioner**

**Vs.**

1. Hon. Attorney General,  
Attorney General's Department,  
Colombo 12.
2. Officer-in-Charge  
Police Narcotics Bureau,  
Colombo 01.

**Respondents – Respondents**

Wijayamuni Priyantha De Silva alias  
Wijemuni Priyantha De Silva,  
Remand Prison

**9<sup>th</sup> Suspect – Respondent**

Before – Menaka Wijesundera J.

Neil Iddawala J.

Counsel – Sarath Jayamanne, PC with S. Mahawanniarachchi and Vineshka Mendis for the petitioner.

Priyani Abeygunawardane, SSC for state.

Argued On – 16.11.2021

Decided On – 30.11.2021

**MENAKA WIJESUNDERA J.**

The instant application for revision has been filed to set aside the order of the learned High Court Judge of Colombo dated 23.3.2021.

In the instant application the Counsel appearing for the petitioner stated that the exceptional circumstances he is urging are as follows,

- 1) The B reports filed by the investigative officers do not carry a synopsis of the evidence for the magistrate to consider before remanding the suspects which is a violation of section 115 (1) Of the Code of Criminal Procedure Code Act no 15 of 1978.(hereinafter referred to as the CPC)
- 2) The petitioner was not physically present inside the boat which was taken in to custody.

The position of the respondents is that on a tip off received by the Police Narcotics Bearuea (hereinafter referred to as the PNB) they filed a confidential report before the Magistrate on 3.2.2020, with regard to of an information of an illicit drug racket allegedly taking place on the high seas of Sri Lanka, and as such the PNB had sought the assistance of the Sri Lankan Navy.

On 21<sup>st</sup> of February, the Navy officers had raided an Iranian ship on the high seas, and had found eight polysack bags, four of which had contained a substance suspected to be heroin, had been taken in to custody along with ten foreign crew members on boat, and on the 1<sup>st</sup> of March 2020, the navy had noticed a boat , gliding towards the Iranian ship, and the navy has handed over a single bag with the substance suspected to be heroin to the boat, in order to find out as to for what purpose the sail boat has come towards the ship and had thereafter ,surrounded the boat and had arrested the people on the boat and the Navy had informed the PNB to investigate in to the person to whom the said boat belongs and the PNB officers had arrested the owner of the boat namely the 9<sup>th</sup> suspect Wijithamuny Priyantha De Silva , in Boose Galle at his residence on 3rd of March.2020.Thereafter the suspect had been detained till the 9<sup>th</sup> of March for questioning and further investigation, but the learned Magistrate had been informed on the 3<sup>rd</sup> of March with a narration of the investigation and not based on any statements recorded. Thereafter the PNB produced the suspect on B report to the Magistrate on the 9th of March with a narration of the events once again by the officer who was filling the same and the suspect had been remanded by the Magistrate.

The method adopted to investigate this matter had been identified to be as controlled delivery mechanism which had been introduced by the United Nations Convention in Geneva in 2004 according to the position of the respondents. They have further stated that Sri Lanka had been a signatory to the said convention and as such Sri Lankan Navy along with the PNB adopts this method, currently in order to combat the illicit trafficking of Narcotics. But the position of the petitioner is that although Sri Lanka had been a signatory to the said Convention, we as a nation has not adopted the same as a law, as such the Sri Lankan law enforcing authorities cannot adopt such techniques.

The respondents have further stated that the petitioner although not physically present inside the boat, he being the owner would have sponsored the boat with fuel and the other necessities, hence he cannot plead ignorance. But this apparently is yet to be investigated into and obviously not reported to the Magistrate as relevant material with evidence. Therefore this Court is unable to take in to consideration mere hypothetical submissions.

The Counsel for the Petitioner further submitted that the Navy had no authority to arrest any person unless he or she is later rearrested by a person specified under section 35 of the CPC.

But the Respondents contended that the Navy had authority on the waters the suspects were arrested and they were later rearrested by the officers of the PNB.

The section of the CPC 115(1) quoted by the Petitioner states as follows,

“Whenever an investigation under this Chapter cannot be completed within the period of twenty-four hours .....and there are grounds to believe that further investigations are necessary the officer in charge of the police station or the inquirer forthwith forward the suspect to the Magistrate .....**a report of the case together with a summary of the statements if any made by each witness....**”, and it very clearly states that the Magistrate has to be furnished with a synopsis of the evidence recorded against the suspect who is being produced for remanding because the following subsection specifies the necessity for the Magistrate to record his or her reasons if any before remanding the suspect. Therefore the law is very clear that the Magistrate should be furnished with the evidence recorded against the suspect who is being produced before him.

Therefore it is very clear that the investigative officers must submit a synopsis of the statements recorded if any for the Magistrate to ascertain any reasons if any to

remand the suspects. The case law submitted by the petitioner is very clear on this point of law.

In the instant case the learned High Court Judge in several other bail applications made with regard to the 5<sup>th</sup>, 3<sup>rd</sup>, 4<sup>th</sup>, 6<sup>th</sup>, and the 7<sup>th</sup> suspects pertaining to this case have enlarged them on bail, on the same grounds urged by the petitioner before this Court.

The explanation given by the respondents is to the above contention is that, the instant investigation was done on the high seas and it was practically not possible to adhere to the provisions of the law. But it has to be noted that there is no provision in the law which says that the relevant provisions of the law can be ignored when the situation demands. If that is so investigations could be carried out according to the whims and fancies of any person.

In the instant case the report filed against the petitioner has been filed on the 3<sup>rd</sup> of March and in the same, there is no synopsis of the statements but a narration of the arrest and the fact he is the owner of the boat taken in to custody, and even in the subsequent reports filed, there is no statements of a witnesses recorded against the petitioner. Therefore although a report has been filed in terms of section 115(1) of the CPC, the requirements of the said section has not been followed.

Therefore this Court has to note that the petitioner had been taken in to custody without proper reasoning recorded by the Magistrate.

Nevertheless in the instant application the Respondents are vehemently objecting to the position taken up by the Petitioner on the basis that the Petitioner has not urged the same before the High Court.

But this Court is exercising its revisionary powers in which this Court has the power even to act on its own and call for a record and correct the errors if justice demands. In the case of **Mariam Beebeevs Seyad Mohamed 1965 68 SLR 36, Sansoni CJ** has stated that in revision... "it is exercised in some cases by the Judge of his own motion ...if it is brought to his notice". Therefore we are unable to agree with that contention and we further state that we are unable to agree with the fact that practicality in a situation can bend and amend the law according to the whims and fancies of the investigators.

The respondents further submitted that the instant investigations were carried out according to the new method of controlled delivery adopted by the UN Convention against Transitional Organized Crime 2000. But the petitioner pointed out that it has not been enacted as law in this country, and the Act cited by the respondents also does not indicate whether the said method has been legalized in this country. The case law cited by the respondents has said that it is unable to adopt the said treaty when it has not been passed by the legislature.

According to the provisions of the law under which the petitioner had been produced , a suspect to be enlarged on bail , Court must be satisfied that there are exceptional grounds and the term exceptional has been lately defined as varying from case to case.

In the instant matter the exceptionality pleaded by the petitioner is that the violation of the provisions of the CPC and the fact that the petitioner not being on board at the time of the boat being taken into custody, although it had belonged to him.

Therefore upon considering the submissions of both parties it is the considered view of this Court that at the time of the arrest of the petitioner the Magistrate was not furnished with sufficient material to remand the suspect, and nor does the subsequent

reports filed state any, and this, although not pleaded before the learned High Court Judge, this Court can observe and exercise its powers of revision.

Hence the instant application for revision is allowed and the order dated 23<sup>rd</sup> March 2021 is hereby set aside and this Court direct the learned High Court Judge to enlarge the 9<sup>th</sup> suspect namely Wijemuny Priyantha De Silva on bail with suitable bail conditions.

Hence the instant application for revision is allowed.

**Judge of the Court of Appeal.**

**I agree.**

**Judge of the Court of Appeal.**