

IN THE COURT OF APPEAL OF THE DEMOCRATIC SOCIALIST

REPUBLIC OF SRI LANKA.

An application for revision under Article 138 (1) of the Constitution of the Democratic Socialist Republic of Sri Lanka.

Officer – in – Charge,
Police Station,
Katunayaka.

Magistrate’s Court of Negombo

Case No: **L 91156**

High Court of Negombo Case No:

HC/BAL/433/2020

Court of Appeal Case No:

CA (PHC) APN 124/20

Complainant

Vs.

Senadeera Pathirannahelage Sanjaya
Pradeep Senadeera,
No 101/D/1. Yatiyana,
Minuwangoda.

Suspect

AND THEN BETWEEN

Herath Mudiyanseelage Dilani Deepika
Kumari Herath.
No 101/D/1, Yatiyana,
Minuwangoda.

Petitioner

Vs.

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

2 Officer in Charge

Police Station

Katunayaka.

Respondents

AND NOW BETWEEN

Herath Mudiyanseelage Dilani Deepika
Kumari Herath

No 101 /d/1

Yatiana

Minuwangoda

Petitioner – Petitioner

Vs.

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

2 Officer in Charge

Police Station

Katunayaka.

Respondent – Respondents

Suspect – Respondent

Before – Menaka Wijesundera J.

Neil Iddawala J.

Counsel – Anuja Premaratna PC with Nayana Disanayake and N. Rajapaksha

For the petitioner.

Chathuranga Bandara SC for the State.

Argued On – 24.11.2021

Decided On – 07.12.2021

MENAKA WIJESUNDERA J.

The instant application for revision has been filed to set aside the order dated 17.9.2020 of the learned High Court Judge of Negombo.

In the said order the exceptionality pleaded by the petitioner (hereinafter referred to as the petitioner) is,

- 1) The improbability of the incident,
- 2) The delay in filling the indictment.

According to the facts of the incident the suspect in this matter had been taken in to custody by the Katunayake police on a tip off received while he was travelling in a motor vehicle accompanied by a driver. When the police had stopped the said

vehicle the driver had allowed the police to search but the suspect had tried to escape and the police had taken him into custody. Upon searching the suspect the police had recovered a parcel concealed inside his trouser pocket weighing up to 100 grams of a substance suspected to be heroin. The driver who also had been produced had been enlarged on bail and the counsel for the respondents averred that the driver had been discharged by the Attorney General for absence of exclusive possession.

The position taken up by the counsel for the suspect is that if the suspect carried 100 gm of heroin it would have been clearly visible, but the counsel for the respondents very correctly averred that even the mobile phone which most men carry in their trouser pocket weigh more than that.

The Government Analyst has detected 3.570 Gms of heroin in the substance taken in to custody from the possession of the suspect.

The second ground urged by the counsel for the suspect is that although the Government analyst report has been received the indictment has not been forwarded, but the Counsel for the respondents averred that the indictment is ready for dispatching to the relevant High Court.

The third ground averred by the counsel for the suspect is that the learned High Court Judge has not properly analyzed the exceptional grounds averred before him.

The suspect in this matter has been produced before the magistrate and remanded under the provisions of the Poisons Opium and Dangerous Drugs (Amendment) Act no 13 of 1984 according to which if a suspect is to be enlarged on bail the said suspect has to satisfy the relevant High Court that there are exceptional circumstances. This is very clearly said in section 83(1) of the said act.

The term exceptional has been analyzed by our Court on numerous occasions and finally it has been more or less decided that it varies from case to case. But the term exceptional by no means envisages a suspect having children or being married or being the sole breadwinner in a family as being exceptional, which as stipulated in the famous case of **Ramu Thamodarumpillaivs AG 2004 3 SLR180**, those are facts which are most common to most people. Therefore the judges are given a wide discretion in deciding which an exceptional situation in a case is.

Therefore upon consideration of the exceptional circumstances as pleaded by the counsel for the suspect this Court is of the opinion that they cannot be considered as exceptional for the simple reason that it has been held in the case of **Alawathutha Kankanamge Nandasena vs Attorney General CA (PHC) APN147/2017 by Wickremasinghe J** that facts of a case need not be adjudicated at the time of a bail application. This Court also notes that counsel for the suspect averred that suspect need not suffer from a malignant censer to convince Court that he deserves to be enlarged on bail under the provisions of the act under which the instant suspect has been produced, of course this Court also agree with that submission of the learned counsel for the suspect but Court also notes that the learned presidents counsel has to plead grounds which shocks the conscious of this Court and the grounds he has already very strenuously pleaded cannot be excepted as exceptional. The counsel for the suspect has also averred that the learned High Court Judge has not sufficiently analyzed the exceptional grounds placed before him, this Court also notes that it would have been more appropriate had the learned High Court Judge had stated his reasons for rejecting bail in a more explanatory manner.

Therefore as the learned president's counsel for the suspect has failed to satisfy this Court with exceptional circumstances, this Court is compelled to dismiss the instant application for revision.

Judge of the Court of Appeal.

I agree.

Neil Iddawala J.

Judge of the Court of Appeal.