

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 read with section 154P (3) of the 138 of the Constitution of the Democratic Socialist Republic of Sri Lanka, against the order of the provincial High Court of the Southern Province Holden in Matara dated 10.03.2021 in the case bearing bail/99/2020.

CA Revision Application No:

CA/PHC/APN/65/2021

High Court of Matara Bail Application

No: **99/2020**

Negombo Magistrate Court Case No:

BR/1477/2020

Officer in Charge,

Police Station,

Malimbada.

Complainant

Vs.

Rathnayake Mudiyanseelage Raveen
Madushanka.

Suspect

Samantha Palihawadana,

Beheth Shalava,

Thelijjavila,

Kirimetimulla,
Wellawaya.

Petitioner

Vs.

1. Officer in Charge,
Police Station,
Malimbada.

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

Respondents

And Now Between

Samantha Palihawadana,
Beheth Shalava,
Thelijjavila,
Kirimetimulla,
Wellawaya.

Petitioner – Petitioner

Vs.

1. Officer in Charge,
Police Station,
Malimbada.

Complainant – Respondent

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

Respondent – Respondent

Rathnayake Mudiyanseelage Raveen
Madushanka.

Suspect – Respondent

Before – Menaka Wijesundera J.

Neil Iddawala J.

Counsel – Amila Palliyage for the
petitioner.

Erandi Dasanayaka SC for
the respondent.

Argued On – 18.01.2022

Decided On – 25.01.2022

MENAKA WIJESUNDERA J.

The instant application for revision has been filed to set aside the order dated **10.3.2021** of the learned High Court Judge of Matara.

In the instant application suspect respondent (hereinafter referred to as the suspect) was taken in to custody for allegedly being **in possession of 6.54 grams of heroin on 26.5 2020** and remanded on the **27th of May 2020 and in remand custody ever since.**

He had been indicted for the same in the relevant High Court according to the Attorney General under the provisions of **the Poisons Opium and Dangerous Drugs Act.**

The main contention of the Counsel for the suspect is that the suspect was taken into custody by the police while he was travelling in a vehicle and in the same vehicle another woman had been travelling and she too had been arrested for possession of heroin, a very small amount and was produced before the Magistrates Court and charged on the next day and she had pleaded guilty and had been sentenced and released on the same day.

Hence the Counsel for the suspect urged that there is a grave inequality in the treatment meted out to the two suspects taken in to custody together on the same day, which he says casts a doubt as with regard to the credibility of the investigations against the suspect.

According to the provisions of the act under which the suspect has been produced and **remanded bail** can be considered under **section 83 (1)** of the act which reads as follows,

“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 in exceptional circumstances”.

The term exceptional has not been defined in the statute. But in many of our decided cases the term exceptional has been considered on numerous occasions in relation to the provisions of the instant act, but the grounds which has been considered as exceptional vary from case to case and there does not appear to be a definite guiding principle but the judges have been vested with the power to exercise their judicial discretion in view of the facts of each case.

As such in the instant case the ground urged by the counsel for the suspect is the fact that the woman who was taken in to custody was served with speedy justice whereas the suspect in the instant case- was not.

But this Court takes in to consideration the quantity of heroin which was supposed to have been recovered from his custody which if found guilty would be life imprisonment or death.

Therefore the severity of the offence with which the suspect has been charged with, makes it only fair to look for exceptional circumstances in granting bail as stipulated in the statute.

Therefore merely because another suspect who has been taken into custody along with the suspect in the instant matter, being dealt with differently for the reason that it being a lesser amount of the alleged substance does not make it an exceptional circumstance to release the instant suspect on bail.

Therefore the exceptional circumstances pleaded by the Counsel for the suspect cannot be considered as exceptional.

As such this Court sees no reason to interfere with the order of the learned High Court Judge.

Hence the instant application for revision is hereby stands dismissed.

Judge of the Court of Appeal.

I agree.

Neil Iddawala J.

Judge of the Court of Appeal.