

**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 of the Democratic  
Socialist Republic of Sri Lanka.

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

**Complainant**

Court of Appeal Case No: **CA (PHC)**  
**APN 49 / 21**

High Court of Chilaw Case No: **HC / 42**  
**/20**

HC Chilaw Case No: **HC / HCAB /**  
**09/19**

Vs.

- 1.W. Lawrence Fernando
2. W. Nelson Hubert Caniseus Thamel

**Accused**

**AND BETWEEN**

W. Nelson Hubert Caniseus Thamel  
(Presently in Negombo Prison)

**2<sup>nd</sup> Accused Petitioner**

Vs.

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

**Complainant Respondent**

Before: Menaka Wijesundera J.

Neil Iddawala J.

Counsel: R Arseculeratne, PC with ThilinaPunchihewa and UdaraMuhandiramge

For the petitioner.

Sudharshana De Silva, DSG with KanishkaRajakaruna, SC for the

Attorney General.

Argued On: 21.02.2022

Decided On: 22.03.2022

**MENAKA WIJESUNDERA J.**

The instant application for revision has been filed to set aside the orders of the High Court dated 12.6.2020 and 23.12.2020 and to obtain bail for the second accused petitioner (hereinafter referred to as the petitioner).

The contention of the petitioner is that he was arrested by the police on 21<sup>st</sup> of May 2015 in Tangalle and no alleged substance was found from his custody and he had been in remand since then.

He further states that he has two pending cases similar in nature and while in remand prison he had undergone a bypass surgery and as he is in remand he is unable to go through the required health precautions necessary after a bypass surgery.

The petitioner further stated that the two impugned orders by the High Court is illegal and capricious for the reasons that,

- 1) It has declared him to be already guilty of the offence he has been indicted for,
- 2) The High Court is of the erroneous understanding that a bail application can be made only once,
- 3) That the High Court believes that the petitioner has to submit attractive grounds for bail and not exceptional, which is in law is incorrect.

The respondents on the other hand have stated that the,

- 1) Petitioner committed the instant offence while being on bail for a similar offence,
- 2) Petitioner has two more pending cases which are similar in nature
- 3) That the petitioner if enlarged on bail is most likely to abscond as in one of the other cases in which another accused has absconded after being enlarged on bail
- 4) The Court of appeal on a previous occasion has considered bail and has rejected the same in considering the gravity of the offence in the year 2018.

*According to the facts of the instant case the petitioner had been arrested by the police on 25.5.2020 and had been produced before the Magistrate on a B report stating that he had been arrested for offences under **the Poisons Opium and Dangerous Drugs act**, and he had also been detained under the provisions of the **Prevention of Terrorism Act due to an alleged involvement of terrorist activities.***

*According to the provisions of the act under which the petitioner had been produced section 83 states that **“no person suspected or accused of an offence under section 54 A and 54B ...shall be released on bail except by High Court in exceptional circumstances”***

*The term exceptional has not been defined in the act but in many of the judgments so far decided has defined the term exceptional, but in the case of **Carder vs. OIC Narcotics Bureau 2006 vol 3 74** has very lengthily gone in to analyzing as to what had been defined as exceptional and it has cited six cases where the period in remand has been considered to be exceptional and also has highlighted othergrounds which had been considered as exceptional such as the,*

**1) Nature of the accusation,**

**2) The nature of the evidence,**

**3) The severity of the punishment if convicted.**

*The same judgment has held that in considering bail in an application of the instant nature that Court should be mindful of “...**the effects of the society at large, and the law should not be made impotent that it does not serve the society and the antisocial elements should not be given license to create havoc in society**”*

*The Counsel for the petitioner had submitted that when the petitioner was arrested he had no illegal substance in his possession, the respondents also did not dispute the fact but this Court is of the view that the facts of the case need not be gone into at this stage, but this Court is very mindful of the gravity of the offence with which the petitioner had been charged with and also of the fact that the petitioner was arrested for the instant offence when he had been on bail for a similar offence which is now pending.*

*The petitioner has further submitted that he had been in remand for nearly five and half years, and it should be considered to be exceptional enough to grant bail. But in the case of **Attorney General vs. Letchchami SC Appeal 13/2006** it refers to*

*usual delay in distinguishing delay that is common to all in remand prison due administrative and other reasons and delay which is inordinate.*

*In the instant matter the petitioner has been accused of a quantity of heroin which is quite large which can be termed as being for commercial purposes and he has two pending cases of similar nature and the petitioner has been arrested for the instant matter while being on bail for one of them, hence the five years in remand although not very reasonable cannot be considered as being exceptional due to the reasons aforesaid.*

*The petitioner has quoted his health condition as being exceptional, but this Court notes that he has undergone the bypass surgery while being in remand very successfully, hence directions can be given for him to be able to adhere to whatever conditions those need to be done, inside the prison.*

*Hence for the reasons stated above this Court sees no exceptional ground to enlarge the petitioner on bail.*

*Hence although this Court is unable to agree with the legal reasoning's of the High Court in the two impugned bail orders the instant application is dismissed for the reason that the grounds urged by the petitioner as exceptional cannot be considered so in view of the reasons stated above.*

*As such the instant application is dismissed.*

**Judge of the Court of Appeal.**

**I agree.**

**Neil Iddawala J.**

**Judge of the Court of Appeal.**