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 Narcotic Bureau,

Colombo 01.

Complainant

Vs.

Razik Ramzeen

(Presently incarcerated in remand prison)

Suspect

AND BETWEEN

Razik Ramzeen

(Presently incarcerated in remand prison)

Accused – Petitioner

Vs.

1. Hon. Attorney General,

Attorney General's Department,

Colombo 12.

Court of Appeal Case No: **CA (PHC) APN 149 / 2019**

High Court of Negombo Case No: **HC 664 / 2013**

Magistrate's Court of Wattala Case No: **B 234 / 2013**

Respondent

AND NOW BETWEEN

Razik Ramzeen

(Presently incarcerated in remand prison)

Accused – Petitioner – Petitioner

Vs.

1. Hon. Attorney General,

Attorney General's Department,

Colombo 12.

Respondent – Respondent

Before: Menaka Wijesundera J.

Neil Iddawala J.

Counsel: Nalin Weerakoon for the Accused – Petitioner.

P. Abeygunawardena, SC for the Respondent.

Argued on: 03.03.2022

Decided on: 24.03.2022

MENAKA WIJESUNDERA J.

The instant application for revision has been filed to set aside the order of the learned High Court Judge of Negambo refusing to enlarge the accused petitioner (hereinafter referred to as the petitioner) namely RazikRamzzeen on bail.

The petitioner was taken in to custody for being in possession of heroin on 9.2.2013 and was indicted for the same on 18.11.2013.

The grievance of the petitioner is that he has been in remanding ever since, for nearly 10 years up to date.

The petitioner had been indicted under the provisions of the Poisons Opium and Dangerous drugs amendment act no 13 of 1984 under which if an accused or suspect is produced or charged under section 54 A and B the suspect or accused can be enlarged on bail only upon exceptional circumstances by the High Court.

The term exceptional has not been defined in the act, but in many of our decided cases many grounds have been considered to be exceptional, such as,

1) The nature of the accusation,

2) The culpability of the accused,

3) The severity of the sentence if convicted,

4) The health condition of the petitioner which would be aggravated by the incineration.

Therefore what has been decided so far is that the exceptionality would be decided by the facts of each case. **This has been discussed in the case of Carder vs. OIC Narcotics Bureau 2006 3 SLR 74 by Basnayake J.**

In the instant matter the main grievance of the petitioner is that he has been in remand for 10 years without the trial being concluded.

If one may go through the proceedings against the petitioner in the relevant High Court it is noted that,

1) Indictment has been received by the High Court on 2013.11.18,

2) It had been served on the petitioner on 2014.6.4, and trial had been fixed,

3) But since then 15 trial dates had gone and only prosecution witness no1 had been partly concluded up to date.

Numerous bail applications have been made but on each occasion the trial judge had refused bail on the basis that the trial had been postponed owing to the huge backlog of cases pending in the Court.

But in the case of CH/PHC/APN/36/2016 it has been held by Sisira De Abrew J that in a case of similar nature that "it is therefore seen that the learned High Court judge has post poned the case by a period of 1 year and 4 months,..If the accused is on remand it becomes the duty of the trial judge to expedite and conclude the matter without delay ….this itself can be considered as an exceptional ground to release the accused on bail".

Therefore in the instant matter the trial had been postponed on 15 trial dates with only on one single day the trial being taken up, which in the opinion of this

Court should be strongly discouraged because it undermines the due administration of justice.

It has been decided in the case of **Sumanadasa vs. Attorney General (SLR 2006202) by the former CJ Sarath Silva that "...fundamental rights of the petitioners guaranteed by the Article 13(2) have been infringed …being detained in custody merely upon being produced in Court and incaserated without a remedy until the conclusion of their trials"**

According to Chapter 111 Article 13 (4) of the constitution it says that "no person shall be punished with death or imprisonment except by order of a competent court, made in accordance with procedure established by law. ***The arrest holding in custody, detention or other deprivation of personal liberty of a person, pending investigation or trial shall not constitute punishment".***

The Counsel appearing for the respondents strenuously urged that the trial had been postponed for the huge backlog of cases which are pending in the High Court of the instant matter, and further said that fair trial has to be ensured to the accused and to the prosecution as well.

The Constitution by Article 13(3) has expressly provided a person accused of an offence to be heard by an Attorney-At-Law at a fair trial by a competent court. In the case of The AG v Segulebbe Latheef and another(S.C. Appeal No. 79A/2007, 24/2008 and 25/2008, the concept of fair trial has been analyzed, and J.A.N de Silva, J has said that,"The right of an accused person to a fair trial is recognized in all the criminal justice system in the civilized world, its denial is generally proof enough that justice is denied. Like the concept of fairness, a fair trial is also not capable of a clear definition. The right to a fair trial has been defined by way of

thirteen chachteristicsbytheir lordships and have included the "The right of an accused to be tried without much delay also as one of them".

Therefore, the right of an accused person to a fair trial without delay has been recognized in the criminal justice systems in the civilized world as being of utmost importance. The concept of fair trial was formerly recognized in International law in 1948 in the United Nations Declaration of Human Rights. Since 1948, the right to a fair trial has been incorporated into many national, international and regional instruments. Therefore, a trial being concluded without a delay is of utmost importance in the concept of a "fair trial'' which the counsel for the respondents failed to mention.

It is also noted with regret that if the Court is overloaded with work it is more the reason to consider bail for the accused because conclusion of the trial seems to be very remote and not in the near future, and it is very clearly stipulated in the constitution under article 13(4)"….holding in custody detention or other deprivation of personal liberty of a person pending investigation or trial shall not constitute punishment".

Therefore as stated by his Lordship Sisira de Abrew in the case cited above it is the duty of the trial judge to give precedence to the cases where the accused is in remand over the other cases. Therefore it is needless to say that it is the duty of the persecution too to be amicus to Court to conclude those matters speedily ensuring the rights of the accused as enshrined in the constitution.

It has been held in the case of Attorney General vs. Ediriweera 2006 (BLR)12 that "delay is always a relative term and the question to be considered is not whether there was mere explicable delay ,as when there was a back log of cases , but whether there has been excessive or oppressive delay ..".

Therefore in the instant matter the case against the petitioner has gone down on numerous occasions from 2014 to up to date without conclusion, which runs in to a span of nearly 10 years during which period the petitioner had been in remand which this Court considers to be a delay which is oppressive and exceptional.

Hence the instant application for revision is allowed and the order of the High Court refusing bail is set aside and this Court directs the High Court Judge to impose suitable conditions of bail and enlarge the petitioner on bail.

As such the instant application for revision is allowed.

Judge of the Court of Appeal.

I agree.

Neil Iddawala J.

Judge of the Court of Appeal.