

**IN THE COURT OF APPEAL OF DEMOCRATIC SOCIALIST REPUBLIC**  
**OF SRI LANKA.**

In the matter of an Application for Revision under Article 138 of the Constitution of the Democratic Socialist Republic of Sri Lanka.

Democratic Socialist Republic of Sri Lanka.

**Complainant**

Court of Appeal Revision Application

No: **CPA / 0100 / 21**

High Court of Gampaha Case No:

**HC / 156 / 21**

Magistrate's Court of Mahara Case No:

**B 2888 / 2019**

Vs.

Alahakoon Arachchilage Namal  
Nishantha Alahakoon

**Accused**

**AND NOW BETWEEN**

Alahakoon Archchilage Namal  
Nishantha Alahakoon,

No.109,

Abanwila, Gampaha.

**Petitioner**

**On Behalf of**

Alahakoon Arachchilage Namal  
Nishantha Alahakoon.

**Accused**

Vs.

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

**Respondent**

Before: Menaka Wijesundera J.

Neil Iddawala J.

Counsel: Kasun Liyanage for the petitioner.

Chathuranga Bandara, SC for the State.

Argued on: 23.03.2022

Decided on: 06.04.2022

**MENAKA WIJESUNDERA J.**

The instant application for revision has been filled to set aside the order dated 27.08.2021 of the high Court of Gampaha. The accused in this matter namely AlahakoonArachchilageNamalNishantha has been indicted in the High Court for possession and trafficking of 8.5 grams of Heroin. The accused had been arrested in 19.07.2019. Indictment has been forwarded on 28.04.2021. The trial is to be taken up on the 08.04.2022. The main grievance of the petitioner is that, there is a delay of filing the indictment even upon receipt of the government analyst report.

But this Court notes that the Attorney General has taken steps to file the indictment within 1 year and 9 months inspite of the COVID pandemic starting from March 2019.

According to the provisions of the Poisons, Opium and Dangerous Drugs Act No. 13 of 1984, if a suspect is indicted under the same, he or she can be enlarged on bail only upon exceptional circumstances. The term exceptional has not been defined in the Act. But several decided cases has defined many factors to be exceptional which are

- 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 accused or suspect which would be aggravated by the incarceration

Hence up to now, what has evolved is that the exceptionality would be decided by the facts of each case, but in the case of **Cader v OIC narcotics Bureau 2006 3 SLR 74** Eric Basnayake J said that, “ ***these types of offences affect the society at large and the law should not be made impotent that it does not serve the society and the anti-social elements should not be given license to create havoc in the society***” citing the case of ***Abdul Hamidkari Path and etc v State of Gujarat and other 15 476***.

Therefore, the law pertaining to the instant matter has provided for the accused person to be remanded until the conclusion of the trial if not for exceptional circumstances. In the instant matter, the exceptionality pleaded is the delay in filing the indictment. The term delay has been considered by this Court in several cases.

In the case of ***Attorney General v Ediriweera (2006) BLR pg. 12***, it has been stated 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 bag log of cases , but whether there has been excessive or oppressive delay**”.

But in the instant matter the delay alleged up to the filing of the indictment is only 1 year and 9 months. The period of remand from the date of arrest up to date is only four years. It has been stated by the counsel for the respondent that the trial is fixed

for 08.04.2022, which is not far and remote. Therefore, the due administration of justice against the accused has started and one can reasonably think that, it could be concluded in the near future.

As such, this court sees no oppressive or excessive delay as stated in the above mentioned judgment. As such the revision application is dismissed.

**Judge of the Court of Appeal**

**I agree**

**Neil Iddawala J.**

**Judge of the Court of Appeal**