

**IN THE COURT OF APPEAL OF THE DEMOCRATIC SOCIALIST**

**REPUBLIC OF SRI LANKA.**

In the matter of an application  
for Revision under and in terms  
of Article 138 of the  
Constitution read with section  
11 of the High Court of the  
Provinces (Special Provisions)  
Act No. 19 of 1990.

Court of Appeal Revision  
Application No: **CA PHC APN /  
109 / 21**

High Court of Panadura Bail  
Application No: **HC BA 109 /21**

Magistrate's Court of Horana  
Case No: **B 60494 /21**

Raigama Vithanage Chandrika  
Dias,

No. 260/07, Tharunasewa  
Mawatha,

Moronthuduwa.

**Petitioner**

Vs.

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

2. Officer – in – Charge,  
Police Narcotic Bureau,  
Colombo 01.

**Respondent**

Rajagalgodage Sugath Kumara

**1<sup>st</sup> Suspect**

**AND NOW BETWEEN**

Raigama Vithanage Chandrika  
Dias,

No. 260/07, Tharunasewa  
Mawatha,

Moronthuduwa.

**Petitioner – Petitioner**

Vs.

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

2. Officer – in – Charge,  
Police Narcotic Bureau,  
Colombo 01.

**Respondent – Respondent**

Rajagalgodage Sugath Kumara  
(Presently at Kalutara Prison)

**1<sup>st</sup> Suspect – Respondent**

Before: Menaka Wijesundera J.

Neil Iddawala J.

Counsel: Asthika Devendra with Sanjeewa Ruwanpathirana for the  
Petitioner.

Chathurangi Mahwaduge, SC for the State.

Argued on: 31.03.2022

Decided on: 05.05.2022

**MENAKA WIJESUNDERA J.**

The instant application for revision has been filed to set aside the order dated 17.9.2021 of the High Court of Panadura.

In the instant matter the suspect namely Rajagalgodage Sugath Kumara was taken in to custody at Anuradhapura along with 3 others on suspicion of 10.3.2021.

Thereafter the Counsel for the suspect alleges that on a statement made by the suspect a parcel containing a substance which had been suspected to be heroin had been recovered from his residence.

The main contention of the Counsel for the suspect is that it is highly improbable that a person taken into custody on suspicion would make a statement incriminating himself and would forthwith guide the police to recover a parcel of heroin.

This apparently is the only piece of evidence against the suspect.

The Counsel for the respondents submitted that the suspect had pending and previous cases of similar nature which the suspect has failed to disclose in the petition, which the Counsel for the suspect admitted. The Counsel for the respondents further submitted that the IB extracts have been handed over and the indictment would be forwarded in due course.

But the Counsel for the suspect strenuously submitted that the evidence against the suspect is insufficient to secure a conviction.

Therefore at this juncture what this Court has to consider is whether this Court can consider evidence in a case in an application for bail.

The suspect in the instant matter has been taken in to custody under the provisions of the Poisons Opium and Dangerous Drugs Act No. 13 of 1984, according to which bail can be considered under Section 83 of the said act only upon exceptional circumstances. The term exceptional has not been defined in the act but in several of our decided cases many instances have been decided to be exceptional, such as

- 1) The gravity of the offence,
- 2) The severity of the sentence,
- 3) The culpability of the suspect,
- 4) The health of the suspect,
- 5) Delay, which had been set out in ***Carder vs. OIC Narcotics Bureau 2006 3 SLR*** by Basnayake J.

In the instant matter what had been urged to be exceptional is the improbability of the nature of the evidence and the entirety of the case being based on a Section 27(1) recovery.

The Counsel for the respondents did not deny the fact that the entirety of the case is based on a Section 27(1) recovery. At this juncture this Court diverts its attention to a full bench judgment of their Lordships in the Supreme Court where the former Chief Justice Priyasath Dep had analyzed what weight should be attached to a Section 27(1) recovery led in evidence and if that is the only piece of evidence.

**In the case of Duminda de Silva and others vs. the AG their Lordships have held that” The effect of a statement made under Section 27 of the Evidence Ordinance is that the accused had the knowledge of the place where the item was kept hidden. Solely on that evidence individual liability could not be established. The accused cannot be convicted of joint possession...”**

**Therefore in the instant matter the only item of evidence against the suspect at this stage it appears to be the recovery of the parcel of heroin on a Section 27(1) of the Evidence Ordinance, which in the opinion of this Court is insufficient to implicate the suspect for exclusive possession of heroin.**

**At this point the Counsel for the Attorney General may argue that facts in a case cannot be gone into in an application for bail. But this Court draws its attention to the judgment cited by the Counsel for the suspect by his Lordship Sisira De Abrew J in CA (PHC) APN9/2010 in which Justice Sisira De Abrew has held that “ in the B report by the police the police have failed to indicate the particular place of the body from which the heroin was found(the**

body of the suspect).” And has held that therefore it is only fair to en large the suspect on bail.

Therefore in the instant matter in view of the material stated above this Court is of the opinion that the learned High Court Judge has failed to consider the above mentioned material in the impugned order which makes it an exceptional circumstance to set aside the said order dated 17.9.2021 and enlarge the above mentioned suspect on bail.

Therefore the instant application for revision is allowed and this Court directs the learned High Court Judge to enlarge the above mentioned suspect on suitable conditions of 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.**