

**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.

Hewa Thantrige Chathushi  
Jayadri,

No. 29/106 D, Sri Saranankara  
Road,

Kalubowila, Dehiwala.

**Petitioner**

Court of Appeal Case No:

**CA / CPA / 061 / 2021**

Vs.

High Bail Application No:

**HCBA 02 /2021**

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

Magistrates of Colombo Case

No: **B 28390/01/2020**

2. The Officer – in – Charge  
Police Narcotics Bureau,  
Colombo 01.

**Respondents**

Dissanayaka Mudiyansele  
Prasanna Gunathilaka

**31<sup>st</sup> Suspect**

**AND NOW BETWEEN**

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

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

Vs.

2. The Officer – in – Charge  
Police Narcotics Bureau,  
Colombo 01.

**2<sup>nd</sup> Respondent – Petitioner**

Vs.

Dissanayake Mudiyansele  
Prasanna Gunathilaka.

No. 29/106 D, Sri Saranankara  
Road, Kalubowila, Dehiwala.

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

Hewa Thanthrige Chathushi  
Jayadri

No. 29/106 D, Sri Saranankara  
Road,

Kalubowila, Dehiwala.

**Petitioner – Respondent**

Before: Menaka Wijesundera J.

Neil Iddawala J.

Counsel: Janaka Bandara, DSG for the State.

Nalin Ladduwahetty, PC with Sarath Ekanayake, Vajira

Ranasinghe and Kavithri Obeysekara for the 31<sup>st</sup> Suspect –  
Respondent.

Argued on: 30.03.2022

Decided on: 18.05.2022

**MENAKA WIJESUNDERA J.**

The instant matter has been filed to set aside the order of the High Court of Colombo dated 01/04/2021.

The 31<sup>st</sup> suspect respondent in this matter, (hereinafter referred to as the suspect) had been enlarged on bail by the High Court considering the fact that in the B report filed against the suspect ,had not contained any incriminating evidence against him. The Attorney–General has filed the instant application to revise the said order.

According to the Attorney General, the instant matter pertains to a raid conducted by the Police Narcotics Bureau (PNB) with the assistance of the Sri Lankan Navy. The PNB had received information, a person operating from Dubai was to send some narcotics on a vessel and a Sri Lankan team to receive the said narcotics and distribute the same within the country. A confidential B report has been filed before the Magistrate on 03/02/2020. The Sri Lankan Navy had detected the said vessel and

had arrested 10 people on the vessel with narcotics in hand. Thereafter, three more suspects have been arrested from Sri Lankan shores by the PNB Officers on 29/02/2020. Thereafter, further investigations have been done and instant suspect had been taken into custody upon surrendering himself on 05/03/2020 to the PNB Officers and produced before the Magistrate. But the said B report does not carry any independent evidence against him other than the material in his statement which is inadmissible under the Evidence Ordinance and the narration by the PNB officers of the raid.

The counsel appearing for the Attorney general stated that, under the circumstances upon which the instant raid has been carried out, it is not practical to be divulging all information in a B report. But, this Court draws its attention to **Section 115(1)** of the **Criminal Procedure Code**, according to which “... **the Officer-in-Charge of the Police Station or the inquirer shall forth with forward the suspect to the Magistrate...together with a summary of the statement if any made by each of the witnesses examined in the course of such investigation related to the case**”. Therefore, the Section is very clear to say that, the Magistrate has to have material before him when a suspect is produced before him. Section 115(2) further says very clearly that, “**the Magistrate before whom a suspect is produced under this Section, if he is satisfied that it is expedient to detain the suspect in custody...**” therefore, the law is very clear that the Magistrate should be furnished with the evidence recorded against the suspect who is being produced before him. Therefore, the investigating officers must submit a summary of the statements recorded if any for the Magistrate to ascertain any reason if any, to remand the suspect. This same issue has been discussed by this

Court in the case of **CPA/63/21** and this Court has disregarded the contention of the petitioner of the impracticality of furnishing all details against the suspect in a B report in a raid of this nature. This Court has noted with disapproval in the said judgment stating that **“there is no provision in law which says that the relevant provisions of law can be ignored when the situation demands and if that is so investigations could be carried out according to the vim and fancies of any persons”**.

In the case of **SC SPI 1-199-200-206, Sumanadasa and 205 others v Attorney General**, Sarath Silva C.J declared **“Every person held in custody, detained or otherwise deprived of personal liberty shall be brought before the judge of the nearest competent court according to procedure established by law, and shall not be further held in custody, detained or deprived of personal liberty except upon and in terms of the order of such judge made in accordance with procedure established by law.”** Furthermore, his Lordship elaborated stating **“...The procedure established by law in respect of the right referred to above in (i) (the right to be brought up before the judge of the nearest competent court according to the procedure established by law) is contained in Sections 115 and 116 of the Code of Criminal Procedure Act. It is not in dispute that this procedure has been complied with and that the petitioners have been produced before the judge of the nearest competent court.”** Additionally, the honorable C.J claimed, **“In Section 115(1) which covers situations where the person is produced in court the reference is to a “suspect”**.

In the Indian case of **Joginder Kumar v State of U.P. (1994) 4 SCC 260: 1994 SCC (Cri) 1172** Anand, J., considered the dynamics of misuse of

police power of arrest and declared (SCC p. 267, para 20) **“No arrest can be made because it is lawful for the police officer to do so. The existence of the power to arrest is one thing. The justification for the exercise of it is quite another.... No arrest should be made without a reasonable satisfaction reached after some investigation as to the genuineness and bona fides of a complaint and a reasonable belief both as to the person's complicity and even so as to the need to effect arrest. Denying a person of his liberty is a serious matter.”**

Therefore, in the instant matter, this Court observes that the B Report filed against the suspect in the instant matter is only a narration of the raid carried out by the Investigating Officers plus the summary of the statements of the suspects which is not admissible under the Evidence Ordinance.

Therefore, this Court sees no illegality which shocks the conscious of this Court in the impugned order of the Learned High Court Judge dated 01/04/2021 in which he has very strenuously considered **Section 115(1) of the CCPA.**

Therefore, this Court sees no reason to set aside the order of the learned High Court Judge, as such the instant application for revision is dismissed.

**Judge of the Court of Appeal.**

**I agree.**

**Neil Iddawala J.**

**Judge of the Court of Appeal.**