

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

In the matter of an Appeal in terms of Article 138 (1) (2) of the Constitution of the Democratic Socialist Republic of Sri Lanka read together with the section 404 of the Code of Criminal Procedure Code Act no.15 of 1979 for revising judgment/ order of the High Court.

Shanthi Perera,
B/1, S/4, Fareline Road,
Dehiwala

Petitioner

Court of Appeal Application
No: **CPA 75/21**

On behalf of
Omanthage Inoka Thushari Perera

High Court of Panadura
No: **190/20**

Suspect

Vs.

Magistrate's Court of
Panadura
No :**77129/20**

1. The Hon. Attorney General
2. The Officer in Charge, Police
Station, Panadura South.

Respondents

And Now Between

Shanthi Perera,
B/1, S/4, Fareline Road,
Dehiwala.

Petitioner

On behalf of
Omanthage Inoka Thushari Perera

Suspect

Vs.

1. The Hon. Attorney General
2. The Officer in Charge, Police Station, Panadura South.

Respondents

Before : Menaka Wijesundera J
Neil Iddawala J

Counsel : Tenny Fernando with Shehan
Weerasinghe for the Petitioner.

Ridma Kuruwita, State Counsel for the
Respondent.

Argued on : 06.09.2022

Decided on : 31.10.2022

Iddawala – J

This is an application for revision filed on 08.11.2021 by the petitioner, who is the mother of the suspect. The petitioner impugns the order dated 20.05.2021 of the learned High Court Judge of Panadura, which refused to enlarge the suspect on bail. Therefore, the petitioner seeks to invoke the revisionary jurisdiction of this Court to set aside the above order.

The facts of the case are briefly as follows. The suspect was arrested on 13.08.2020, near the Police Station of Panadura South for the possession

of 10.250 grams of Heroin and was charged under Section 54(A) and Section 54(B) of the Poisons, Opium and dangerous Drugs Ordinance, No. 17 of 1929, as amended by Act No 13 of 1984 (hereinafter the Act). The petitioner, made an application before the High Court, to have the suspect enlarged on bail under exceptional circumstances, as provided by Section 83(1) of the Act, pursuant to the above charge.

The law applicable to the instant application within the ambit of granting bail, can be quoted below in the following manner, prior to an analysis of the merits of the application. As such, Section 83(1) of the Act is reproduced below:

(1) No person suspected or accused of an offence under Section 54A or Section 54B of this Ordinance shall be released on bail, except by the High Court in exceptional circumstances.

The petitioner pleads to have the suspect enlarged on bail by submitting several averments before the High Court, in order to constitute exceptional circumstances within the purview of the above-quoted law. The petitioner, inter alia, avers the following to be the said exceptional circumstances:

1. The suspect is the sole breadwinner of the house, and her two children are now rendered defenseless due to the mother's indefinite period of incarceration.
2. The suspect suffers from a permanent ailment in her womb which requires steady and regular medical attention, and if otherwise, the suspect's health is susceptible for aggravation.
3. The suspect has no previous convictions or any other pending cases.

The learned High Court judge set out in the order dated 05.20.2021, that the averments of the petitioner with regard to being the sole breadwinner of the family and the health conditions of the suspect do not sufficiently constitute exceptional circumstances within the ambit of the Act, for they are mere circumstances in the ordinary course of life of a person. As such,

the High Court dismissed the application for bail on the grounds that the petitioner has failed to establish exceptional circumstances required to enlarge the suspect on bail. It must be noted that the term 'exceptional circumstances' is very subjective and cannot be given a firm description. It depends and varies on the circumstances of each case. There is a series of reported cases in relation to granting of bail, which has identified the term 'exceptional circumstances' to be depending on the circumstances of each case.

The Counsel for the petitioner relies on two major grounds as exceptional circumstances before this Court.

1. The vulnerable health condition of the Suspect.
2. The delay caused in the process of administration of Justice.

However, it is the considered view of this Court that the State Counsel at the inquiry did not challenge the facts relating to the health condition of the petitioner, rather, was of the position that such facts do not constitute exceptional circumstances. This leaves room for further interpretation of exceptional circumstances; therefore, this Court will proceed to consider the contentions of the petitioner in order to determine whether exceptional circumstances do exist to enlarge the suspect on bail.

The primary contention of the petitioner in the instant application, is that the suspect is suffering from a permanent ailment in the womb requiring constant medical attention, where the suspect must undergo regular treatments and is subjected to medication regularly. This is corroborated by the medical reports submitted by the petitioner. The Counsel for the petitioner revealed to this Court that the suspect had been subjected to a surgery where her womb and two ovaries have been removed, thus asserting the precarious health condition of the suspect. The petitioner further avers that the suspect's medical needs and required sanitary facilities would not be adequately met in prison due to the scarcity of medicine, and the inability to access a regular supply of medicine needed

from outside. Counsel for the petitioner urged that this inconvenience of obtaining medicine from outside, coupled with the degree of medical attention, and sanitary facilities required by the suspect while in prison, pose a predicament quite out of the ordinary, thus sufficing to constitute exceptional circumstances.

The second ground urged by the petitioner is the delay in the process of administration of justice. At this juncture, this Court also deems it pertinent to note the delay rendered in serving an indictment for the suspect, even after the release of the government analyst's report on 20.02.2021. (According to the Government Analyst's Report the pure quantity of the illegal substance is 2.792 g.) This delay caused the suspect to be in incarceration for a prolonged period of time, precisely more than one and a half years, since the government analyst's report has been signed. At the inquiry, it was submitted by the State Counsel that the indictment has been dispatched to the High Court, however, since it has not been served even at the time of the instant application to this Court or at the time of the inquiry, a significant delay is unmistakably apparent to this Court. In the case **Ahangama Hewage Yasaswathi v Officer In Charge, Police Narcotic Bureau, Colombo** CA (PHC) APN No. 170/2011 Minute dated 21.06.2012, it was stated that *"Learned State Counsel submits that the indictment was sent to the relevant High Court today morning. But the State Counsel has failed to produce a copy of the indictment said to have been sent to the relevant High Court. Even if we assume that the indictment has been sent to the relevant High Court today, the State Counsel has taken more than one and half years to send out the indictment after the Government Analyst's Report was signed by the Government Analyst".* (Emphasis added)

The above reference is germane to the matter at hand, for in the instant application too, the suspect has been in incarceration for a period of more than one and half years since the release of the Government Analyst's Report. Such a circumstance coupled with the pressing health concerns

of the suspect cumulatively establish exceptional circumstances on the part of the suspect, which are sufficient to enlarge the suspect on bail.

Hence this Court is inclined to exercise its revisionary powers and set aside the order dated 20.05.2021 of the High Court of Panadura, and directs the learned High Court Judge to enlarge the suspect on bail on suitable conditions.

Application allowed.

JUDGE OF THE COURT OF APPEAL

Menaka Wijesundera J.

I agree.

JUDGE OF THE COURT OF APPEAL