

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 the Article 138 of the Constitution read together with the Section 365 of the Code of Criminal Procedure Act No. 15 of 1979 of refusing to grant bail by the Hon. High Court of Negombo.

Court of Appeal Case No:
CPA 35 /2022

High Court of Negombo Case No:
HC 558 /19

Magistrate's Court of Wattala Case
No: **B / 1218 /2016**

The Democratic Socialist Republic of Sri Lanka.

Complainant

Vs.

Anvar Jeyalaabdeen Imithiyas

(Currently incarcerated in the remand Prison)

Accused

AND NOW IN BETWEEN

Anvar Jeilaabdeen Nona Parushiya

Of

No.1272/A, Ananda Mawatha,

Hunupitiya, Wattala.

Petitioner

Vs.

Hon. Attorney General,

Attorney General's Department

Colombo 12.

Complainant – Respondent

Before: Menaka Wijesunder J.

Neil Iddawala J.

Counsel: I.B.S. Harshana for the Petitioner.

Indika Nelummini, SC for the Respondent.

Argued on: 26.09.2022

Decided on: 09.11.2022

MENAKA WIJESUNDERA J.

The instant matter has been filed to set aside the order dated 14.12.2021 of the High Court of Negambo.

The accused in the instant matter has been taken in to custody on 27.7 2016 for being in possession of 300 grams of a substance suspected to be heroin. The accused had been produced before the Magistrate under the provisions of the **Poisons Opium and Dangerous drugs Ordinance.**

The Government Analyst Report has been ready on 31.10.2016 and it has detected 145.94 grams of heroin in the alleged substance taken in to custody from the suspect.

The accused has been indicted on 18.9.2019 but the trial had not been taken up.

The main contention of the Counsel for the accused was that the long period in remand without the conclusion of the trial and the leading witness in the instant matter has been disbelieved in the case of the decoy of this Court in trial before the High Court.

The Counsel for the respondents vehemently objected to the application on the basis that the amount which is alleged to have been in the custody of the accused being very high and the trial being postponed on the last date being due to the Counsel of the suspect and not the prosecution.

Having considered the submissions of both parties this Court observes that although the Attorney General has moved to file objections has not done so but has verbally objecting in Court without bringing to the notice of Court their failure to abide by the undertaking given to Court.

Be that as it may, in a matter filed under the provisions of the above mentioned act an accused charged under the said act can be enlarged on bail only upon exceptional circumstances.

The term exceptional has not been defined in the act, but in many of our cases decided cases it has been held that exceptionality differs from case to case.

In the instant matter the exceptionality urged is the long period of remand even after the receipt of the Government Analyst report.

In the case of Attorney General vs. Ediriweera (2006 1 SLR Pg 25) it was held,

“..... Delay is always a relative term and the question to be considered is not whether there was mere explicable delay, as when there is a backlog of cases, but whether there has been excessive or oppressive delay and this always depend on the facts and circumstances of the case.....”

In the instant matter the accused has been in remand since 2016 up to date which is now 7 years and still the trial has not commenced and the State Counsel had objected verbally but has failed to comply with rule 52 of the Supreme Court rules, which in the event of any violation it is the discretion of Court to consider the submissions of the respondents as per the case of *“Christopher v. Don Paul, [1990] 2SLR L R 54 (CA).*

Hence for the reasons stated above this Court sets aside the impugned order of the High Court and direct the learned High Court Judge to enlarges the accused namely AnvarJeyalaabdeenImithiyas on suitable conditions of bail upon the receipt of this Order.

The Registrar of this Court is directed to convey the instant order to the relevant High Court.

Judge of the Court of Appeal.

I agree.

Neil Iddawala J.

Judge of the Court of Appeal.