

**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 read with Section 404 of the Criminal Procedure Code Act no. 15 of 1979.

Court of Appeal Case No:  
**CPA 11/2022**

High Court of Colombo Bail  
Application No: **HC BAIL 267/2021**

Magistrate's Court of Colombo Case  
No: **B 43972/2/2020**

Sudirikku Hennadigodage Piyaseeli,  
No. 184/4, Wennawaththa,  
Wellampitiya.

**Petitioner**

Vs.

1. Officer in Charge

Colombo Crime Division

Dematagoda

2. Hon. Attorney General

Attorney General's Department

Colombo 12.

**Respondents**

Sabdeen Mohammed Suber,

Remand Prison Colombo

**Suspect**

**AND NOW**

Sudirikku Hennadigodage Piyaseeli,

No. 184/4, Wennawaththa,  
Wellampitiya

**Petitioner – Petitioner**

Vs.

1. Officer in Charge

Colombo Crime Division

Dematagoda

2. Hon. Attorney General

Attorney General's Department

Colombo 12.

**Respondents – Respondents**

Sabdeen Mohammed Subair,

Remand Prison, Colombo.

**Suspect – Respondent**

Before: Menaka Wijesundera J.

Neil Iddawala J.

Counsel: Palitha Fernando, PC for the Petitioner.

Indika Nelummini, SC for the State.

Argued on: 12.10.2022

Decided on: 17.11.2022

**MENAKA WIJESUNDERA J.**

The instant application for revision has been filed to set aside the order dated 18.08.2021 of the High Court of Colombo.

The President's Counsel appearing for the suspect stated that he was arrested on 23.08.2020 at the Katunayake Airport while he was planning to travel abroad, and he had been produced under the provisions of the Prevention of Terrorism Act.

While in custody 11 Kilogram's of a substance suspected to be heroin had been taken into custody on 17.10.2020 based on his statement to Police.

The State Counsel appearing for the Attorney General objected to this application.

Having considered the submissions of both parties this Court draws its attention to the Law pertaining to the instant matter.

The Suspect in the instant matter is at present in custody for an offence under the **Poisons, Opium and Dangerous Drugs Act, falling under section 54 of the Act.**

According to section **83 of the Act a person suspected or accused of an offense under section 54 of A and B of the Act shall be released on bail only**

**upon exceptional circumstances. The term exceptional has not been defined in the statute. But in the cases so far decided it has been concluded that exceptionality differs from case to case.**

The learned President's Counsel contended that the suspect being in remand since 2020 without trial or indictment against him is violating the right to his personal liberty and contended further that the main item of evidence against the suspect is a section 27 recovery under the Evidence Ordinance which he said was not sufficient to prove his guilt.

At this point this Court is not inclined to go into the merits of the case but, we observe that he has been first taken into custody under the provisions of the **Prevention of Terrorism Act** and later produced under the instant Act. But, up to date the Law enforcement authorities have failed to take any meaningful action against the suspect.

The state Counsel appearing for the Respondent have failed to state as to when or whether indictment would be forwarded against the suspect or not.

It has been held in the case of **Attorney General vs Ediraweera (supra)** that **“delay is always a relative term and the question to be considered is not whether there was mere explicable delay, but whether there has been excessive or oppressive delay and this always depends on the facts of the circumstances of the case.....”**

The State Counsel has urged that **the quantity** of the substance taken into custody from the suspect is commercial in nature.

The exceptionality urged by the President's Counsel in the instant matter is that there is no sufficient evidence against the suspect to prove exclusive possession of heroin and the period in remand without trial.

As stated above we are unable to go into the merits of the case but we observe that the alleged substance **had been recovered on the statement of the suspect, as such we note that "ends of Justice will be met only by granting bail"** to the suspect as stated in the case of **Carder Vs. OIC Narcotic Bureau 2006 page SLR by Justice Eric Basnayake.**

Hence, the instant application is allowed and the impugned order dated 18.08.2021 of the High Court is here by set aside and we direct the learned High Court Judge to enlarge the suspect namely **Sabdeen Mohammed Suber** on suitable conditions of bail.

**Judge of the Court of Appeal.**

**I agree.**

**Neil Iddawala J.**

**Judge of the Court of Appeal.**