

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

**REPUBLIC OF SRI LANKA.**

Court of Appeal Case No:  
**CPA / 12/ 2022**

High Court of Panadura Bail  
Application No: **HC BA 34/2021**

Magistrete's of Horana Case No:  
**B 35447/2018**

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.

Eththiligoda Widanagamage  
Nadeeka Kumari,

No. 71/3, Mahagalawatta,  
Cheena Koratuwa,

Galle.

**Petitioner**

Vs.

1. Officer in Charge,

Police Narcotics Bureau,

Colombo 01

2. Hon. Attorney General,

Attorney General's Department,

Colombo 12.

**Respondents**

Weerakkodi Sunil Shantha,  
Remand Prison,  
Boossa.

**Suspect**

**AND NOW**

Eththiligoda Widanagamage  
Nadeeka Kumari,  
No. 71/3, Mahagalawatta,  
CheenaKoratuwa,  
Galle.

**Petitioner – Petitioner**

**Vs.**

1. Officer in Charge,  
Police Narcotics Bureau,  
Colombo 01  
2. Hon. Attorney General,  
Attorney General's Department,  
Colombo 12.

**Respondent – Respondents**

Weerakkodi Sunil Shantha,  
Remand Prison,  
Boossa.

**Suspect – Respondent**

Before: Menaka Wijesundera J.

Neil Iddawal J.

Counsel: Palitha Fernando, PC for the Petitioner.

Yohan Abeywickrema, DSG for the State.

Argued on: 12.10.2022

Decided on: 17.11.2022

**MENAKA WIJESUNDERA J.**

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

The Counsel for the suspect stated that the suspect had been arrested by the Narcotics Bureau on the 4.5.2018 for the alleged possession of 100 grams of a substance suspected to be heroin under the provisions of the **Poisons, Opium and Dangerous Drugs Act No 13 of 1984**

The main contention of the Counsel for the suspect is that he is in remand custody since his arrest without the trial concluding.

The state Counsel appearing for the Respondents objected to the application.

The law pertaining to the instant application concerning bail is laid under section 83 of the act which has very clearly stated that a suspect arrested or charged under section 54 A and B of the act can be enlarged on bail only upon exceptional instances by the High Court.

The term exceptional has not been denied in the act but in numerous cases decided by our Court had concluded that exceptional circumstances vary from case to case. In the instant matter the exceptionality is the delay in concluding the trial and the suspect languishing in remand.

In the case of **Attorney General Vs. Ediriweera (Supra)** 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 depends on the facts and circumstances of the case.....”**

***In the instant matter the indictment had been filed against the suspect but the trial had not concluded according to the brief submitted to us, therefore up-to-date if one may calculate the suspect had been in remand for nearly five years, which in the opinion of this Court is “excessive and oppressive”.***

***Hence it is the considered opinion of this Court that “ends of justice will be met only by granting bail” as decided in the case of Carder vs. O.I.C Narcotics Bureau [2006] 3 SLR in page 74 at page 77 by Justice Eric Basnayake.***

***As such the instant application for revision is allowed and the impugned order of the High Court is set aside and we order the trial judge to enlarge the suspect on suitable condition of bail.***

**Judge of the Court of Appeal.**

**I agree.**

**Neil Iddawala J.**

**Judge of the Court of Appeal.**