

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 Article 138 of the Constitution
read together with the section
365 of the Code of Criminal
Procedure Act No: 15 of 1979
against the bail refusing order
dated 27.10.2021 by the Hon.
High Court Judge of Panadura.

Court of Appeal Case No:
CA / PHC / APN / 14 / 2022

High Court of Panadura Bail Case
No: **BA 136 / 2021**

Magistrate's Court of Moratuwa
Case No: **B 1887 /2020**

The officer in Charge
Police Station
Mount Lavinia.

Complainant

Vs.

Madiha Arachchige Sampath
Athula Gunawardena.

No: C/08/04, Sayurupura Mahal
Niwasa, Angulana.

**(Currently incarcerated in the
Kalutara Remand Prison)**

Suspect

AND THEN

Wannakuwaththa Waduge
Miyoni Fernando.

No: F/ 04/ 04, Sayurupura,
Angulana

Petitioner

On Behalf of

Madiha Arachchige Sampath
Athula Gunawardena.

No: C/08/04, Sayurupura Mahal
Niwasa, Angulana.

**(Currently incarcerated in the
Kalutara Remand Prison)**

Suspect

1. Hon. Attorney General,
Attorney General's Department
Colombo 12.
2. The Officer in Charge
Police Station
Mount Lavinia.

Respondents – Respondents

AND NOW BETWEEN

Wannakuwaththa Waduge
Miyoni Fernando.

No: F/ 04/ 04, Sayurupura,
Angulana

Petitioner – Petitioner

On Behalf of

Madiha Arachchige Sampath
Athula Gunawardena.

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Suspect

1. Hon. Attorney General,
Attorney General's Department
Colombo 12.
2. The Officer in Charge
Police Station
Mount Lavinia.

Respondents – Respondents

Before: Menaka Wijesundera J.

Neil Iddawala J.

Counsel: Kasun Liyanage for the petitioner.

Ridma Kuruwita, SC for the State.

Argued On: 01.11.2022

Decided On: 22.11.2022

MENAKA WIJESUNDERA J.

The instant application has been filed to obtain bail for the suspect namely Madiha Archchige Sampth Athula Gunawardena under the provisions of the Poisons, Opium and Dangerous Drugs (Amendment) Act No 13 of 1984. The suspect in the instant matter had been arrested on 19.10.2020 for being in possession of 3.33g of Heroin. The main contention of the Counsel for the suspect is that when the suspect was produced before the Magistrate the B report filed before Court did not specify the place from where the Heroin was recovered, instead it had only mentioned that the Heroin was recovered from the **custody of the suspect**. Hence the Counsel submitted that the suspect is greatly prejudiced by this fact and that he is in remand since the date of arrest and subsequently even after the receipt of the Government Analyst report the suspect is in remand without any judicial proceedings being concluded against him.

The Attorney General objected to this application and stated that the Counsel for the suspect has not averred any exceptional circumstances in the instant matter.

Considering the submissions of both parties the law relating to the instant matter is that when a suspect is produced under the provisions of Poisons, Opium And Dangerous Drugs Act under section 54 (A) (B) bail can be considered only under section 83 which says that **“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 term exceptional had not been defined in the statute. But in some of the cases so far decided has enumerated the term exceptional to be depending on the facts of each case. Some of the circumstances which have been considered to be exceptional are,

- i. **The delay considered in the case of Milroy Fernando vs. AG CA Bail 542/90**
- ii. **The period in remand considered in the case of OIC Police Narcotic Bureau vs. Kanahalagamage Suneehtha CA Revision 3/2002**
- iii. **Nature of the offence considered in the case of Mohansing vs. State of Utra Pradesh**

In the instant matter the exceptionality pleaded by the Counsel for the suspect is the failure of the police to state the exact place of Heroin from where it was recovered while in the custody of the suspect. At this juncture this Court draws its attention to the case of **CA (PHC) APN 09/2019 decided on 19.07.2010 by Sisira De Abrew, J where it had been**

held that “the police have failed to state the particular place (the body of the suspect) where Heroin was found...” it had been considered a suitable situation to consider bail against the suspect who had been arrested for being in possession of 50g of Heroin.

Therefore, in the light of the above mentioned case we are unable to agree with the learned State Counsel that the Counsel for the suspect has failed to plead any exceptional circumstances, the above mentioned exceptionality cited by the Counsel for the suspect we hold as good enough to enlarge the suspect namely Madiha Archchige Sampath Athula Gunawardena on bail.

As such the instant application for bail is allowed and the impugned order of the learned High Court Judge dated 27.10.2021 is hereby set-aside and we direct the learned High Court Judge to enlarge above mentioned suspect namely Madiha Archchige Sampath Athula Gunawardena on suitable conditions of bail.

Judge of the Court of Appeal.

I agree.

Neil Iddawala J.

Judge of the Court of Appeal.