

IN THE COURT OF APPEAL OF THE DEMOCRATIC SOCIALIST

REPUBLIC OF SRI LANKA.

In the matter of an application for
Revision under Article 138 of the
Constitution of the Democratic
Socialist Republic of Sri Lanka.

The Hon. Attorney General,
The Attorney General's Department,
Colombo 12.

Court of Appeal Case No:
CPA 56/2022

High Court of Negombo Case No:
HC 191/21

Magistrate's Court of Welisara Case
No: **739/19**

Complainant

Vs.

Warnakulasooriyage Maduranga
Fernando

**(Currently held in Remand custody
in Negombo)**

Accused

AND NOW BETWEEN

Warnakulasooriyage Maduranga
Fernando

Petitioner

Vs

The Hon. Attorney General
Attorney General's Department
Colombo 12.

Respondents

Before: Menaka Wijesundera J.

Neil Iddawala J.

Counsel: Hafeel Fariz for the Petitioner.

Y. Abeywickrema for the State. DSG.

Argued on: 08.11.2022

Decided on: 06.12.2022

MENAKA WIJESUNDERA J.

The instant application has been filed to obtain bail to the accused namely **Waranakulasuriyage Maduranga Fernando under the provisions of the Poisons Opium and Dangerous Drugs Act.**

The Counsel for the accused contended that he had been arrested in 2019 along with three others for being in possession of a substance suspected to be heroin while travelling in a vehicle. The Government Analyst report had revealed the substance to be heroin and the alleged quantity to be 20 grams.

The Counsel further submitted that the case is a total fabrication and that they had requested the tower reports to prove that the arrest had not taken place as alleged by the police, but in the meantime the Attorney General had discharged the other three suspects and had indicted the accused in the High Court of Negambo in 2022.

Upon the service of the indictment the Counsel for the accused had made an application for bail but it had been refused on the basis that in view of the quantity of the heroin bail can be considered once the main witnesses of the prosecution are over.

The Counsel appearing for the Respondents objected to the instant application on the basis of lack of exceptional circumstances.

The law pertaining to the instant application is that if a person is indicted or arrested under the provisions of the above mentioned act bail can be considered only upon exceptional circumstances, but the statute has not defined the term exceptional. But the cases so far decided has defined exceptional circumstances to be decided on facts of each case, and this has been very clearly stated in the case of **Ramu Thamodarumpillai vs. The Attorney General**, although it is case after the trial pending the appeal.

The instant matter is during trial hence the most important aspect here is to make sure that the accused appears to face the trial hence the likelihood of absconding is lesser than when considering bail pending the appeal.

The main contention of the Counsel for the accused is that the instant case is a fabrication by the prosecution witnesses but as stated in the recently decided case in the **Supreme Court 53-2022 that "creditworthiness of witnesses and morality cannot be considered in a bail application under the above mentioned act"**., but this Court observes that the learned High Court Judge had stated that bail would be considered upon the conclusion of the main witnesses of the prosecution, hence we direct the learned High Court Judge to expedite this matter and consider bail upon the conclusion of the main witness of the prosecution as per his order dated 1.4.2022.

As such the instant application is dismissed.

Judge of the Court of Appeal.

I agree.

Neil Iddawala J.

Judge of the Court of Appeal.