

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 read with section 404 of the code of criminal procedure act no. 15 of 1979.

Court of Appeal Case No:
CPA 52 / 22

High Court of Gampaha Case
No: **HC 171 / 21**

Magistrate's Court of Mahara
Case No: **B 4161 /2019**

The democratic socialist republic of Sri Lanka.

Complainant

Vs.

Amaratunga Arachchige Janitha
Lasantha Perera.

Accused

AND NOW BETWEEN

K.M.G. Medha Kaushalya Dias,
351, Lumbini Road, Dalugama,
Kelaniya.

Petitioner

On behalf of

Amarathunga Arachchige
Janitha Lasantha Perera.

Vs.

Hon. Attorney General,
Attorney General Department,
Colombo 12.

Complainant – Respondent

Before: Menaka Wijesundera J.

Neil Iddawala J.

Counsel: Tenny Fernando appears for the Accused Appellant.

Panchali Witharana, SC for the state.

Argued on: 17.11.2022

Decided on: 14.12.2022

MENAKA WIJESUNDERA J.

The instant application has been filed to set aside the order dated 1.4.2022 of the High Court of Gampaha.

The accused in the instant matter had been indicted for being in possession of 177.74 grammas of heroin in the High Court. He had been taken in to custody in 2019 and he had been indicted in 2021 but the trial had not yet commenced.

The main ground urged by the Counsel for the accused is that,

- 1) The likelihood of the trial being concluded in the near future being very remote,
- 2) The main investigative officers of the matter being accused for similar offences hence the credibility of the prosecution witnesses being questionable,
- 3) The health condition of the accused.

The Counsel appearing for the respondents vehemently objected to the application and stated that this Court cannot go in to the merits of the case in a bail application.

The law pertaining to the instant matter is that the accused in the instant matter had been indicted under the provisions of the Poisons Opium and Dangerous Drugs act and according to the latest amendment to the act no 41 of 2022 under which if the accused is indicted or produced under section 54 And B of the act and if it is more than 10 grams bail can be considered by the Court of Appeal only on exceptional grounds.

As it had been said in many of our decided cases by this bench the term exceptional has not been defined in the statute but it has been decided in many of the cases so far decided that exceptionality defers from case to case.

In the instant matter the exceptional circumstances cited are stated above. But it has been held in the recently decided case by the Supreme

Court in SC Application 53-2022 that the credit worthiness of witnesses and morality cannot be considered in a bail application.

But we take in to consideration the health condition of the accused which is substantiated by medical reports which say that the accused is suffering from a continuing illness termed as the double vessel disease and had undergone treatment at a Private Hospital.

Hence receiving treatment inside the prison seem to be very remote and as such it is the considered view of this Court that it is only but fair to enlarge the accused on bail as the conclusion of the trial in the near future appear to be very remote.

As such the instant application is allowed and the order of the High Court is hereby set-aside and we direct the learned High Court Judge to enlarge the above named accused on suitable conditions of bail.

Judge of the Court of Appeal.

I agree

Neil Iddawala J.

Judge of the Court of Appeal.