

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 of the Democratic Socialist Republic of Sri Lanka read together with the section 404 of the Code of Criminal Procedure Act No. 15 of 1979 for revising judgment/order of the High Court.

Colombo High Court Case
No. HC 1300/2019
CA (PHC) APN 110/2021

Subhashini Damayanthi,
10/8, Saunders Place
Colombo 12.

Petitioner

Vs.

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

Complainant-Petitioner

Before: **Menaka Wijesundera, J.**
Neil Iddawala, J.

Counsel: Kasun Liyanage for the Petitioner
Deshan Aluwihare, SC for the State

Decided on: 25.05.2022

Menaka Wijesundera, J.

The instant application has been filed to revise the order dated 30.04.2021. In this matter the State Counsel has taken up an objection stating that the Petition is not in order because in the caption the Petitioner has not named the relevant Police Station which has conducted the investigations.

This we note and that the Petitioner has failed to submit to Court the amended Petition. When the relevant Police Station is not mentioned, the Attorney-General appearing on behalf of the respondents is at a disadvantage because they are unable to obtain the relevant instructions. This we see, as a failure on the part of the Petitioner and a valid objections to dismiss the Petition. But nevertheless as the matter has been taken up for inquiry, we take note of the fact that the accused in this matter namely Yohan Shashika Nanayakkara has been indicted in the High Court for being in possession of 42.476gm of heroin and cannabis as well. The accused has been taken into custody in 2018, the main contention of the Petitioner is that the accused has been in remand since then which is four years and two months.

The above named accused has been taken into custody for an offence under the Provisions of the Poisons, Opium and Dangerous Drugs. In the said act a person who is taken into custody under the Provisions of the Act bail can be granted only upon an exceptional circumstances. The term exceptional has not been defined in the act but in many of our decided cases the term exceptional has been defined and finally it was come to be followed that the exceptionality has to be decided according to the facts of each case. In the instant matter the exceptionality urged by the Petitioner is the long period of remand but this Court makes note that the amount involved in the instant matter is 42.476gm of heroin which is of a commercial value and the inadequacies in the Petition pointed out by the Attorney General, we see as grounds not to enlarge the suspect on bail. The second point is that the trial has already commenced and witness No. 1 is under examination. Therefore, although four years had taken as the trial is in progress and in view of the commercial quantity of the heroin involved and the inadequacy in

the Petition, we see as grounds good enough to dismiss the instant application for revision. As such the instant application for revision is dismissed.

JUDGE OF THE COURT OF APPEAL

Neil Iddawala, J.

I agree.

JUDGE OF THE COURT OF APPEAL

Mm/-