

**IN THE COURT OF APPEAL OF THE DEMOCRATIC SOCIALIST REPUBLIC OF
SRI LANKA**

In the matter of a Revision Application in terms of Section 136 of the Constitution read with Section 364 and 404 of the Criminal Procedure Code Act No. 15 of 1979.

Hetti Arachchige Champika Damayanthi,
No. 511/11, Maithree Mawatha,
Waragoda, Kelaniya.

Court of Appeal Revision Application

No: CPA-0016-22

H.C. Gampaha Bail Application No:

HCBA 379/21

M.C. Mahara Case No:

B2753/21

Petitioner - Petitioner

Vs.

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

1st Respondent-Respondent

2. Officer in Charge,
Police Narcotic Bureau,
Colombo 01.

2nd Respondent-Respondent

And

Abesekare Gama Arachchilage
Ubhayathissa Priyantha

1st Suspect (In remand Custody)

Before : **Hon. Justice Menaka Wijesundera**
Hon. Justice Neil Iddawala

Counsel : Neranjan Jayasinghe with Harshana Ananda for the Petitioner.
Panchali Witharana, SC for the Respondent.

Argued and

Decided on : 09/08/2022

Hon. Justice Menaka Wijesundera

Submissions of both parties are concluded. The instant bail application has been filed to obtain bail to Abesekare Gama Arachchilage Ubhayathissa Priyantha who is in remand custody. The instant Petition has been filed by his wife, the Petitioner namely, Hettiarachchige Champika Damayanthi.

According to the submissions of the Counsel for the Petitioner, the Suspect in the instant matter has been taken into custody on the 10/09/2021 for allegedly being in possession of 132kg of cannabis. The main contention of the Counsel for the Suspect is that the Suspect has been in remand since September, 2021 and whereas the other Suspect who had been taken into custody along with this Suspect had been enlarged on bail on 23/11/2021 which is after only three months.

The second ground urged by the Counsel is that the Suspect in the instant matter has been in remand since September, 2021 which is 11 months and if the instant Suspect is found guilty for the alleged offence the period of imprisonment for the instant offence would be a maximum of 05 years, which is one fifth of the time he has already been spent in remand.

The third ground urged by the Counsel is that although the Suspect has been in remand for 11 months, the legal proceedings being initiated against the Suspect if any is yet not known.

The State Counsel appearing for the Respondents objected to the instant matter stating that the instant application has been filed by the wife of the Suspect and that she has no *locus standi*. Secondly, she stated that the Petitioner has failed to state a previous conviction pertaining to the Suspect in the petition.

Considering the submissions of both parties, this Court observes that the State Counsel contends that the wife of the Suspect does not have a *locus standi* to file the instant action is without substance because it has been held very clearly in the case of **Shriyani Silva vs. Iddamalgoda, Officer- in -Charge of Payagala and others (2003) SLR 14** where the Supreme Court has held that “anyone having a legitimate interest could prosecute..... in terms of Article 126(2) of the constitution” and further held that “in deciding that the aggrieved party does not have a *locus standi* to litigate would amount within Court to a preposterous situation that can leave to a mischief,” Therefore, this Court holds that the Petitioner being spouse of the Suspect has the *locus standi* to prefer the instant application. Therefore, we cannot agree with the said submissions of the State Counsel.

Secondly, this Court observes that as pointed out by the Counsel for the Petitioner if the Suspect in remand is found guilty for the alleged offence, the maximum period of imprisonment to be meted out to him according to the section is 05 years of imprisonment or a fine but he has been in remand already for 11 months which is in fact more than 1/5 of the sentence enshrined in the relevant section.

Furthermore according to the State Counsel, they have not yet even received the IB extracts pertaining to this matter. Hence, the date of any judicial proceedings against the Suspect is yet unknown. Therefore, considering all these submissions, this Court sees the instant application as a fit case to act in revision and set aside the order dated 18/01/2022 of the High Court which has not considered the above grounds. As such the impugned order dated 18/01/2022 is hereby revised and the Suspect namely, Abesekare Gama Arachchilage Ubhayathissa Priyantha is enlarged on bail on the following conditions:-

01. A Cash Bail of Rupees Five Hundred Thousand.
02. Two sureties to the value of Two Hundred and Fifty Thousand each.
03. The Suspect to report to the relevant Police Station on every last Sunday of the month.
04. The Suspect to surrender his passport if any to the relevant Registrar of the High Court.

The Registrar of this Court is ordered to convey the above order to the Magistrate's Court of Mahara. As such, the instant application for revision is allowed.

JUDGE OF THE COURT OF APPEAL

Hon. Justice Neil Iddawala

I agree.

JUDGE OF THE COURT OF APPEAL

NS/-