

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

In the matter of an application for Revision in terms of Article 138 read with Article 154 P (3) (b) of the Constitution of the Democratic Socialist Republic of Sri Lanka against the Order of Provincial High Court of the Western Province Holden in Panadura.

**Court of Appeal Revision Application No:-**

**CA/PHC/APN 0103/2021**

**High Court of Panadura**

**Bail Application No:- 0210/20**

**Magistrate's Court of**

**Panadura Case No:- 72449/20**

Chief Inspector of Police,  
Police Station,  
Panadura.

**COMPLAINANT**

**Vs.**

Mahamalage Imesh Jood Madushanka  
Perera

**SUSPECT**

**And**

Arapaththu Ralalage Sudarshanie,  
325/2, Mandawal Road,  
Malamulla,  
Panadura.

**PETITIONER**

**Vs.**

01. Chief Inspector of Police,  
Police Station,  
Panadura.

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

**RESPONDENTS**

**And now between**

Atapaththu Ralalage Sudarshanie,  
325/2, Mandawala Road,  
Malamulla,  
Panadura.

**PETITIONER-PETITIONER**

01. Chief Inspector of Police,  
Police Station,  
Panadura.

**COMPLAINANT-RESPONDENT**

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

**RESPONDENT-RESPONDENT**

**Vs.**

Mahamalage Imesh Jood Madusanka  
Perera.

**SUSPECT-RESPONDENT**

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

**Counsel** :- Kasun Liyanage with Nipunika Karunathilaka for the  
Petitioner.  
Nishanth Nagaratnam, SC for the Respondents.

**Decided on** :- 31.08.2022

**Hon. Justice Menaka Wijesundera**

The instant application has been filed to obtain bail to Mahamalage Imesh Jood Madusanka Perera under the Provisions of the Poisons, Opium and Dangerous Drugs Ordinance as amended by Act No.13 of 1984.

The said application has been refused by the High Court of Panadura on 18.06.2021 and upon that refusal, the instant application has been filed. According to the submissions of both parties the suspect had been taken into custody for being in possession of a substance suspected to be Heroin and produced before the Magistrate on 27.02.2020 and in remand since then. The Counsel appearing for the suspect stated that the suspect had been in remand now nearly for over two years and the Government Analyst Report had been received on 15.02.2021 and even after the receipt of the Government Analyst Report the indictment has not been filed. The 02<sup>nd</sup> round urged by the Counsel for the suspect is that in the B Report mentioned above the police have failed to state the gross quantity of Heroin and the place of recovery of the alleged substance. The B Report, it appears has only stated that the alleged substance had been recovered from the custody of the suspect.

The learned State Counsel in reply to the above submissions stated that the indictment was dispatched to the High Court of Panadura yesterday, and he further stated that the grounds urged by the Counsel for the Suspect are not exceptional.

But he concedes that the Police has failed to state from where the alleged substance has been recovered and the gross quantity of the said alleged substance.

The Counsel appearing for the Suspect cited a Judgment by His Lordship Justice Sisira De Abrew, CA/PHC/APN 0009-2010 decided on 19.07.2010 in which His Lordship had decided that the Police in failing to mention as to the exact location of recovery is a miscarriage of justice and on that basis in the said matter, the Suspect had been enlarged on bail.

According to the provisions of the instant Act a Suspect who is taken into custody under the current Act can be enlarged on bail only upon exceptional circumstances. The term exceptional has not been defined but nevertheless, in the cases so far decided it has been more or less come to the conclusion that exceptionality defers from case to case according to its facts. But in the instant case, this Court notes that the Police have failed to mention the exact place from where the alleged substance has been recovered and also it has failed very strangely to mention the gross quantity of the alleged substance. It is well settled law that the B Report has to furnish the Magistrate with all details to facilitate the Magistrate to come to a conclusion whether the Suspect in question should be remanded or not. But when there are infirmities of this nature in the B Report, the Magistrate is unable to come to a justifiable conclusion.

As such, we see this as an exceptionality to consider bail for the instant Suspect and furthermore although the learned State Counsel has said that the relevant indictment has been dispatched yesterday, we observe that it has been done so after a lapse of two years and six months from the date of arrest and from the receipt of the Government Analyst more than one year.

As such, we see these two instances as being exceptional enough to enlarge the Suspect namely, Mahamalage Imesh Jood Madusanka Perera on the following conditions of bail:-

01. A cash bail of Rs. 500,000/-.
02. Two sureties to the value of 1,000,000.
03. The Suspect is directed to report to Panadura South Police Station on every Sunday of the month.
04. The Suspect is directed to hand over his Passport, if any to the Registrar of High Court of Panadura.

As such, the instant revision application is allowed and the impugned Order dated 18.06.2021 is hereby revised.

The Registrar of this Court is directed to inform the Registrar of the High Court of Panadura regarding the above-mentioned Order.

Instant application for revision is allowed.

**JUDGE OF THE COURT OF APPEAL**

**Hon. Justice Neil Iddawala.**

I agree.

**JUDGE OF THE COURT OF APPEAL**

SMR/-