

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

*In the matter of an application for Revision
under Article 138 (1) of the Constitution
read with section 365 of the Code of
Criminal Procedure.*

Officer in Charge,
Police Station,
Thellippalai

Complainant

Vs.

Court of Appeal Application
No: **CPA/74/22**

High Court of Jaffna Bail
Application No:
HCJ/BA/1769/21

Magistrate's Court
(Mallakkam) Case No:
B/1748/H/20

Meneri Gamage Don Amila Udayanga,
175/20, Nagalagam Weediya,
Colombo 14.

(Presently at Remand Prison Jaffna)

Suspect

AND BETWEEN

1. Meneri Gamage Don Amila Udayanga,
175/20, Nagalagam Weediya,
Colombo 14.

Suspect-Petitioner

2. Akmeemana Pathirage Dharshanika
Sandamali,
175/20, Nagalagam Weediya,
Colombo 14.

Petitioner

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Vs.

1. Officer in Charge,
Police Station,
Thellippalai

Complainant- Respondent

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

Respondent

AND NOW BETWEEN

1. Meneri Gamage Don Amila Udayanga,
175/20, Nagalagam Weediya,
Colombo 14.

(Presently at Remand Prison Jaffna)

Suspect-Petitioner-Petitioner

2. Akmeemana Pathirage Dharshanika
Sandamali,
175/20, Nagalagam Weediya,
Colombo 14.

Petitioner-Petitioner

Vs.

1. Officer in Charge,
Police Station,
Thellippalai

Complainant- Respondent-Respondent

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

Respondent- Respondent

BEFORE : Menaka Wijesundera J
Neil Iddawala J

COUNSEL : ASM Perera PC with Uvindu Jayasiri for
the Petitioner
Nishanthi Nagaratnam State Counsel for
the State

Argued on : 24.01.2023

Decided on : 02.03.2023

Iddawala – J

This is a revisionary application filed on 05.07.2022 against the order of the learned High Court Judge of the Jaffna High Court dated 24.06.2022 refusing bail for the Suspect-Petitioner-Petitioner (*hereinafter referred to as 1st Petitioner*) who is presently in the remand prison of Jaffna. The application further seeks granting of bail to the 1st petitioner.

The facts of the case are as follows. The 1st petitioner has been taken into custody on or about 17.12.2020 in Point Pedro for committing an offence under S. 54 (a) and (b) of the Poisons, Opium and Dangerous Drugs Act No. 17 of 1929 as amended (*hereinafter referred to as the Drugs Act*) for possessing 212 grams of heroin in which 103 grams were of pure quantity. Being remanded by the

learned Magistrate of Mallakam on 23.12.2020, the 1st petitioner filed for bail on 01.02.2020 to the Jaffna HC which was refused. Thereafter a second bail application was filed on 01.10.2020 and was refused on 24.06.2022.

The 1st petitioner claims an involvement of one Suthaharan Lohini who was arrested alongside him with 23 grams of heroin where she has maliciously given information against the 1st petitioner to incriminate him. Furthermore, she has been released on bail in 2021. However, the respondents claim that there is no connection of one Lohini to the 1st petitioner's case as she was arrested 25 kms away from him and was released on bail due to the lower quantity of heroin as opposed to the 1st petitioner. The facts are at dispute herein therefore this Court would leave the trial judge to determine the truth and would not give much emphasis to it at this stage.

The 1st petitioner states that he invoked the revisionary powers of this Court on the following exceptional circumstances;

- (a) the 1st petitioner being incarcerated in Jaffna and his wife (2nd petitioner), the only person who could act on behalf of him living in Colombo, there is extremely limited contact and communication between them.
- (b) The transport restrictions have resulted in traveling difficulties and difficulty in obtaining certified copies.
- (c) Delay in obtaining affidavit from the suspect due to traveling restrictions and delay in obtaining translated copies. (Elaborations mentioned in the petition)

The 1st petitioner prays for the granting of bail from this Court on the following grounds;

- (a) Government Analyst's report has been issued on 29.01.2021 and no indictment has been filed until the date of this petition.
- (b) Petitioner in remand for over 19 months (25 months until the day of arguments)

- (c) The 1st Petitioner denies the allegations of the possession of heroin and claims he is incriminated as mentioned above.
- (d) The 1st Petitioner believes evidence alleged to be against him is fabricated against him and there is no sufficient admissible evidence against him.
- (e) The 1st petitioner has no criminal cases pending against him and there are no cases in which he has been found guilty.

During the arguments the learned President's Counsel appearing for the petitioner further submitted to this Court that due to the difficulty in language and difficulty in communication with the counsel of his choice he is deprived of a fair trial, further, he is unable to communicate with anyone. The State Counsel appearing for the respondents stated that the exceptional circumstances do not exist in this matter and the indictment has been filed in last October and date is fixed for trial. The learned SC further submitted that the order of the learned HC judge is not illegal to be subjected to the revisionary powers of this Court. And that the exceptional circumstances do not warrant invoking revision. It was further submitted that the averments of the petition do not elucidate how the order of the learned HC judge is illegal and this Court exercising revisionary jurisdiction without such grounds would open floodgates to bad precedent. The learned SC submitted to this Court that the 1st petitioner can always obtain assistance from counsel in Jaffna or through legal aid in Jaffna.

This Court is inclined to the submissions of the respondents. It is well settled law that the power of revision vested in this Court can be exercised and in certain circumstances ought to be exercised when the impugned order is tainted with illegalities or entered without jurisdiction or in excess of jurisdiction. As reiterated in several Judgments of this Court where a

strong case for the interference of this Court is made out or a miscarriage of justice has occurred, this Court is obliged to revise such an order. We see no reason to interfere with the order delivered by the learned High Court Judge of Jaffna. While this Court acknowledges the 1st petitioner has been incarcerated from a considerably long period of time, as the indictment is already filed and date is fixed for the trial this Court does not envision a need of granting bail to the suspect petitioner at this instance.

Application dismissed

JUDGE OF THE COURT OF APPEAL

Menaka Wijesundera J.

I agree.

JUDGE OF THE COURT OF APPEAL