

**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.

Officer in Charge

Police Station

Ingiriya.

**Complainant**

Vs.

1. Ruwan Rupasinghe Haputantri

Temple Road

Hadapanagoda

2. Godage Indika Jayantha

17/1. Gatapussawa

Hadapanagoda

**Suspects**

**AND NOW**

Harankaha Vidanalage Siriyawathi

Temple Road, Hadapanagoda

Gonapala Junction.

**Petitioner**

Vs.

1. Officer in Charge

Police Station

Ingiriya

**Complainant – Respondent**

Court of Appeal Case No: **CA (PHC)  
APN 86/22**

High Court of Panadura Case No:  
**HCBA 197/2021**

Magistrate's Court of Horana Case No:  
**55314 / 2020**

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

**Respondent**

3.Ruwan Rupasinghe Haputantri  
Temple Road  
Hadapanagoda.

**1<sup>st</sup> Suspect – Respondent**

**AND NOW BETWEEN**

Harankaha Vidanalage Siriyawathi  
Temple Road, Hadapanagoda  
Gonapala Junction.

**Petitioner – Petitioner**

Vs.

1.Officer in Charge  
Police Station  
Ingiriya

**Complainant – Respondent –  
Respondent**

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

**Respondent – Respondent**

3.Ruwan Rupasinghe Haputantri  
Temple Road  
Hadapanagoda.

**1<sup>st</sup> Suspect – Respondent –  
Respondent**

Before: Menaka Wijesundera J.

Neil Iddawala J.

Counsel: Asanka D. Mendis for the Petitioner – Petitioner

Jayalakshi De Silva, S.C. for the Respondent – Respondent.

Argued on: 14.02.2023

Decided on: 29.03.2023

**MENAKA WIJESUNDERA J.**

The instant bail application has been filed to set aside the order dated 15.7.2022 of the High Court of Panadura.

The suspect respondent had been taken in to custody for allegedly possessing 31560 of a substance suspected to be heroin on 27.6.2020 under the provisions of the Poisons Opium and Dangerous Drugs act , and has been in remand ever since.

The Government Analyst report has been received on 18.3.2021 and it has identified 20 grammes of pure quantity of heroin.

The main contention of the Counsel for the suspect is that the place of heroin from where it has been recovered has not been stated in the initial B report. He also stated that even after the receipt of the Government Analyst report the indictment has not been forwarded.

The law pertaining to the instant matter is that if a suspect is produced under the instant act and if it is over 5grammes the suspect must show exceptional grounds to obtain bail from the Court of Appeal. But the term exceptional has not been defined in the act but in numerous cases so far decided has said that exceptional circumstances differ from case to case.

In the instant matter the exceptionality urged is the non-reference to the place of discovery of the heroin in the initial B report.

Upon perusal of the brief, we find that the police have failed to mention the place from where the heroin had been detected.

At this point this Court draws its attention to a judgment delivered by this bench on **16.6.2022 in CA-1-2022** where it has been held that **“the omission by the excise officers**

**to specifically delineate where heroin was found in the suspects person is a grave situation that must be given due judicial regard. ”**

The said judgment further goes on to cite the judgment of **Justice Sisira de Abrew** in which his Lordship also has taken the same view in the case of **Udumulla Kankanamlage Sumathipala vs Attorney General CA-PHC-APN 9-2010 dated 19.7.2020.**

Further to above we note that although the Government Analyst report had been ready in the year 2021 any meaningful action is yet to be taken against the suspect.

The learned Counsel for the Attorney General objected to the instant application but conceded the fact that any meaningful legal action is still pending.

As such this Court also considers the same to be exceptional which the learned High Court Judge had failed to pay due judicial regard. As such the impugned order of the learned High Court Judge is hereby set aside and we direct the learned High Court Judge to enlarge the 1<sup>st</sup> suspect respondent -respondent on suitable conditions on bail.

**Judge of the Court of Appeal.**

**I agree.**

**Neil Iddawala J.**

**Judge of the Court of Appeal.**