

**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 of the Constitution of the  
Democratic Socialist Republic of Sri Lanka.*

Lekamwasam Liyanage Lakshani  
No.25/40,  
Poranuwa Kotuwa Watta,  
Peliyagoda.  
(Presently at Colombo Remand Prison)

Court of Appeal Application  
No: **CA/CPA/79/22**

**Petitioner**

High Court of Gampaha  
No: **HCBA 377/2021**

**Vs.**

Magistrate Court Mahara  
No.: **B 1722/2021**

1. Officer-in-Charge,  
Police Station,  
Sapugaskanda.
2. Hon. Attorney General,  
Attorney General's Department,  
Colombo 12.

**Respondents**

**AND NOW**

Lekamwasam Liyanage Lakshani  
No.25/40,  
Poranuwa Kotuwa Watta,  
Peliyagoda.

**Petitioner-Petitioner**

**Vs.**

1. Officer in Charge  
Police Station  
Sapugaskanda

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

**Respondents-Respondents**

**BEFORE** : Menaka Wijesundera J  
Neil Iddawala J

**COUNSEL** : Hafeel Farisz for the Petitioner  
Nishantha Nagaratnam, SC for the  
Respondents

**Argued on** : 16.01.2023

**Decided on** : 14.02.2023

**Iddawala – J**

This is an application for revision filed on 24.08.2022 against the order of the Learned High Court Judge of Gampaha dated 01.08.2022 in the cases No. HCBA 377/2021 and No. HCBA 288/2021. This Court will deliver one judgment with respect to both the cases. The said order dated 01.08.2022 refused to grant bail to the 3<sup>rd</sup> suspect or the accused-petitioner of PHC/APN/CPA/79/22 and the 2<sup>nd</sup> suspect, the petitioner of PHC/APN/CPA/80/22 who were charged under the Poisons, Opium and Dangerous Drugs Ordinance as amended by Act No. 13 of 1984 (hereinafter referred to as the Act) for the possession of 32.1 grams and 28.450 grams of heroin by the 2<sup>nd</sup> suspect and the 3<sup>rd</sup> suspect petitioner respectively. Being aggrieved, the petitioner has preferred the present revision application praying for, inter alia setting aside of the order of the Learned High Court Judge of Gampaha dated 01.08.2022 and to enlarge the suspects on bail.

The facts of the case are briefly as follows. The information revealed during an investigation of a suspect lead to the arrest of the 1<sup>st</sup> suspect, the brother of the petitioner, one Lekamwasam Liyanage Lakmal. However, he was enlarged on bail on the 01.10.2021 by the learned Magistrate, on the basis of the Covid 19 circular issued by the 2<sup>nd</sup> respondent dated 13.08.2021. Upon further information received by the 1<sup>st</sup> suspect, five suspects, including the petitioner have been arrested and produced before the Magistrate Court on 15.06.2021 and were detained till the 21.06.2021 for further interrogation. However, the fourth and the fifth suspects were granted bail on the 21.06.2021 while the remaining suspects including the petitioner was ordered to be kept in remand custody. The petitioner has then filed a bail application on the 06.10.2021 in the High Court of Gampaha bearing the case no. HCBA 377/2021.

The petitioner has averred the following circumstances as exceptional circumstances before the High Court:

1. The 1<sup>st</sup> Respondent has reported falsified facts against the petitioner.
2. The police were not able to recover illegal substances from the petitioner's possession.
3. The 1<sup>st</sup> respondent submitted misleading facts to the Magistrate's Court.
4. The petitioner has no prior convictions.

The learned High Court Judge has dismissed the bail application on the grounds that the averred circumstances do not posit any exceptionality and thus cannot be enlarged on bail in terms of Section 83 (1) of the Act. The relevant provision can be reproduced in the following manner.

*"No person suspected or accused of an offence under Section 54A or Section 54B of this Ordinance shall be released on bail, except by the High Court, in exceptional circumstances"*

As such, in order to enlarge a suspect on bail in terms of the above law, the petitioner must convince the court of the existence of exceptional circumstances which shock the conscious of the court. However, it has been held by the learned High Court Judge that the averred circumstances of the petitioner do no warrant exceptionality, and thus cannot be enlarged on bail. Aggrieved by the said order

dated 01.08.2022 and pleading that the order of the High Court is irregular, illegal and contrary to law, the petitioner pleads the following exceptional circumstances before this Court.

1. The petitioner avers that the suspects have been treated with discrimination where the 4<sup>th</sup> and the 5<sup>th</sup> suspect has been granted bail while the petitioner and the 2<sup>nd</sup> suspect languish in remand custody.
2. The respondent has concocted or falsified facts against the petitioner.

In the event the circumstances averred are deemed to be of such exceptional nature warranting an intervention, this Court will exercise its revisionary jurisdiction against the impugned order of the High Court.

However, in considering the first averment, this Court is of the observation that the circumstances of the suspects, although transpired in the same series of events, cannot be treated as the same, as the suspects in question, namely the 2<sup>nd</sup> and the 3<sup>rd</sup> suspects, were caught in the act of packaging heroin along with the electronic weighing equipment used for the said purpose. The 2<sup>nd</sup> suspect was in possession of 32.1 grams of heroin and the 3<sup>rd</sup> suspect i.e. the petitioner was in possession of 28.450 grams of heroin which amounts to a commercial quantity.

The above circumstances of the suspects evince the gravity of the offence committed and as such the treatment of other suspects in this regard does not amount to exceptional circumstances as the 4<sup>th</sup> suspect was granted bail under the Covid 19 circular issued on 13.08.2021 and the 5<sup>th</sup> suspect was granted bail as he was not in possession of illegal substances at the time of arrest.

As such, it is the view of this Court that the primary pleading of the petitioner that the suspects have been treated with discrimination is without credit and refutable as the circumstances surrounding the suspects cannot be treated alike. The pure quantity of heroin possessed infers a commercial purpose for such possession of drugs and the utensils recovered during the arrest further buttresses the gravity of the offence and the commercial nature of the act which manifests a prima facie case against the two suspects.

The revisionary power of this Court is discretionary and such discretion is exercised under Section 83 (1) of the Act, in instances where exceptional circumstances are extant which shocks the conscious of this Court so as to enable this court to intervene. As expounded in **Attorney General vs. Ranasinghe and others** 1993 2 SLR p 81, in the presence of such exceptional circumstances, the revisionary power of the court is exercised in the following instances:

- 1) To satisfy this court as to the legality of any sentence or order passed by the High Court or Magistrate's Court.
- 2) To satisfy this court as to the propriety of any sentence or order passed by such court.
- 3) To satisfy this court as to the regularity of the proceedings of such court

However, this Court is of the observation that regarding the averments of the petitioner, there is no exceptionality which shocks the conscious of this Court. The petitioner has pleaded that the suspects were treated unequally as the fourth and the fifth suspects were granted bail eventually while the petitioner herself, being the 3<sup>rd</sup> suspect and the 2<sup>nd</sup> suspect were refused bail. It is the view of this court that the petitioner's averment of supposed discrimination is refutable and does not warrant exceptionality as the suspects were treated differently depending on their different circumstances. Contrary to the circumstances of the fifth and the fourth suspects, the petitioner and the 2<sup>nd</sup> suspect were arrested while packaging heroin with the utensils used for the act and the released suspects were not found in similar circumstances to be treated alike. Moreover, this Court observes that, with regards to the petitioner's claim that the respondent has concocted or falsified facts against petitioner, the verity of such facts cannot be determined at this stage of the case, therefore such an averment does not emulate exceptionality.

This Court is inclined to intervene only in the presence of exceptional circumstances which shock the conscious of this court as per the revisionary jurisdiction bestowed upon it. However, taking into consideration the circumstances of the 2<sup>nd</sup> and the 3<sup>rd</sup> suspects, where the pure quantity of heroin

found in the possession of the 2<sup>nd</sup> and third suspects were 32.1 grams and 28.450 grams respectively and the arrest being made while they were packeting drugs, the averred circumstances do not warrant exceptionality.

Hence, it is observed that there is no irregularity or illegality of the order of the High Court in refusing the application of bail as there is no inordinate or oppressive delays nor any other circumstances which constitute exceptional circumstances.

For the above reasons, there is no reason for this Court to intervene in the order of the High Court as the learned High Court Judge has correctly dismissed the bail application. Thereby, this Court affirms the order dated 01.08.22 by the learned High Court Judge in cases no. HCBA 377/2021 and No. HCBA 288/2021.

The application is hereby dismissed without costs.

**JUDGE OF THE COURT OF APPEAL**

**Menaka Wijesundera J.**

I agree.

**JUDGE OF THE COURT OF APPEAL**