

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 read with Section 404 of the Criminal Procedure Code Act No. 15 of 1979.

Court of Appeal Case No:
CPA 25/2022

High Court Homagama Bail
Application No: **HC BA 12 / 2021**

Negombo Magistrate's Court Case
No: **M 25285**

Sudirikku Hennadigodage Piyaseeli,
No.184/4, Wennawaththa,
Wellampitiya.

Petitioner

Vs.

01. Officer in Charge

Colombo Crime Division

Dematagoda.

02. Hon. Attorney General

Attorney General's Department

Colombo 12

Respondents

Sabdeen Mohammed Suber

Remand Prison, Colombo.

Suspect

AND NOW

Sudirikku Hennadigodage Piyaseeli,

No.184/4, Wennawaththa,
Wellampitiya.

Petitioner – Petitioner

Vs.

01. Officer in Charge

Colombo Crime Division

Dematagoda.

02. Hon. Attorney General

Attorney General's Department

Colombo 12

Respondent – Respondents

Sabdeen Mohammed Subair,

Remand Prison, Colombo.

Suspect – Respondent

Before: Menaka Wijesundera J.

Neil Iddawala J.

Counsel: Palitha Fernando P.C. with Pradeepa Abeyratne and J. Samarasinghe
for the Petitioner.

Yohan Abaywickrema, D.S.G. for Respondent.

Argued on: 28.11.2022

Decided on: 17.01.2023

MENAKA WIJESUNDERA J.

The instant application has been filed to set aside the order dated **22.8.2020** of the High Court of **Colombo in which bail has been refused to the accused namely Sabdeen Mohamed Suber.**

The accused in the instant matter had been remanded for the possession **28.158 kilograms of** pure quantity of heroin under the provisions of **Poisons Opium and Dangerous Drugs** act and has been in remand ever since

The main submission of the Counsel for the accused is that firstly he had been detained under the **Prevention of Terrorism act** and thereafter while in detention based on his statement a parcel of heroin had been found from a house which the Counsel for the accused allege the police is not divulging the name of the real owner. He further said that the suspect was arrested at the Katunayake International airport.

The Counsel for the respondents vehemently objected to the application and stated that the suspect was trying to leave the country violating the bail conditions of a case in which he is the third accused in a case of armed robbery.

In the instant matter too along with the parcel of heroin weapons and ammunition had been found.

The Presidents Counsel for the suspect further alleged that there was no exclusive possession of the heroin recovered because the suspect had no keys to the house in which the alleged heroin had been found.

The learned High Court Judge has considered the same and had rejected both grounds as being not suitable to enlarge the accused on bail.

The law pertaining to the instant matter is that if a suspect is produced under section 54 A and B the said suspect can be released on bail only upon exceptional conditions by the Court of Appeal if the amount is over 10 grams notwithstanding section 84 and 85 of the latest amendment (act no 41 of 2022) to the Poisons and Opium and Dangerous Drugs act.

The term exceptional has not been defined in the act but numerous cases so far decided had held that the exceptionality is determined by the facts of each case.

In the instant case the exceptionality averred is the fact that although the parcel of heroin was found on the statement of the suspect the recovery has not been made in the presence of the suspect and the heroin and the weapons and the ammunition had been recovered from a house to which the connection to the suspect had not been revealed.

But the Counsel for the respondents stated that the house from which the recoveries were made had to be forced open and that it belonged to the aunt of the suspect.

But the evidential value of the recoveries made on the statement of the suspect is to be considered at trial stage but the question to be considered now is whether the remanding of the suspect is fair in view of the facts revealed at the investigations. But in the recently decided judgment of the Supreme Court SC Appeal 53 of 2022 has held that morality should not be considered in an application for bail. The said Judgement reads as follows,

“.....morality as a yardstick in an application for or revision in relation to an offence committed under the Poisons, Opium and Dangerous Drugs ordinance, I am of the view that the Court of Appeal has erred in considering morality as a yardstick or an exceptional ground in an application for revision in relation to an offence committed under the Poisons, Opium and Dangerous Drugs Ordinance.”

As such we see no exceptional ground urged by the Counsel for the suspect hence the instant application for revision is hereby dismissed.

Judge of the Court of Appeal

I agree.

Neil Iddawala J.

Judge of the Court of Appeal