

IN THE COURT OF APPEAL OF THE DEMOCRATIC SOCIALIST

REPUBLIC OF SRI LANKA.

In the matter of a Revision
Application under Article 138 of
the Constitution of the
Democratic Socialist Republic of
Sri Lanka.

Court of Appeal Case No:

CA / CPA / 47 / 2022

High Court of Colombo Case No:

HC / 3108 /2021

Magistrate's Court of Ampara

Case No: **B 47/2020**

Democratic Socialist Republic of
Sri Lanka.

Complainant

Vs.

Malawiarachchige Samantha
Nandana Kumara

929/5, Niyuguna Gramaya

Irakkamamam 03

Ampara.

Accused

AND NOW BETWEEN

Malawiarachchige Samantha
Nandana Kumara

929/5, Niyuguna Gramaya

Irakkamamam 03

Ampara.

(Presently at Walikada Prison)

Accused – Petitioner

Vs.

The Hon. Attorney General

Attorney General's Department

Colombo 12.

Complainant – Respondent

Before: Menaka Wijesundera J.

Neil Iddawala J.

Counsel: Nihara Renakiya for the Accused – Petitioner.

Indika Nelummini SC for the State.

Argued on: 23.11.2022

Decided on: 17.01.2023

MENAKA WIJESUNDERA J

The instant application has been filed to set aside the order dated **2.3.2022** of the High Court of **Colombo** in which bail has been refused to the accused namely **Mallawaarrachhige Samantha Nandana Kumara**.

The accused in the instant matter had been remanded for the possession of **4.26 grams** of pure quantity of heroin under the provisions of **Poisons Opium and Dangerous Drugs** act and has been indicted for the same and

the trial has commenced and one witness has been concluded and the other are to be led.

The main submission of the Counsel for the accused is the period in remand and the fact that the child was sitting for the Ordinary level exam.

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 of the Poisons Opium and Dangerous Drugs act, the said suspect can be released on bail only upon exceptional conditions by the Court of Appeal, if the quantity in question is more than 10 grams, but in the instant matter the quantity is less than five grams and the accused has been in remand for more than two years hence under the provisions of the latest amendment to the instant act under section 84 an accused tried or convicted cannot be kept in remand for more than 12 months and the Attorney General can make an application to the High Court for an extension of the period but again for not more than another 12 months and in totality it is 24 months and nothing more.

But the Court of Appeal notwithstanding section 84 and 85 of the amendment has to consider exceptional circumstances when considering bail for a case in which the quantity of heroin is more than 10 grams.

In the instant matter the quantity involved is less than five grams and the accused has been in remand since 2020 which is more than two years up to now.

Hence as per section 84 and 85 of the amendment act no 41 of 2022 the instant application for revision is allowed and the impugned order of the learned High Court Judge is hereby set aside, and we order the learned High Court Judge to enlarge the above named accused on suitable conditions of bail.

Judge of the Court of Appeal

Neil Iddawala J.

I agree

Judge of the Court of Appeal.