

**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 154P of the Constitution read with Section 11 of the High Court of the Province Act No.19 of 1990 and in terms of Article 138 (1) of the Constitution read with Section 404 of the Code of Criminal Procedure Act No.15 of 1979.

Court of Appeal
Revision Application No:
CA(PHC)APN/0072/2022

Jayasekera Vithanage Kanthi
Puhulangaha Hena, Wekada,
Midigama,Ahangama.

PETITIONER

High Court of Panadura
Bail Application No.157/21

Jayasekera Vithanage Pradeep
Dilshan Jayasekera.

SUSPECT

MC Horana
No.B 60266/2021

Vs.

1. Officer-in Charge,
Police Narcotics Bureau,
Colombo-01.
2. The Attorney General
Attorney General's Department,
Colombo-12.

RESPONDENTS

AND NOW BETWEEN

Jayasekera Vithanage Kanthi

Puhulangaha Hena, Wekada,

Midigama, Ahangama.

PETITIONER-PETITIONER

Vs

1. Officer-in Charge,

Police Narcotics Bureau,

Colombo-01.

2. The Attorney General

Attorney General's Department,

Colombo-12.

RESPONDENTS-RESPONDENTS

Jayasekera Vithanage Pradeep

Dilshan Jayasekera.

SUSPECT

BEFORE : **Sampath B. Abayakoon, J.**
P. Kumararatnam, J.

COUNSEL : **Palitha Fernando, PC with Eranda**
Wijenayake for the Petitioners.
Ridma Kuruwita, SC for the
Respondents.

ARGUED ON : **12/05/2023.**

DECIDED ON : **19/06/2023.**

JUDGMENT

P.Kumararatnam,J.

The Petitioner had applied for bail on behalf of the suspect in the High Court of Panadura in the case bearing No. HCBA 157/2021. After an inquiry, the Learned High Court Judge had refused bail on 21.01.2022. Aggrieved by the said order, the Petitioner had filed this Revision Application to revise the said order. The Petitioner is the mother of the suspect.

On 24.02.2021, upon receiving an information, the suspect was arrested by officers attached to Panadura Walana Anti-Corruption Unit and recovered a parcel from the vehicle which is belonging to Sri Lanka Army. The Suspect was the driver of the vehicle. Two travelling bags were recovered in the vehicle. Inside the travelling bag several parcels had been detected. The parcels contained some substances which reacted for Heroin (Diacetylmorphine). The substance weighed about 45 Kg and 368 grams. The police also taken into their custody the vehicle bearing Army No.51556. Another person was also arrested from the vehicle.

The suspect and other person were produced and facts were reported to the Horana Magistrate under Section 54A (b) and (d) of the Poisons, Opium and Dangerous Drugs Ordinance as amended by the Act No.13 of 1984.

The production had been sent to the Government Analyst Department on 21/03/2021. After analysis, the Government Analyst had forwarded the report to Court on 04/10/2021. According to the Government Analyst, 31 Kg and 26.04 grams of pure Heroin (Diacetylmorphine) had been detected from the substance sent for the analysis. The Suspect had been indicted before the High Court of Panadura. The Suspect is an Army deserter.

No special circumstances pleaded in the Petition by the Petitioner. The only reason adduced is that the granting of bail to 6th and 7th Suspects arrested in this case before being indicted.

One of the preliminary objections taken up by the State is that the Petitioner has failed to establish an acceptable “exceptional circumstance” to invoke revisionary jurisdiction of this Court.

Next, the State pleads that this matter should be dismissed *in limine* as no valid reason had been explained by the Petitioner for his delay.

The Learned State Counsel submitted that the delay is not an exceptional circumstance to be considered to enlarge the suspect on bail. Further, the time spent for preparing the indictment does not constitute an exceptional circumstance. According to the State, the Suspect had been indicted under AG reference No.CR3/74/2022 in the High Court of Panadura.

The suspect is in remand for more than two years.

Exceptional circumstances are not defined in the statute. Hence, what is exceptional circumstances must be considered on its own facts and circumstances on a case by case.

In **Ramu Thamodarampillai v. The Attorney General [2004] 3 SLR 180** the court held that:

“the decision must in each case depend on its own peculiar facts and circumstances”.

The Section 83 of the Poison, Opium and Dangerous Drugs Act which was amended by Act No. 41 of 2022 states:

83. (1) Subject to the provisions of sections 84, 85 and subsection (2) of this section, a person suspected or accused of an offence under sections 54A and 54B of this Ordinance, shall not be released on bail by the High Court except in exceptional circumstances.

(2) Notwithstanding the provisions of sections 84 and 85, a person suspected or accused of an offence under subsection (1) of section 54A and section 54B-

(a) of which the pure quantity of the dangerous drug, trafficked, imported, exported, or possessed is ten grammes or above in terms of the report issued by the Government Analyst under section 77A; and

(b) which is punishable with death or life imprisonment, shall not be released on bail except by the Court of Appeal in exceptional circumstances.

shall not be released on bail except by the Court of Appeal in exceptional circumstances.

In this case the pure quantity of Heroin detected in the production by the Government Analyst is 31 Kg 26.04 grams. Hence, this Court has jurisdiction to consider granting of bail as per the new amendment.

According to the Learned High Court Judge, the sole reason for rejection of bail to the suspect is non submission of exceptional circumstances by the Petitioner.

The learned President's Counsel for the Petitioner urged this Court to consider that the detaining a suspect without any legal action for an extended period of time amounts to a violation of his fundamental rights which can be considered as an exceptional ground.

The Learned President's Counsel submitted that the Suspect was only a driver when the parcel was detected in the vehicle. As another person was also travelled in the vehicle, he cannot be charged jointly for the contraband recovered from the vehicle.

The factual and evidentiary matters pertain to the investigations can only be tested at the trial upon the witnesses being cross examined and shall not be tested at the time of hearing this bail application considering the nature of this case.

In this case the detection was done on 24.02.2021 and the Government Analyst Report was received by the Police Narcotic Bureau on 17.11.2021. The Hon. Attorney General has already dispatched the indictment against the Suspect to the High Court of Panadura. Further, the Suspect is an Army deserter.

Further, I do not consider the delay more than two years in remand falls into the category of excessive and oppressive delay considering the circumstances of this case.

The Offence under Section 54A(b) and (d) of the Poisons Opium and Dangerous Drugs Ordinance as amended by the Act No.13 of 1984 is a serious offence and the seriousness of the offence should be considered when bail is considered.

In **Ranil Charuka Kulatunga v. Attorney General CA (PHC) APN 134/2015** the court held that:

“The quantity of cocaine involved in this case is 62.847 grams, which is a commercial quantity. If Petitioner is convicted, the punishment is death or life imprisonment. Under these circumstances, it is prudent to conclude the trial early while the Petitioner is kept in custody..”

In this case the pure Heroin detected is 31 Kg and 26.04 grams, which certainly a very high commercial quantity. Considering the seriousness of the sentence prescribed under the Poison, Opium and Dangerous

Drugs Ordinance, there is a high risk of absconding. Hence, it is prudent to conclude the High Court case expeditiously keeping the Suspect in remand.

Considering all these factors into account, especially the pure quantity of Heroin detected, the charge in the indictment against the Suspect and other circumstances of the case, I consider this is not an appropriate case in which to interfere with the order of the Learned High Court Judge of Panadura dated 21.01.2022. Hence, I refuse to release the Suspect on bail.

Hence, the revision application is hereby dismissed.

The Registrar of this Court is directed to send a copy of this Judgment to the High Court of Panadura and Officer-in-Charge of the Police Narcotics Bureau, Colombo-01.

JUDGE OF THE COURT OF APPEAL

SAMPATH B. ABAYAKOON, J.

I agree.

JUDGE OF THE COURT OF APPEAL