

**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 read with Section 11 of the High Court of Provinces (Special Provisions) Act No 19 of 1990.

Amarasinghe Pedige Rasika

**Court of Appeal**

Tharangani

**Revision Application No:**

No.367, Kehel Ella,

**CA/PHC/APN/30/2022**

Badalgama.

**PETITIONER**

**High Court of Negombo**

1. The Hon. Attorney General

**Bail Application No.313/2021**

Attorney General's Department

Colombo-12.

**MC Minuwangoda**

2. The Officer-In-Charge

**Case No.2144**

Police Station,

Diulapitiya.

**RESPONDENTS**

**AND**

Balasinghe Pedige Samantha

No. 367, Kehel Ella,

Badalgama.

(Presently Aungunukolapellassa  
Prison)

**SUSPECT**

**AND NOW BETWEEN**

Amarasinghe Pedige Rasika  
Tharangani  
No.367, Kehel Ella,  
Badalgama.

**PETITIONER-PETITIONER**

**Vs**

1. The Hon. Attorney General  
Attorney General's Department  
Colombo-12.
2. The Officer-In-Charge  
Police Station,  
Diulapitiya.

**RESPONDENTS-RESPONDENTS**

Balasinghe Pedige Samantha  
No. 367, Kehel Ella,  
Badalgama.

(Presently Aungunukolapellassa Prison)

**SUSPECT-RESPONDENT**

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

**COUNSEL** : **Asthika Devendra with Sanjeewa  
Ruwanpathirana for the Appellant.**  
**Ridma Kuruwita, SC for the  
Respondent.**

**ARGUED ON** : **08/03/2023.**

**DECIDED ON** : **04/05/2023.**

### **BAIL ORDER**

The Petitioner had applied for bail on behalf of the suspect in the High Court of Negombo in HC Negombo Bail Application No.313/2021. After an inquiry, the Learned High Court Judge had refused bail on 14.12.2021. Aggrieved by the said order, the Petitioner had filed this Revision Application to revise the said order.

On 19.02.2020, upon receiving an information, the suspect was arrested by the Special Task Force officers and recovered a sword, a parcel, a digital scale and Rs.178,500/-. The parcel contained some substances which reacted for Heroin (Diacetylmorphine). The substance weighed about 200 grams.

The suspect was produced and facts were reported to the Minuwangoda Magistrate under Section 54A(b) and 54A(c) of the Poisons Opium and Dangerous Drugs Ordinance as amended by the Act No.13 of 1984 and

a detention order was obtained for further investigations under Section 82(3) of the said Act.

The production had been sent to the Government Analyst Department on 16/12/2020. After analysis, the Government Analyst had forwarded the report to Court on 27/01/2021. According to the Government Analyst, 19.04 grams of pure Heroin (Diacetylmorphine) had been detected from the substance sent for the analysis.

The contention of the Petitioner is that the suspect is a fish and vegetable vendor who carried out his business about 1Km away from his house. On 19.02.2020 the suspect had left the house around 5.30am with his assistant to purchase fish from the Negombo Fishing Harbour. Few minutes after his departure, a team of police officers from the Special Task Force had surrounded his house and carried out a search in his house in his absence.

When he returned home at about 6.00am, he was arrested by the officers from the Special Task Force and introduced a parcel to the suspect, which was supposed to have contain Heroin.

The Petitioner has pleaded following exceptional circumstances in support of her Revision Application.

1. The suspect is a father of a child in Grade 11 who is preparing to sit for the GCE O/L Examination, and the suspect is the sole breadwinner of the family.
2. The suspect had been remanded for more than two years without being indicted.
3. Although about 12 months had lapsed upon the receiving of the Government Analyst's Report to court, the 2<sup>nd</sup> Respondent has not taken any steps to produce the investigation notes to the Hon. Attorney General.

4. Further, because of the pandemic it is reasonable to presume that it will take a prolonged period for the extracts to be sent to the Hon. Attorney General to indict the suspect.

In **Nasher v. Director of Public Prosecution [2020] VSCA 144** the court held that:

*“a combination of delay, onerous custodial conditions, and the relative weakness of the prosecution case may, when considered with all relevant circumstances, compel the conclusion that exceptional circumstances have been established”.*

The State opposing to bail must submit that the indictment pertaining to the offence is already prepared and approved and will be dispatched to the relevant High Court in due course. Hence, 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. In addition, the two other cases pending against the suspect in the High Court was also submitted.

The suspect is in remand for more than two years. Indictment has not been forwarded even after lapse of over 12 months from producing of the Government Analyst Report. It is uncertain as to when the indictment going to be served on the suspect.

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”.*

In **CA(PHC) APN 17/12 and CA(PHC) APN 16/12** the court observed the fact that indictment was not served even after the laps of one year from the producing of the Government Analyst's Report was considered as exceptional circumstances.

In **CA(PHC)APN 107/2018** decided on 19.03.2019 held that remanding for a period of one year and five months without being served with the indictment was considered inter alia in releasing the suspect on bail.

According to the Petitioner, at present her family is going through untold hardship without proper income and care. The Petitioner admitted that two cases are pending before High Court, and one is for the possession and trafficking of 2.58 grams of Heroin. The date of indictment was 07.09.2015 and the case No. is HC 268/2014 pending before High Court of Negombo.

In respect of the second pending case, the Petitioner submits that although the Learned High Court Judge had considered the case bearing No. HC/Colombo (01) SPL/21/20 under Money Laundering Act, the suspect has neither been informed about the case nor has any summon or warrant been issued against him up to date. Furthermore, the suspect has neither been able to obtain any information on the aforementioned case nor is aware against what property this case is instituted.

**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 19.04grams. Hence, this court has jurisdiction to consider granting of bail as per the new amendment.

In this case, as per the submission of the Learned State Counsel has stated that the indictment will be dispatched to the High Court. No exact date is mentioned in his submission. This alone is an exceptional circumstance which warrants the accused being enlarged on bail. Further, the delay more than two year in remand falls into the category of excessive and oppressive delay considering the circumstances of this case. Even though the indictment on the pending case was dated 07.09.2015, the said case is not over to date.

Offences under Section 54A(b) and 54A(c) of the Poisons Opium and Dangerous Drugs Ordinance as amended by the Act No.13 of 1984 is no doubt serious offences but seriousness of the offence alone cannot form a ground to refuse bail. In considering these matters, the court must bear in mind the presumption of innocence.

Considering all these factors into account, especially that the indictment not being forwarded, I order the suspect to be granted with following strict bail conditions.

1. Cash bail of Rs.200,000/=.

2. To provide 02 sureties. They must sign a bond of two million each.
3. The suspect and the sureties must reside in the address given until conclusion of his case.
4. Not to approach any prosecution witnesses directly or indirectly or to interfere with.
5. To surrender his passport if any, to court and not to apply for a travel document. The Controller of the Immigration and Emigration is informed of the travel ban on the suspect.
6. To report to the Divulapitiya Police Station on the last Sunday of every month between 9am to 1pm.
7. Any breach of these conditions is likely to result in the cancellation of his bail.

The Magistrate Court of Minuwangoda is hereby directed to enlarge the suspect on the above bail conditions.

The Registrar of this Court is directed to send a copy of this order to the Officer-in-Charge of the Police Station Divulapitiya and Magistrate Court of Minuwangoda.

The Application is allowed.

**JUDGE OF THE COURT OF APPEAL**

**SAMPATH B. ABAYAKOON, J.**

I agree.

**JUDGE OF THE COURT OF APPEAL**