

**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.

**Court of Appeal**

Officer-in-Charge

**Revision Application No:**

Police Narcotics Bureau,

**CA(PHC)APN/0164/2022**

Colombo-01.

**COMPLAINANT**

**High Court of Colombo**

**Vs**

**Bail Application No.182/2022**

Weerawairodi Mudiyansele

Ranjani Dissanayake

**MC Mahara**

**SUSPECT**

**Case No. B 1668/22**

Weerawairodi Mudiyansele

Premawathi

**PETITIONER**

**Vs**

1. Officer-in-Charge

Police Narcotics Bureau,

Colombo-01.

**COMPLAINANT-RESPONDENT**

2. Hon. Attorney General

Attorney General's Department,

Colombo-12.

**RESPONDENT**

Weerawairodi Mudiyansele  
Ranjani Dissanayake

**SUSPECT-RESPONDENT**

**AND NOW BETWEEN**

Weerawairodi Mudiyansele  
Premawathi

**PETITIONER-PETITIONER**

**Vs**

1. Officer-in-Charge  
Police Narcotics Bureau,  
Colombo-01.

**COMPLAINANT-RESPONDENT-RESPONDENT**

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

**RESPONDENT-RESPONDENT**

Weerawairodi Mudiyansele  
Ranjani Dissanayake

**SUSPECT-RESPONDENT-RESPONDENT**

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

**COUNSEL** : **Amila Palliyage with S.Udugampola,  
Sandeepani Wijesooriya and  
T.Ratwatte for the Petitioner.  
Kanishka Rajakaruna, SC for the  
Respondent.**

**ARGUED ON** : **23/05/2023.**

**DECIDED ON** : **07/07/2023.**

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**ORDER**

**P.Kumararatnam,J.**

The Petitioner-Petitioner (hereinafter referred to as the Petitioner) had applied for bail on behalf of the Suspect-Respondent-Respondent (hereinafter referred to as the Suspect) in the High Court of Colombo in the case bearing No. HCBA 182/2022. After an inquiry, the Learned High Court Judge had refused bail on 21.10.2022. 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 21.05.2022, upon receiving an information, a lorry was searched and a person was arrested with Cannabis Sativa L. Deriving information upon further investigation, a house situated at the address of No.191/4, Pattiwala Road, Gonawala, Kelaniya was searched and found 6 poly sack bags under and near a bed in a locked room. The key of the room was provided by the Suspect.Rs.86,000/- believed to be proceeds of sale of Cannabis Sativa L was recovered from an almirah at the afore said room.

The said production was weighed at the Police Narcotics Bureau in presence of the Suspect. The gross quantity weighed to be 249.96 Kilograms of Cannabis Sativa L.

The Suspect was produced and facts were reported to the Mahara Magistrate under Section 54A (d) and (b) and of the Poisons, Opium and Dangerous Drugs Ordinance as amended by the Act No.13 of 1984. For further investigation, a detention order was obtained from the Learned Magistrate of Mahara for the period from 21.05.2022 to 27.05.2022.

The production had been sent to the Government Analyst Department on 26/05/2022. After analysis, the Government Analyst had forwarded the report to Mahara Magistrate Court on 30/05/2022. According to the Government Analyst, the dried vegetable matter in the polythene packet consisted of parts of the hemp plant. (Cannabis Sativa L)

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

1. The Learned High Court Judge has erred in law by failing to consider the facts, material, evidence and the circumstances averred by the Petitioner in the petition to the High Court.
2. The Learned High Court Judge has erred in law by failing to consider 'Exceptional Circumstances' and relevant case laws on this regard.
3. The Learned High Court Judge has erred in law by failing to take into account the fact that the Government Analyst Report was received to the Court and the 2<sup>nd</sup> Respondent had not taken steps to file an indictment to the High Court.
4. The Learned High Court Judge has erred in law by failing to consider the sentence stipulated in 3<sup>rd</sup> schedule of the Poisons, Opium and Dangerous Drugs Ordinance.
5. The Learned High Court Judge has erred in law by failing to consider the legal principle that remanding a Suspect should not be punished.

6. The Learned High Court Judge had failed to consider the presumption of innocence until proven guilty as guaranteed by Article 13(5) of the Constitution.
7. The Learned High Court Judge has erred in law by failing to consider the fact that the Suspect did not have exclusive possession of the said Cannabis Sativa L.
8. The Learned High Court Judge had failed to consider that there would be a substantial miscarriage of justice to the Suspect if she is not enlarged on bail.

One of the preliminary objections taken up by the State is that the Petitioner has failed to establish of exceptional circumstances. Hence, the State pleads that this matter should be dismissed *in limine* as no valid reason had been explained by the Petitioner for her failure.

Further, the State submits that the Petitioner has failed to demonstrate *uberima fide* in filing this revision application.

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, all steps has been taken to send out indictment against the Suspect but failed to mention the time period.

The suspect is in remand for little more than two years. According to the police the net quantity of Cannabis Sativa L detected is 249.96 Kilograms.

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 107/2018** decided on 19.03.2019 the court 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 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.

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 order is re-produced below:

(X9- page 13)

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මෙම නඩුවේ නීතියෙන් නියම කර ඇති දඩුවම් පිළිබඳ පෙත්සම්කාරිය වෙනුවෙන් කරුණු දක්වා සිටින ලදී. එසේ වුවත් ඇප ලබා දීමේදී සලකා බැලිය යුතු වන්නේ සුවිශේෂී කරුණු ඇද්ද යන්න පිළිබඳවය. හැකි ඉක්මනින් අධිවෝදනා පත්‍රය කැඳවා ගැනීම මිස අති විශාල ගංජා ප්‍රමාණයකට සැකකරනු ලබන තැනැත්තෙකුට සුවිශේෂී කරුණු නොමැතිව ඇප ලබා දීමට හැකියාවක් නැත. මෙම අවස්ථාවේදී සැකකරනු ලබන්නේ කිලෝ ග්‍රෑම් 200 කටත් වඩා වැඩි ගංජා ප්‍රමාණයකටය. එවැනි ප්‍රමාණයකට ඇප ලබා දීමට තරම් සුවිශේෂී

කරුණු පෙත්සම්කාරිය වෙනුවෙන් ඉදිරිපත් වී නැත. ඒ අනුව අප ඉල්ලීම ප්‍රතික්ෂේප කරමි.

The Learned High Court Judge in his brief order dismissing the bail application remarked that expediting of filing of indictment is the only plausible redress to the Suspect. The order was made on 31/10/2022.

The Counsel for the Petitioner urged this Court to consider that 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.

According to the Petitioner, the production was sent to the Government Analyst Department on 26.05.2022 and the Government Analyst's Report dated 30.05.2022 was sent the Mahara Magistrate Court on 30.05.2022. Although one year has passed after receiving the Government Analyst Report, the prosecuting authority has not taken any action to indict the Suspect in the High Court. In the Objection filed by the State has not mentioned what is the stage of investigation and whether they have received investigation notes from the law enforcement agency. This is very serious lethargic attitude of the prosecution. Despite the remark made by Learned High Judge regarding the importance of sending out indictment in this case, the prosecution has not taken any meaning full action to send out indictment against the Suspect. This is a serious lap on the part of the prosecution.

Section 7 of the Poisons, Opium and Dangerous Drugs (Amendment) Act No.41 of 2022, declares that the provisions of section 6 shall not apply in respect of an offence which was committed prior to the date of coming into operation of this Act. The Amended Act came into operation from 23.11.2022. The offence allegedly has been committed by the Suspect is on 21.05.2022. Hence, Section 6 has no operation in this case.

According to the Poisons, Opium and Dangerous Drugs (Amendment) Act No.13 of 1984 the punishment prescribed in Part III of the schedule as follows:

Possession of 5kg and above fine not less than 25000/- and not exceeding 50,000/-or imprisonment either discription for a period not less than two years and not exceeding 5 years. The Suspect had already spent two years in remand custody as at now.

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”*. [Emphasis added]

The right to trial without undue delay is found in numerous international and regional human rights instruments; for example, the International Covenant on Civil and Political Rights (Article 14(3)(c), the American Convention on Human Rights (Article 8(1), the African Charter on Human and People’s Rights (Article 7(1)(d), and the European Convention for the Protection of Human Rights and Fundamental Freedoms (Article 6(1).

When a person is kept in remand without filing charges for a considerable period of time, he or she should be released on bail pending indictment. Otherwise, this will lead to prison overcrowding.

Hence, I consider the delay more than two years in remand falls into the category of excessive and oppressive delay considering the circumstances of this case. Considering other matters which had escaped the attention of the Learned High Court Judge of Colombo, the Suspect has very good exceptional circumstances to consider this application in her favour. Further, remanding the Suspect without filing any charge will prejudice her rights and her family as well.



Offences under Section 54A(d) 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.

Further, bail should never be withheld as punishment. Granting of bail is primarily at the discretion of the Courts. The discretion should be exercised with due care and caution taking into account the facts and circumstances of each case.

Considering all these factors into account, especially the period in remand without a charge, the punishment prescribed for the offence committed and the circumstances of the case, I consider this an appropriate case to grant bail to the suspect. Hence, I order the suspect be granted bail with following strict conditions.

1. Cash bail of Rs.100,000/=.
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 Kelaniya 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 her bail.

The Revision Application is allowed and the Learned High Court Judge of Colombo is hereby directed to enlarge the suspect on bail on the above bail conditions.

The Registrar of this Court is directed to send a copy of this Judgment to the High Court of Colombo 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**