

**IN THE COURT OF APPEAL OF THE DEMOCRATIC SOCIALIST
REPUBLIC OF SRI LANKA**

In the matter of an application for Revision under the Article 138 of the Constitution of the Democratic Socialist Republic of Sri Lanka read together with Section 404 of the Code of Criminal Procedure Act No.15 of 1979.

Court of Appeal

The Democratic Socialist Republic of Sri

Application No:

Lanka

CA(PHC) APN 142/2022

COMPLAINANT

High Court of Negombo

Vs.

No.HC/912/20

Selva Kumar Ranjith

ACCUSED

AND NOW BETWEEN

Selva Kumar Ranjith

ACCUSED-PETITIONER

The Attorney General

Attorney General's Department

Colombo-12.

COMPLAINANT-RESPONDENT

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

COUNSEL : **Tenny Fernando for the Petitioner.**
Kanishka Rajakaruna, SC for the
Respondent.

ARGUED ON : **10/07/2023.**

DECIDED ON : **07/08/2023.**

ORDER

P.Kumararatnam,J.

The Accused-Petitioner (hereinafter referred to as the Petitioner) filed this Revision Application against the order of the Learned High Court Judge of Negombo. By his order dated 21.06.2022 the Learned High Court Judge had refused bail to the Petitioner on the basis that the Petitioner has failed adduce exceptional circumstances. The Learned High Court Judge further stated bail would be considered after conclusion of the evidence of the chief investigating officer in this case. Aggrieved by the said order, the Petitioner had filed this Revision Application to revise the said order.

On 13.06.2019, The Petitioner was arrested by officers from the Police Narcotic Bureau Colombo-01 that he had possessed 52.378 grams of Heroin (Diacetylmorphine).

The Petitioner was produced, and facts were reported to the Welisara 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 21/06/2019. After analysis, the Government Analyst had forwarded the report to Court on 17/01/2020. According to the Government Analyst, 25.084 grams of pure Heroin (Diacetylmorphine) had been detected from the substance sent for the analysis.

The Petitioner has pleaded following grounds in support of his Revision Application.

1. The Petitioner is continuously languishing in remand custody for a period more than that of four years from his date of arrest namely 13.06.2019.
2. The Chief Investigating Officer who is the first witness in this case had been convicted by the High Court of Galle for being a member of an unlawful assembly and committing attempted murder.
3. The said PW1 in this case has been indicted for committing murder and served indictment on 30.11.2011 by the High Court of Colombo.
4. Further, the PW1 and PW2 in this case are served with an indictment for committing an offence under the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment Act No. 22 of 1994.

5. Further, PW6 of this case is an accused of racketing huge quantities of narcotics together with 16 other officers of the Police Narcotics Bureau.
6. The trial against the Petitioner is yet to be started and the Petitioner is denied the substance of a fair trial preventing him being from effective preparation, preventing him from providing effective and sufficient instructions to his Counsel.

The Learned Counsel for the Petitioner further submitted that due to above mentioned misconduct of the vital witnesses in this case, it unequivocally demonstrates that the credibility and the integrity of prosecution witnesses who are presumed to carry out their duties according to law are disputed by the very prosecution by prosecuting them for such above mentioned serious offences and especially the PW6 racketing and smuggling Heroin being using their official capacity will dismantle the case for the prosecution.

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 Learned State Counsel submitted that the delay is not an exceptional circumstance to be considered to enlarge the Petitioner on bail. Further, the time spent for preparing the indictment does not constitute an exceptional circumstance and the credibility of the said prosecution witnesses cannot be weighed at a bail inquiry, but only at the trial stage.

The Counsel for the Petitioner submits that the Petitioner is in remand for little more than four years. Considering the facts and the circumstances of this case, the prosecution will not be able to establish a prima facie case against the Petitioner. Further, call prosecution witnesses may be further delayed due to aforementioned circumstances of this case.

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 admits that he had one previous conviction but no pending cases.

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 25.084 grams. 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 that the indictment has been dispatched to the High Court High Court of Negombo and the trial has not commenced. As the indictment had been forwarded to the High Court, the delay more than four years in remand does not falls into the category of excessive and oppressive delay considering the circumstances of this case.

I consider the delay more than four 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 Negombo, the Petitioner has very good exceptional circumstances to consider this application in his favour.

Offences under Section 54A(d) and 54A(b) 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 pure quantity of Heroin detected, the present status of the important prosecution witnesses mentioned in the indictment, the period in remand and the other circumstances of the case, I consider this an appropriate case to revise the order of the Learned High Court Judge of Negombo dated 21.06.2022 and grant bail to the Petitioner. Hence, I order the Petitioner be granted bail with following strict conditions.

Considering all these factors into account, I order the suspect to be granted with following strict bail conditions.

1. Cash bail of Rs.100,000/=.
2. To provide 02 sureties. They must sign a bond of two million each.
3. The Petitioner 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 Petitioner.
6. To report to the Police Narcotics Bureau 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 Learned High Court Judge of Negombo is hereby directed to enlarge the Petitioner on the above bail conditions.

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

The Revision Application is allowed.

JUDGE OF THE COURT OF APPEAL

SAMPATH B. ABAYAKOON, J.

I agree.

JUDGE OF THE COURT OF APPEAL