

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

*In the matter of an application for revision
under and in terms of Article 138 of the
Constitution read with Section 11 of the
High Court of the Provinces (Special
Provisions) Act No. 19 of 1990 read with
Section 404 of the Code of Criminal
Procedure Act No- 15 of 1979 and section
83 (2) of the Poisons, Opium and Dangerous
Drugs Ordinance (as amended)*

C.A. Revision Application No:

CA (PHC) APN 0159/22

High Court of Gampaha

No. HC BA 322/21

Magistrate's Court of Mahara

No. B.2177/21

Officer-in-Charge,

Police Narcotics Bureau,

Colombo 01.

PLAINTIFF

Vs.

Nissanka Arachchige Dinuka,

No. 61/C/02,

Porana Kotu Watta,

Kandy Road,

Peliyagoda.

1ST SUSPECT

AND THEN BETWEEN

Sakunthala Nethsarani,
No. 61/C/02,
Porana Kotu Watta,
Kandy Road,
Peliyagoda.

PETITIONER

Vs.

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

RESPONDENTS

Nissanka Arachchige Dinuka

1ST SUSPECT

AND NOW BETWEEN

Sakunthala Nethsarani,
No. 61/C/02,
Porana Kotu Watta,
Kandy Road,
Peliyagoda.

PETITIONER-PETITIONER

Vs.

1. The Attorney General,
Attorney General's Department,
Colombo 12.

2. Officer-In-Charge,
Police Narcotics Bureau,
Colombo 01.

RESPONDENT-RESPONDENTS

Nissanka Arachchige Dinuka
(Presently at Welikada prison)

1ST SUSPECT-RESPONDENT

Before : Sampath B. Abayakoon, J.

: P. Kumararatnam, J.

Counsel : Asthika Devendra with A. Madushanka for the
Petitioner

: Kanishka Rajakaruna, S.C. for the Respondent

Argued on : 21-06-2023

Decided on : 28-08-2023

Sampath B. Abayakoon, J.

This is an application invoking the revisionary jurisdiction of this Court by the petitioner-petitioner (hereinafter referred to as the petitioner) being aggrieved by the order dated 07-10-2022, pronounced by the learned High Court Judge of Gampaha.

When this matter was supported for notice, this Court decided to issue notice to the respondents mentioned, and accordingly, the relevant objections have been filed by the respondents.

At the hearing of this application, this Court heard the submissions of the learned Counsel for the petitioner, as well as the submissions made by the learned State Counsel on behalf of the respondents.

By the impugned order, the learned High Court Judge has refused the bail application filed by the petitioner seeking bail for Nissanka Arachchige Dinuka, the suspect in the Magistrate Court of Mahara case No-B 2177/22. The petitioner is the mother of the said suspect.

The suspect has been arrested and produced before the learned Magistrate of Mahara for allegedly committing an offence punishable in terms of section 54A of the Poisons Opium and dangerous Drugs Ordinance. At the time of her arrest, she is alleged to have had in her possession a gross quantity of 194.050 grams of the substance suspected to be Heroin. She has been arrested on 15-07-2021, and in remand custody since. She has been arrested along with two other suspects and sum of Rs. 500457/- also has been recovered.

According to the Government Analyst Report, the substance sent for the analysis has been identified as Heroin, and the pure quantity of the drug has been 119.39 grams.

This bail application before the High Court of Gampaha has been instituted by the petitioner before the Poisons Opium and Dangerous Drugs Ordinance was amended by Poisons Opium and Dangerous Drugs (Amendment) Act No- 41 of 2022, as the jurisdiction to grant bail under exceptional circumstances was vested with the relevant High Court for a person suspected of an offence of this nature.

It appears from the copy of the proceeding before the High Court, that the contention of the petitioner before the High Court had been that the suspect is suffering from a medical condition that can be considered as an exceptional circumstance.

The learned High Court Judge has considered the application by the petitioner in his order dated 07-10-2022, and has determined that the medical condition stated was not a condition that cannot be treated at the Prison Hospital, and it would not fall under the category of exceptional circumstances. The learned High Court Judge has refused bail on that basis.

When this application in revision was considered before this Court, it was the contention of the learned State Counsel for the petitioner that the jurisdiction to grant bail for the suspect or an accused who in said have possessed or trafficked a pure quantity of Heroin of this nature is not with the High Court as relevant law now stands. It was his view that considering to revise an order where the High Court now has no jurisdiction to grant bail is a futile exercise. It was his position that in any way, there were no exceptional circumstances that have been placed before the High Court that can be considered as such, and the order by the learned High Court Judge was correct, which need no disturbance.

The learned Counsel for the petitioner insisted that the petitioner has adduced sufficient documentary evidence before the High Court which should have been

considered in her favour and invited this Court to pronounce a judgment setting aside the order of the learned High Court judge and to grant bail for the suspect.

The section 83 of the Poisons, Opium and Dangerous Drugs Ordinance as amended by Act No. 13 of 1984 was repealed and replaced by a new section 83 by Poisons, Opium and Dangerous Drugs (Amendment) Act No. 41 of 2022 in the following manner.

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.

(3) For the purposes of this section “dangerous drug” means Morphine, Cocaine, Heroin and Methamphetamine.

Section 84 and 85 are the provisions where it has been stipulated that a suspect or an accused shall not be detained in custody for a period exceeding 12 months from the date of arrest and up to another period of 12 months on an application made by the Attorney General to the High Court.

Although, section 83 that existed until the Amendment Act No. 41 of 2022 came into being had vested the power to grant bail for a person suspected or accused of an offence committed under section 54A or 54B of the Poisons, Opium and Dangerous Drugs Ordinance to the relevant High Court in exceptional circumstances, the amendment has provided for different jurisdictions to grant bail under mentioned circumstances.

Under the provisions of section 83 (2) of the Amendment Act No. 41 of 2022, notwithstanding the provisions of sections 84 and 85, if the pure quantity of the dangerous drug trafficked, imported, exported or possessed is 10 grams or above in terms of the Government Analyst Report, in such circumstances only the Court of Appeal that has the exclusive jurisdiction to grant bail in exceptional circumstances for a person accused or suspected of committing an offence in terms of section 54A or 54B of the Ordinance.

As the impugned order has been pronounced by the learned High Court Judge on 07-10-2022 was an order pronounced before the Amendment Act No 41 of 2022 was certified by the Speaker of the Parliament on 22-11-2022, the petitioner can only succeed in her application before the Court if she is able to show that the learned High Court Judge was wrong when bail was refused for the suspect, and there were exceptional grounds placed before the Court that should have been considered in her favour.

What constitutes exceptional circumstances have not been defined in the Statute.

Our superior Courts have considered various situations at various times as exceptional in deciding to grant bail for suspects in terms of the Poisons, Opium and Dangerous Drugs Ordinance.

The varied decisions by our Superior Courts have clearly established the fact that whether a certain situation amounts to exceptional circumstances or not, has to be considered on a case-by-case basis, unique to each application before the Court.

In the instant matter, the basis upon the petitioner has sought bail for the suspect had been that she is ill and need treatment. It appears that several reports had been submitted to the Court to substantiate that position. It is clear from the records submitted that the suspect had been referred to best possible treatment at the National Hospital through the Prison Hospital on several occasions.

There is nothing to suggest that the suspect is having a medical condition that cannot be treated while she is in incarceration.

I find that these relevant facts had been considered by the learned High Court Judge of Gampaha before refusing the bail application for want of merit.

For the reasons considered above, I find no basis to interfere into the order by the learned High Court Judge.

The application in revision is therefore dismissed.

The Registrar of the Court is directed to forward s copy of this judgment to the High Court of Gampaha for information.

Judge of the Court of Appeal

P. Kumararatnam, J.

I agree.

Judge of the Court of Appeal