

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

In the matter of an application for Revision under Article 138 of the Constitution of the Democratic Socialist Republic of Sri Lanka.

**Court of Appeal Application**

**CA (PHC) APN/0117/22**

**High Court of Panadura**

**Case No. HC/3753/2019**

**High Court of Balapitiya**

**Case No.HC/2002/2017**

Officer-in-Charge

Police Station

Kosgoda.

**Complainant**

1. Suwaris Deshan Udara  
Abeysekara
2. Hadunneththi Siripala De Soyza
3. Dharmakirthi Maduka Nimal  
Perera Wijesekara
4. Suwaris Nuwan Chamara  
Abeysekara (deceased)
5. Mukundadura Ruwan Chamara  
Perera

**Accused**

**AND NOW BETWEEN**

Angampodi Janaki Priyanthi De  
Silva

403/A/1, Nanathota

Kosgoda.

**Petitioner**

**Vs**

1. The Officer-in-Charge  
Police Station  
Kosgoda.

**Complainant-Respondent**

2. The Attorney General  
Attorney General's Department  
Colombo-12.

**Respondent**

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

**COUNSEL** : **Lakshan Dias with Dayani**  
**Panditharathne for the Petitioner.**  
**Kanishka Rajakaruna, SC for the**  
**Respondents.**

**ARGUED ON** : **15/06/2023.**

**DECIDED ON** : **04/09/2023.**

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**ORDER**

**P.Kumararatnam,J.**

The Suspect had applied for bail in the High Court of Panadura in the case bearing No. HC 3753/2019. After an inquiry, the Learned High Court Judge had refused bail on 29.07.2022. Aggrieved by the said

order, the Petitioner had filed this Revision Application to revise the said order. The Petitioner is the mother of the 3<sup>rd</sup> Accused (Hereinafter referred to as the 'Accused').

The Accused was indicted in the High Court of Balapitiya under Sections 140,146,32,434, and 317 of the Penal Code. As the witnesses received death threats the case was transferred to High Court of Panadura.

After fixing the High Court trial the Accused absconded the court. On 09.03.2018, the Accused was arrested on a warrant and produced to the Court. As such the Learned High Court Judge has cancelled his bail on 13.09.2018.

While the High Court trial was proceeding the Accused made an application for bail but it was refused by the Learned High Court Judge of Panadura on 29.07.2022.

Being aggrieved by the said order the Accused has filed this Revision Application before this Court on following exceptional circumstances.

1. The Learned High Court Judge had failed to consider that the Accused had been incarcerated since 13.09.2019.
2. The elder brother of the Accused is Kosgoda Tharaka alias Dharmakeerthi Taraka Perera Wijsekera who was shot dead on 13.05.2020 by the police when he was taken into Western Province North Crime Division Police custody.
3. The Accused and his brother Kosgoda Taraka lived in secrecy due to receive of death threats. Confirming that information, the Accused brother was killed on 13.05.2021 while in police custody.
4. After the death of the brother of the Accused, the police took action to file fabricated cases against the Accused but he was discharged by the Learned Magistrate of Balapitiya after Non-Summary inquiries.

5. The 1<sup>st</sup> Accused named in the indictment was released on bail on 29.05.2022.
6. No evidence before the Court that the Accused will interfere with witnesses directly or indirectly.
7. No evidence before the Court to believe that the gravity and public reaction to the offence may rise to public disquiet.

The Learned State Counsel has submitted following preliminary objections in respect of this Revision Application.

1. The Petitioner has failed to submit acceptable exceptional circumstances to invoke revisionary jurisdiction of this Court.
2. There are no grounds in existence which demonstrate that the order of the High Court Judge is illegal, irregular, capricious or arbitrary.
3. The Petitioner is guilty of laches as he failed mention the reason for the delay in coming to this Court.
4. The Petitioner has failed to demonstrate *uberima fide* by not disclosing material facts.
5. The Petitioner has contravened of Court of Appeal rules by not submitting certified copy of the entire case record.

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”.*

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

According to the Petitioner the Accused went in to hiding after he was granted bail is that the Accused had received credible information on the threat to his life. Hence, he was forced to act in this manner and his absconding was not voluntary.

The Petitioner has invited this Court to consider the prolonged detention in remand close to 4 years even after the trial is commenced in the High Court of Panadura.

Section 16 of the Bail Act 30 of 1997 reads as follows:

“Subject to the provision of Section 17, unless a person convicted and sentenced by a court, no person shall be detained in the custody for a period exceeding 12 months from the date of arrest”

Hence, the Counsel for the Petitioner urged this Court to consider that detaining a suspect without his case being for an extended period of time amounts to a violation of his fundamental rights which can be considered as an exceptional ground.

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 continue his trial 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 closer to 4 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 Panadura, the Accused has very good exceptional circumstances to consider this application in his favour. Further, remanding a suspect without his case being taken for trial will prejudice his or her rights and his or her family as well.

Offences under Section 140, 146, 32, 434, and 317 of Penal Code are 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, the stage of the trial and the other circumstances of the case, I consider this an appropriate case to grant bail to the Accused. Hence, I order the Accused be granted bail with following strict conditions.

1. Cash bail of Rs.50,000/=.
2. To provide 02 sureties. They must sign a bond of two million each.
3. The Accused and the sureties must reside in the address given until conclusion of her 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 Accused.
6. To report to the Kosgoda 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 Revision Application is allowed and the Learned High Court Judge of Panadura is hereby directed to enlarge the Accused on bail on the above bail conditions.

The Registrar of this Court is directed to send a copy of this order to the High Court of Panadura and Officer-in-Charge of the Police Station Kosgoda.

**JUDGE OF THE COURT OF APPEAL**

**SAMPATH B. ABAYAKOON, J.**

I agree.

**JUDGE OF THE COURT OF APPEAL**