

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

IN THE MATTER OF AN APPLICATION
TO REVISE THE ORDER OF THE HIGH
COURT OF KALUTARA REFUSING
THE GRANT OF BAIL UNDER THE
RELEVANT ARTICLES OF THE
CONSTITUTION READ TOGETHER
WITH THE PROVISIONS OF THE
CRIMINAL PROCEDURE ACT NO 15
OF 1979

**CA (PHC) REV.APPN NO.116/2014
HC KALUTARA (BAIL) 79/2013
MC HORANA BR 78485**

Don Prabath Thilanka

(Presently in Remand – Kalutara Prison

Accused/Suspect Petitioner

(through his wife)

Ms. Wariyapola Mudiyanse

Lakshika Tharangani

Karangoda

Ratnapura

Petitioner

Vs.

- (1) The Hon. Attorney General
- (2) OIC / PNB
- (3) OIC Police Station, Horana

Respondents

Before: W.M.M. Malinie Gunaratne, J.
P.R. Walgama, J.

Counsel: Dr. Ranjit Fernando for the Petitioner
H. Jayanetti, State Counsel for the Respondents.

Argued on: 27.02.2015

Decided on: 12.03.2015

Malinie Gunaratne, J.

The Petitioner in this case was arrested on 24.07.2012 and was produced before the Magistrate of Horana, by the Officer in Charge of the Police Station, Horana alleging that he had 100 grams of heroin in his possession. According to the Government Analyst's Report the net quantity of heroin became 25.26 grams.

On the 8th of July 2013, the Suspect-Petitioner made an application for bail before the High Court Judge of Kalutara. The learned High Court Judge by his Order dated 10th December 2013 refused the said application on the ground that there were no exceptional circumstances.

Thereupon the Suspect-Petitioner filed this application seeking that the Order of the learned High Court Judge be revised.

When this application was taken up for inquiry, the learned State Counsel submitted that at the time of filing the objections to this application, an indictment was filed in the High Court of Kalutara and therefore the Petitioner must make an application afresh before the Trial Court for bail.

The learned Counsel for the Petitioner contended that serving of an indictment does not become a reason not to hear and determine the application made to revise the Order of the High Court.

Learned Counsel for the Petitioner does not dispute the filing of an indictment in the High Court against the Petitioner. Therefore, it is clear that the circumstances under which this application was made have been changed when the application for bail is to be considered, it is necessary to look at the matters that are presently in existence. In the Petition filed in this Court does not disclose the existing facts.

Under those circumstances it will amount this Court being an Appellate Court, entertaining the power of the High Court.

Therefore it is not proper to enlarge the Petitioner on bail by this Court.

-4-

In the above circumstances I refuse to grant bail and dismiss the application.

JUDGE OF THE COURT OF APPEAL

I agree

JUDGE OF THE COURT OF APPEAL