

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

**M.C. Case No. B/81509/05/17**

**H.C. Bail Application No. 554/18**

**Court of Appeal Case No.**

**C.A. (PHC) APN 123/2018**

Atigala Withanalage Shalika Dilrukshi,  
No.103/6, Shriwickrama Mawatha,  
Galwetiya, Wattala.

Petitioner

V.

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

Respondent

Vimukthi Kannangara Senarathne,  
Presently at Rimand Prison,  
Magazine.

2<sup>nd</sup> Suspect-Respondent

**And Now**

Vimukthi Kannangara Senarathne,  
Presently at Rimand Prison,  
Magazine.

Suspect-Respondent-Petitioner

V.

1. Hon. Attorney General,  
Attorney General's Department,  
Colombo 12.
2. Officer in charge of the Police,  
Narcotic Division, Colombo 01.

Respondent-Respondents

**BEFORE**

: K.K. WICKREMASINGHE, J  
K. PRIYANTHA FERNANDO, J

**COUNSEL**

: Yajeesh Thennakoon for the Suspect-  
Respondent-Petitioner.  
Nayomi Wickramasekara SSC for A.G.

**ARGUED ON**

: 17.05.2019

**WRITTEN SUBMISSIONS**

**FILED ON**

: 06.03.2019 by  
the Suspect-Respondent-petitioner.

**ORDER ON**

: 31.05.2019

**K. PRIYANTHA FERNANDO, J.**

01. This is an application to revise the orders of the learned High Court Judge of Colombo dated 03.09.2018 and 09.10.2018, refusing to enlarge the Suspect Respondent Petitioner (Petitioner). The Petitioner is the 2<sup>nd</sup> suspect in case No. B/81509/05/17 in the Magistrates Court Colombo.
02. According to the facts reported in the Magistrates Court on 28.09.2017, Special Task Force officers have conducted the raid at Peliyagoda on 27.09.2017 on an information they received from an informant. They had stopped the car No. KL-5465 and the driver had been the Petitioner. The passenger who had been in the front seat had tried to escape. Upon searching him, they have taken a bag containing cannabis, an electronic weighing scale and another parcel containing 170 cellophane bags. When they searched the car, they have found a live hand grenade and live 9mm cartridges in the cubbyhole. They had produced the Petitioner for having in possession of the hand grenade and live cartridges and also for aiding and abetting in trafficking of Cannabis. Other suspects who were in the car were produced for offences relating to cannabis.
03. Three consecutive bail applications made on behalf of the Petitioner were refused by the learned High Court Judge for given reasons. Instant revision application is made to get the orders refusing the 2<sup>nd</sup> and 3<sup>rd</sup> applications by the learned High Court Judge revised.
04. Counsel for the Petitioner submitted that the learned High Court Judge has failed to take into consideration that the investigations are completed and that the Petitioner had been in remand for over 01 year. The learned High Court Judge has not considered that the Petitioner has complained to the

Human Rights Commission for removal of the CCTV footages by the STF officers and that the Petitioner has requested for the CCTV footages that would prove that no productions were recovered from the Petitioner.

05. It was further submitted that presumption of innocence applies to the Petitioner and that in no way the Petitioner could interfere with the witnesses as they are STF officers. Counsel also submitted that the maximum punishment that can be imposed for the offence involving cannabis is 01 year imprisonment and that the petitioner had been in remand for 05 months in excess of one year.
06. Senior State Counsel for the Respondents submitted that the Petitioner has not submitted exceptional circumstances to invoke revisionary jurisdiction of this Court. Further it was submitted that the learned High Court Judge's orders were not illegal to invoke revisionary jurisdiction of this Court. Further it was submitted that the Petitioner has a previous conviction for an offence involving cannabis and also a pending case in the High Court of Gampaha for possession of Heroin.
07. Senior State Counsel for the Respondents informed this Court at the argument on 17.05.2017, that State has already sent the indictment to the relevant High Court and that therefore Petitioner can now make the application for bail in the High Court.
08. To invoke revisionary jurisdiction, Petitioner must show that a positive miscarriage of justice has occurred by the order he seeks to be revised.
09. Revision is a discretionary remedy and not be available unless the applicant discloses circumstances which shocks the conscience of the

Court. (*Wijesinghe V. Tharmaratnam, Sriskantha Law Reports Vol.4 page 47*).

10. On perusing the copies of the journal entries of the Magistrates Court record as submitted by the Petitioner it, is clear that the learned Magistrate has made the relevant orders for the CCTV footages to be produced to court. On 27.10.2017, filing a further report, Police have produced a CCTV footage to the Magistrates Court and the learned Magistrate has made order for sending the same to the University of Moratuwa on submitting the list of questions to be asked. However, it will be another piece of evidence, if adduced, to be decided by the Trial Judge at the trial stage.
11. The learned High Court Judge in his ruling dated 03.09.2018 has discussed and considered circumstances submitted to him by the Petitioner when deciding on the application for bail. He has taken into consideration that the Petitioner has a previous conviction for a drug related offence and also, he has a pending case for possession of Heroin in High Court. Those are matters to be taken into consideration when deciding on applications for bail.
12. He has clearly mentioned that the other suspects did not have previous convictions, nor they had pending cases when he decided to grant them bail. When refusing the application for bail on 09.10.2018, the learned High Court Judge has made it clear that there were no changes in circumstances for him to consider bail, after the previous application was refused.
13. Although, the counsel for the Appellant submitted that the Petitioner had been in remand for 01 year and 05 months, it is to be noted that it was less

than a year that he was in remand at the time the learned High Court Judge refused the application for bail.

14. In the above premise I find no reason to interfere with the orders of the learned High Court Judge dated 03.09.2018 and 09.10.2018 refusing to grant bail to the Petitioner. However, as stated by the Senior State Counsel, as the indictment is now filed in the High Court, this order would not prevent the Petitioner in applying for bail in the High Court.

Application is dismissed.

**JUDGE OF THE COURT OF APPEAL**

**K.K. WICKREMASINGHE, J**

I agree.

**JUDGE OF THE COURT OF APPEAL**