

IN THE COURT OF APPEAL OF THE DEMOCRATIC SOCIALIST

REPUBLIC OF SRI LANKA

**In the matter of an application for Revision
in terms of Article 138 of the Constitution of
the Democratic Socialist Republic of Sri
Lanka read with section 404 of the Criminal
Procedure Code Act No.15 of 1979**

Officer in Charge

Police Narcotics Bureau

Colombo 01.

Court of Appeal Case No:

CPA 35/2020

High Court Panadura Bail
Application No: HC BA 88/2019

Magistrate's Court Case No:

B527/2019

PLAINTIFF

Vs.

DodanduwaWadugeKelumIndikaSampath

IhalaHewissaRoad,Boraluhena,

Pitigala,

And for now

Remand Prison – Kalutara

SUSPECT

AND THEN

DodanduwaWadugeKelumIndikaSampath

IhalaHewissaRoad,Boraluhena,

Pitigala,

And for now

Remand Prison – Kalutara

SUSPECT – PETITIONER

Vs.

01. Officer in Charge

Police Narcotics Bureau

Colombo 01

02. Hon. Attorney – General

Attorney – General’s Department

Colombo 12

PLAINTIFF – RESPONDENTS

AND NOW BETWEEN

DodanduwaWadugeKelumIndikaSampath

IhalaHewissaRoad,Boraluhena,

Pitigala,

And for now

Remand Prison – Kalutara

SUSPECT – PETITIONER – PETITIONER

Vs.

01. Officer in Charge

Police Narcotics Bureau

Colombo 01

02. Hon. Attorney – General

Attorney – General’s Department

Colombo 12

**PLAINTIFF – RESPONDENTS –
RESPONDENTS**

Before - MENAKA WIJESUNDERA J.

NEIL IDDAWALA J.

Counsel - Palitha Fernando P.C for the petitioner

Chathuri Wijesuriya S.C for the AG

Argued On - 19.01.2021

Decided On - 24.02.2021

MENAKA WIJESUDERA J.

The instant application for revision has been filled to revise the order dated 14.02.2020 by the Learned High Court Judge of Panadura. It is settled law that when a party files a revision application the petitioner has to satisfy this court that there are exceptional grounds which shocks the conscience of court in the order to be revised.

The petitioner states that he was arrested on 04.03.2019 and since then he has been in remand custody. While he was in remand custody for the above mentioned case he was produced before the Magistrate Court of Moratuwa on 19.11.2019 for being in possession of 177Kg (gross quantity) of heroin on 11.03.2019 by the Special Task Force.

According to the respondent the investigative officer had received an information and has raided a three story house in Moratuwa. According to the information received the petitioner is supposed to have occupied the third floor of the building on rent. The petitioner's stand is that the alleged building was searched by the police without obtaining a search Warrant. But the position of the respondent is that at the

time of raiding the building they were not aware that the petitioner occupied the third floor in the building.

The said building had been opened by a witness called H.S.B. Noonis with a key which was in her possession and heroin and some ammunition had been recovered from the 1st floor to the building, to which H.S.B. Noonis had the key.

The petitioner's grievance is that the particular parcel of heroin was not recovered from his exclusive possession and that even after the recovery he was not taken to the alleged scene of crime.

The stand of the respondent is that the investigative officers had received a tip off and based on that while the petitioner was in remand for another offence the 3 storied building in Moratuwa was raided and the door to the 1st floor was opened by the wife of the owner who was living on the second floor with a key which they said the said person had possessed. On the 1st floor the alleged bag of heroin was found. Therefore the petitioner had been produced before the Magistrates Court for being in possession of heroin.

The position of the petitioner is that the said quantity of heroin was found while he was in remand and even thereafter he was not taken to the scene of the alleged crime which makes it exceptional to invoke the revisionary jurisdiction of this court. The petitioner further states that he occupied the 3rd floor while heroin was found on the 1st floor.

The respondents do not deny any of the facts stated above by the petitioner.

The respondents have further stated that the petitioner has not invoked the right of appeal although it has been available. But the petitioner has admitted that and has stated that there is no legal bar to come by way of revision although the right of appeal is available.

The respondents have further stated that the petitioner has not come with clean hands because his previous convictions have not been divulged adequately. The position of the petitioner is that all details have been divulged to court depending on the availability of the facts.

Hence upon consideration of the above facts, the petitioner's main contention is that the irregular manner in which the alleged raid has been conducted in the

absence of the petitioner is exceptional enough to invoke revisionary jurisdiction of this court.

Hence it is the considered view of this court that the above contention has not been considered by the learned High Court Judge and it is a fit case to exercise the revisionary jurisdiction of this court. Hence the instant application for revision is allowed and the order of the Learned High Court Judge dated 14.2.2020 is set aside and the petitioner is enlarged on the following conditions of bail conditions,

1. Cash bail of Rs one million ,
2. Two sureties to the value of Rs 500000 each
3. The petitioner to report to the relevant police station on every Sunday before 2.00 P.M.
4. The petitioner not to interfere with any of the witnesses, if it is reported all bail conditions to be revised.

The Registrar of this Court to inform the above Order to the relevant High Court.

Judge of the Court of appeal

NEIL IDDAWALA J.

I Agree

Judge of the Court of appeal