

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 Article 154 P (6) of the Constitution and the High Court of the Provinces (Special Provisions) Act No. 19 of 1990.

Court of Appeal Case No:
CA (PHC) APN 24/2022

Hapuarachchige Rukshan Nilanka
No 593

High Court of Negombo Case No:
HC BAIL 500 /21

Daluwa Kotuwa
Kochchikade

Magistrate's Court of Negombo Case
No: **M 20722**

**(Name of the B report is Rukshan
Nilanga)**

(Presently at Bussa Prison)

Petitioner

Vs.

1. Officer in Charge

Anti – Corruption Unit

Police Station

Negombo.

2. Hon. Attorney General

Attorney General Department

Colombo 12.

Respondents

AND

Hapuarachchige Rukshan Nilanka

No 593

Daluwa Kotuwa

Kochchikade

**(Name of the B report is Rukshan
Nilanga)**

(Presently at Bussa Prison)

Petitioner – Petitioner

Vs.

1. Officer in Charge

Anti – Corruption Unit

Police Station

2. Hon. Attorney General

Attorney General's Department

Colombo 12.

Respondents – Respondents

Before: Menaka Wijesundera J.

Neil Iddawala J.

Counsel: Sandamal Rajapaksha instructed by Kelum de Zoysa for the petitioner –

Petitioner

Kanishka Rajakaruna, SC for the State.

Argued on: 17.01.2023

Decided on: 15.02.2023

MENAKA WIJESUNDERA J.

The instant application for revision has been filed to set aside the order dated 3.2.2022 of the High Court of Negombo.

The petitioner had been arrested while driving a motor vehicle and on inspection police had detected a substance similar to be heroin in the trouser pocket of the petitioner on 25.7.2020 and upon producing the petitioner before the Magistrate he had been remanded under the provisions of the **Poisons Opium and Dangerous Drugs act on 20.7.2020** and the petitioner had been in remand ever since.

The Government Analyst report had been received by the Magistrate on 15.2.2021 and 17 grams of heroin had been detected from the substance recovered from the custody of the petitioner.

The main grouse of the petitioner is that he has been in remand for over a period of two years without the due administration of justice taking place against him. He further averred that it is over a period of one year since the receipt of the Government Analyst report.

The Counsel for the Respondents objected to the application purely on the basis of nonexistence of exceptional circumstances.

The law pertaining to this matter is that if a suspect or accused is produced under the provisions of the instant act and if it is under section 54 A and B the said suspect or accused can be released on bail if the quantity is over 10 grams by the Court of Appeal only upon exceptional circumstances.

The exceptionality urged in this matter is the delay in due administration of justice taking place against the petitioner.

This Court draws its attention to the case of **CA (PHC) APN No 16/12 in which Justice Sisira De Abrew** has held that for an allegation of 3.59 grams of heroin his Lordship has held that the suspect being in remand for over a period of one year even after the issuance of the Government Analyst report is exceptional enough to consider bail for the suspect.

In the instant matter we observe that although the Government Analyst report has been received due administration of justice has not taken place hence it is the considered view of this Court that the instant application for revision should be allowed and we direct the learned High Court Judge to enlarge the petitioner on suitable conditions of bail.

Judge of the Court of Appeal.

I agree.

Neil Iddawala J.

Judge of the Court of Appeal.