

**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
Section 11(1) of the High Court of
the Provinces (Special Provisions)
Act No.19 of 1990 read with Article
138 of the Constitution.

Court of Appeal Case No. CPA 12/2020

H.C. Galle Case No. 155/2019

M.C. Baddegama Case No B 737/2019

Yasawathi Weerasingha
Diyakadiththagodawatta,
Keradewala
Majuwana

Petitioner-Petitioner

Vs.

01. Officer-in-Charge,
Police Station,
Baddegama.
02. The Hon. Attorney General,
Attorney General's Department,
Colombo 12.

Respondent-Respondents

Anusha Shamali Wawala Panditha
Diyakadiththagodawatta,
Keradewala
Majuwana
(presently in Remand Custody)

BEFORE : HON. JUSTICE ACHALA WENGAPPULI
HON. JUSTICE DEVIKA ABEYRATNE,

COUNSEL : Maithri Gunaratne P.C. with Iffal
Shanabdeen for the Petitioner.
Panchali Witharana S.C. for the
Respondents

ARGUED ON : 18th, February, 2020

ORDER ON : 25th February, 2020

HON. JUSTICE ACHALA WENGAPPULI,

This is an application to revise an order, made by the High Court of Galle in case No. BA 155/2019 dated 14.01.2020, in refusing to enlarge the Suspect-Respondent *Anusha Shyamali Wewala Panditha* on bail. She was produced before the Magistrate's Court of *Baddegama* in case No. 737/2019 as a suspect for committing offences, which are punishable under Sections 54(a), (b) and (c) of Poisons, Opium and Dangerous Drugs Ordinance as amended, in relation of more than 28 kg of *Cannabis Sativa - L.*

It is alleged that the *Baddegama* Police received information that a group of persons who arrived in a car bearing No. KY 5632 had dumped three bags near "*Cheena Wella*" which contained the prohibited substance on 14.09.2019. The said vehicle had exited the Southern Expressway from its *Baddegama* interchange and had failed to stop when signalled by the Police at the said interchange. The said Car was seen during the relevant

time period, in CCTV footage that had been recovered from a public school, which was located near the place where the three bags were found.

The Suspect-Respondent is the registered owner of the said Car and was arrested on 15.09.2019, after she had evaded arrest by shifting her residence to one of her relations. In her statement she had stated that she had given her car on rent to one "*Hichchi Malli*". The Suspect-Respondent claimed that she did not know any other personal details of the said "*Hichchi Malli*" except for his mobile phone number 0729534610. This number had been issued with international roaming facility and therefore the local service provider is unable to trace the details of ownership of the phone or of its subscriber.

In refusing to enlarge the Suspect-Respondent, the High Court has held that the submissions made on her behalf as to the non-availability of evidence in relation to her exclusive possession of the prohibited substance is not relevant since it is a matter for the trial Court. It also considered the time period the Suspect-Respondent has spent in remand pending investigations and found that there is no exceptional ground revealed therefrom. The fact that she is a mother of two children too was disregarded as a non-exceptional ground.

Learned President's Counsel for the Petitioner submitted to this Court in support of the revision application that the Suspect-Respondent was merely arrested because she is the registered owner of the said vehicle and no other evidence is available as to her complicity even though the investigations are continuing. Therefore, he reiterated that there is no basis

that she could be prosecuted successfully and that factor is an exceptional ground to be considered in her favour.

The 1st and 2nd Respondents have resisted the application for revision by filing objections.

Learned State Counsel invited attention of this Court that the Petitioner had failed to make a full and truthful disclosure of the relevant facts and circumstances, when she failed to mention that Suspect-Respondent has another pending case in the Magistrate's Court of *Baddagama* bearing Case No. B688/2018 and was on bail when she was arrested in connection with the instant case.

She defended the impugned order of the High Court on the basis that none of the grounds urged by the learned President's Counsel could be considered as exceptional, a statutory requirement that had to be fulfilled by a Petitioner, in seeking an order of Court for enlarging a suspect or an accused under Section 54(a) to (b) of the said Ordinance.

It is clear from the proceedings relating to the inquiry before the High Court that the Suspect-Respondent had another pending case. The Petitioner had failed to state that fact and the nature of the accusation in Case No. B688/2018. It is the same Petitioner that had filed the Petition supported by her affidavit before the High Court. In that Petition too, it was erroneously stated that the make of the vehicle is Susuki, whereas the vehicle that was involved with the instant detection is of Honda.

There is no explanation forthcoming from the Petitioner as to her failure to state that the Suspect-Respondent had another pending case and therefore it appears that there was in fact a suppression of a material fact.

In the impugned order, the High Court had considered the applicable law and the judicial precedents relied upon by the Petitioner.

The High Court had distinguished those precedents and there were no submissions made before this Court as to the correctness of the order in that respect. The High Court, having considered the attendant circumstances, concluded that the Petitioner had failed to satisfy it as to the existence of any exceptional circumstances.

This Court concurs with the conclusion reached by the High Court that there were no exceptional circumstances revealed before that Court. Whether there is material to conclude the Suspect-Respondent was in exclusive possession of the prohibited substance is not directly a relevant consideration at this stage of the proceedings. It is undisputed that the investigations are continuing.

As correctly submitted by the Learned State Counsel, the Petitioner's application is clearly a premature one, considering all the circumstances of this case.

Since there is no illegality or irregularity in the impugned order of the High Court and in the absence of any exceptional circumstances that exists in favour of the Petitioner in exercising revisionary jurisdiction of this Court, the application of the Petitioner is ought to be rejected.

In view of the foregoing, the application of the Petitioner is refused and her petition is accordingly dismissed without costs.

JUDGE OF THE COURT OF APPEAL

HON. JUSTICE DEVIKA ABEYRATNE

I agree.

JUDGE OF THE COURT OF APPEAL