

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

In the matter of an Application for  
revision in terms of Section 11 of the  
High Court of the Provinces (Special  
Provisions) Act No.19 of 1990 and  
Article 138 of the Constitution of  
Democratic Socialist Republic of Sri  
Lanka.

**C.A. (PHC)APN No. CPA 138 /2019**  
**H.C.Colombo No.165/2019**  
**M.C. Maligakanda Case No B 7930/17**

Kalupahana Arachchige Viraj  
Saranga Jayasuriya

**Accused-Petitioner**

**Vs.**

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

**Complainant-Respondent**

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BEFORE : ACHALA WENGAPPULI,J.  
DEVIKA ABEYRATNE, J.

COUNSEL : Jaliya Samarasinghe for the Petitioner.  
Panchali Witharana S.C. for the  
Respondent

ARGUED ON : 06<sup>th</sup>, March, 2020

ORDER ON : 11<sup>th</sup> March, 2020

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ACHALA WENGAPPULI,J.

In this application, the accused-petitioner invokes the revisionary jurisdiction of this Court, seeking to set aside the order of the High Court of *Colombo* dated 24.10.2019 pronounced in case No. HC 165/19 by which the Court had refused enlarging him on bail. The accused-petitioner was indicted before that Court for the alleged possession and trafficking in of 10.41 grams of Heroin. After service of the indictment on the accused-petitioner, his trial was fixed on 9<sup>th</sup> and 10<sup>th</sup> of December 2019.

The accused-petitioner, in support of his application for bail, had submitted to the High Court that Section 8 of the Convention Against Illicit Traffic in Narcotics Drugs and Psychotropic Substances Act No. 1 of 2008 had made the provisions of the Bail Act No. 30 of 1997 are applicable to

applications for bail and Section 16 of the Bail Act made it mandatory to enlarge a person who was kept in detention for over a period of one year. Since the accused-petitioner is in remand for well over two and half years, he should be enlarged on bail because he need not satisfy the Court of existence of any exceptional circumstances, a legal requirement no longer applicable, in view of the statutory provisions of Section 8 of the Act No. 1 of 2008.

The High Court had rejected the accused-petitioner's interpretation of law on the basis that Section 2 of the Act No. 1 of 2008 had clearly excluded its applicability over the offences that are stated in part III of the Third Schedule of the Poisons Opium and Dangerous Drugs Ordinance as amended by Act No.13 of 1984.

In seeking to revise the said order of the High Court, the accused-petitioner submitted to this Court that he supports his young family, had been incarcerated for over two years pending trial and the Hon. Attorney General had failed to issue a practice direction identifying the exceptional circumstances and thereby prevented a prospective applicant for bail in placing reliance upon such circumstances. The accused-petitioner therefore urges that this Court could treat the non-availability of a definition to the term "*exceptional circumstance*" as an exceptional circumstance in itself.

The accused-petitioner had invoked revisionary jurisdiction of this Court to revise the impugned order of the High Court. Therefore, this Court should consider whether the said impugned order is tainted either with any illegality or any irregularity.

It is undisputed that the accused -petitioner is indicted before the High Court for the alleged commission of offences that are described in Section 54A of the Poisons, Opium and Dangerous Drugs Ordinance as amended and read with Column II of Part III of the Third Schedule to the said Ordinance.

Section 2 of the Convention Against Illicit Traffic in Narcotics Drugs and Psychotropic Substances Act No. 1 of 2008 had described the several offences it had created. The proviso to Section 2 however, had excluded certain offences from the scope of the said Act as it is stated that;

*"Provided further, that the above provisions shall not be applicable to offences to which Part III of the Third Schedule to the Poisons, Opium and Dangerous Drugs Ordinance (Chapter 218) applies."*

The accused-petitioner's contention that Section 8 of the said Act made the provisions of the Bail Act are applicable to a suspect or an accused who is indicted under Poisons, Opium and Dangerous Drugs

Ordinance is therefore directly in conflict with the express statutory provision contained in the proviso to Section 2 of Convention Against Illicit Traffic in Narcotics Drugs and Psychotropic Substances Act.

The accused-petitioner's contention that Section 8 of the said Act made the provisions of Bail Act are applicable to him too is clearly is an instance where he had misled himself since it only categorises the offences that are described in Section 2 of Convention Against Illicit Traffic in Narcotics Drugs and Psychotropic Substances Act as cognizable and non-bailable offences.

In delivering the order denying bail to the accused-petitioner, the High Court had correctly applied the relevant statutory provisions. The impugned order is therefore a legally correct valid order and there was no irregularity alleged.

It is in *Thamodarampillai v Attorney General* (2004) 3 Sri L.R. 180, the then Supreme Court emphasised the presence of exceptional circumstances in considering bail pending appeal. Understandably their Lordships did not venture to define what is meant by exceptional circumstances are, conferring a wide discretion on the Courts of first instance for consideration of bail in respect of each application on its own and peculiar circumstances.

The judgment of *The Queen v Cornelis Silva* 74 NLR 113, stated that the grounds that are "*common to many accused persons*" will not qualify to be considered as exceptional and therefore the personal circumstances as urged by the accused-petitioner, though highlighted for the first time before this Court, fail to satisfy the requirement imposed on him by Section 83(1) of the Poisons, Opium and Dangerous Drugs Ordinance as amended.

In the circumstances, the application of the accused-petitioner to revise the impugned order of the High Court is refused. His application is accordingly dismissed.

No order for costs.

JUDGE OF THE COURT OF APPEAL

DEVIKA ABEYRATNE, J.

I agree.

JUDGE OF THE COURT OF APPEAL