

IN THE COURT OF APPEAL OF THE DEMOCRATIC SOCIALIST

REPUBLIC OF SRI LANKA.

In the matter of an Application for
Revision under Article 138 of the
Constitution of the Democratic
Socialist Republic of Sri Lanka.

Court of Appeal Case No:
CPA /82/2022

High Court of Gampaha Bail
Application No: **277/2021**

Magistrate's Court of Gampaha Case
No: **B 491/2021**

Officer in Charge

Police Station

Ganemulla.

Complainant

Vs.

1.Welambage Sudarshanie Nilanthi
Perera.

2.Mohammed Asmadeen Safna.

3.Hewa Indikatiyage Nuwan
Madusanka.

Suspect

AND THEN

Wattoru Thanthrige Dayawathie
Fernando

No.157/15, Negombo Road,

Peliyagoda

Petitioner

Vs.

1. Hon. Attorney General

Attorney General's Department

Colombo 12.

2. Officer in charge

Police Station

Ganemulla.

Respondents

3. Welambage Sudarshanie Nilanthi
Perera.

Suspect – Respondent

**(Presently in Welikada Remand
Custody)**

AND NOW BETWEEN

Welambage Sudarshanie Nilanthi
Perera.

(Presently in Remand Custody)

Suspect – Respondent – Petitioner

Vs.

1. Hon. Attorney General

Attorney General's Department

Colombo 12.

2. Officer in charge

Police Station

Ganemulla.

Respondents – Respondents

Before: Menaka Wijesundera J.

Neil Iddawala J.

Counsel: Kasun Liyanage for the Suspect – Petitioner.

Nishanth Nagaratnam, SC for the Respondents.

Argued on: 17.01.2023

Decided on: 15.02.2023

MENAKA WEJESUNDERA J.

The instant application for revision has been filed to set aside the order dated **6.7.2022** of the High Court of Gampaha.

The suspect namely **Welambage Sudarshani Nilanthi Perera** had been produced before the Magistrate for allegedly possessing a substance suspected to be heroin in her hand bag on **26.2.2021** along with two others.

The Government Analyst report had detected **31.03 grams of heroin** in the said substance taken in to custody.

The Counsel for the suspect alleges that the substance taken in to custody was introduced to the suspect by the police and further allege that the police had taken steps to send a second parcel to the Government Analyst subsequent to the filling of the bail application in the High Court which is after one year after the initial arrest.

Hence the Counsel for the suspect is alleging an inordinate delay in the due administration of justice taking place against the suspect.

The law pertaining to bail in the instant matter is that if a suspect is produced and remanded under the provisions of the **Poisons Opium and Dangerous drugs act** under section 54 (a) or (b) and if the alleged substance is confirmed to be heroin and if it is over 10 grams the Court of Appeal can consider bail upon exceptional circumstances.

The term exceptional has not been defined in the act but in our legal literature it has been held that exceptionality differs from case to case.

In the instant matter the exceptionality pleaded is the delay.

It has been held in the case of **Q vs Liyanage 65 NLR 289** as to what should be considered in a bail application and they are,

1)the nature of the crime,

2)the severity of the punishment .

3)the nature of the evidence and consequently the probability of a conviction.

But lately a contrary view has been taken up by their Lordships in the Supreme Court in the case of **SC Appeal 53/2022** that “**creditworthiness’ and morality cannot be considered in an application for bail.**”

In the instant matter this Court has been urged to consider the delay in the instant matter.

While appreciating the guidelines set out in the above mentioned cases this Court also notes the several cases in which delay has been considered under the instant act. They are,

1)Milroy Fernando vs Attorney General CA Bail 542/90

2)OIC Narcotics Bureau vs Kanahala Gamage Suneetha CA REV3/2002

3)Gurusamy vs Ramalingum CA 119/200

and several more.

Hence in the instant matter the suspect had been in remand since 2021 and this Court also notes that there is an unexplained delay in sending the productions to the Government Analyst in totality which would further delay the institution of proceedings.

But this Court also notes that the suspect has a similar pending case and one previous conviction for a similar offence which the Respondents have failed to state but the petitioner had stated in the petition.

Hence considering the nature of the offence and the suspect having a similar pending and previous conviction we are of the opinion that the delay pleaded by the suspect cannot be considered as an exceptional ground to overturn the order of the learned High Court Judge.

As such the order of the learned High Court Judge is affirmed and the instant application for revision is dismissed.

Judge of the Court of Appeal.

I agree.

Neil Iddawala J.

Judge of the Court of Appeal.