

IN THE COURT OF APPEAL OF THE DEMOCRATIC SOCIALIST

REPUBLIC OF SRI LANKA

CA (PHC) APN **40/2020**

High Court of Panadura Bail

Application No: **Bail/07/2019**

Magistrate Court of Moratuwa

Case No. **B/ 1167/2018**

In the matter of an application for Revision under and in terms of the Article 138 of the Constitution read together with the Section 365 of the Code of Criminal Procedure Act No. 15 of 1979 against the order dated 28/02/2020 of refusing bail order dated by the Hon. High Court Judge of Panadura.

The Officer in Charge.

Police Station Moratuwa.

Complainant

Vs.

ManikkubadakurugeSamanPriyankara
Kumaranath Silva,

No.250,

North Muhudukatuwa, Marawila

(No.30/01, JanapriyaMawatha,
Koralawella, Moratuwa)

Suspect

AND IN BETWEEN

Wijayathungage Dinika Sanjeewani De
Zoyza

No. 92/1, Pinwala Pahala Road, Pinwala,
Panadura.

Petitioner

Vs.

1. The Officer in Charge

Police Station Moratuwa

2. The Hon. Attorney General,

Attorney General's Department,

Colombo 12.

Respondents

AND NOW IN BETWEEN

Manikkubadakuruge Saman Priyankara
Kumaranath Silva,

No. 250,

North Muhudukatuwa, Marawila

(NO. 30/1, Janapriya Mawatha,
Koralawella, Moratuwa)

(Currently incarcerated in Remand
Custody)

Petitioner – Petitioner

Vs.

1. The Officer in Charge

Police Station Moratuwa.

2. The Hon. Attorney General

Attorney General's Department,

Colombo 12.

Before –Menaka Wijesundera J.

Neil Iddawala J.

Counsel –Neranjan Jayasinghe for

Petitioner.

Panchali Witharana Sc

For AG.

Argued On – 03/ 03 / 2021

Decided On – 17 / 03/ 2021

MENAKAWIJESUNDERA J.

The instant application for revision has been filed to set aside the order dated 28th February 2020 of the learned High Court Judge of Panadura.

The suspect petitioner had been taken in to custody on 24.6.2018 by the Moratuwa police for being in possession of 40 grams of gross quantity of heroin.

It is well settled law that when a party files a revision application that the petitioner must satisfy this court that under the provisions of the **Criminal Procedure Code** (hereinafter referred to as the CPC) **act No 15 of 1979** that there is an ,

- 1) illegality in the impugned order,
- 2) impropriority of any sentence or order,
- 3) irregularity in the proceedings.

The above provision has been discussed in **Attorney General vs. Ranasinghe and others 1993 (2) Sri L.R 81.**

In the instant application the suspect petitioner has been produced under the provision of the **Poisons Opium Drugs Act no 13 of 1984**, and according to the said act a suspect can be enlarged on bail under section 83(1) of the act and under which a suspect has to show that there are exceptional circumstances to enlarge the suspect on bail. The exceptional circumstances have been discussed in

LabynidarageNishanthi V. Attorney General [CA (PHC) APN 48/2014], It was held that,

“it is trite law that any accused or suspect having being charged under the above act will be admitted to bail only in terms of section 83 (1) of the said Act and it is only on exceptional circumstances. Nevertheless it is intensely relevant to note, the tern

“exceptional circumstances” has not been explained or defined in any of the Statutes. Judges are given a wide discretion in deciding in what creates a circumstance which is exceptional in nature.

There are plethora of cases in the legal parlor which had identified what creates an “exceptional circumstances” in relation to granting bail...”

In the instant application the exceptional grounds pleaded by the petitioner is that the discrepancies in the place of arrest of the petitioner along with the telephone tower details of the investigative officers, and the suspect petitioner being in remand upon receipt of the Government Analyst report because indictment was not filed, creates an exceptional situation where the suspect petitioner should be enlarged on bail.

But the position of the respondents, is that the facts of the case should not be gone in to at the time of considering the bail application, which this court observes has been discussed in **CA Revision Application CA (PHC) APN 147/17 by her ladyship WickramasingheJ**. The respondents further says that the petitioner had filed a further bail application before the same High Court, before the same judge on 15.2.2021 and the same has been rejected and that particular order should be canvassed in revision and not this order made on 28.2 2020.

Anyhow having considered the submissions of both parties this court is of the view that in the instant application indictment has already been filed and although the petitioner canvases some irregularities in the investigations this court is of the view that those matters, as set out in previously decided orders of this court, are matters to be considered at trial stage, hence there are no exceptional grounds set out by the petitioner to enlarge the suspect on bail as per the provisions of the Poisons Opium and Dangerous Drugs Act and there is no irregularity or an impropriety in the order of the learned High Court Judge.

Hence the instant application is hereby dismissed.

Judge of the Court of Appeal.

I agree

Neil Iddawala J.

Judge of the Court of Appeal.