

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

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

The Hon. Attorney General,

Attorney General's Department,  
Colombo 12.

**Complainant**

**Vs**

Suriyaarachchige Ruwan Dammika  
Gunawardene

**Accused**

**C. A. Case No. : CA (PHC) APN151/16**

**H. C. Colombo Case No. : 8046/2015**

**And Now between**

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

**Complainant- Petitioner**

**Vs**

Suriyaarachchige Ruwan Dammika  
Gunawardene

**Accused-Respondent**

**BEFORE** : **P.Padman Surasena, J.**  
**K. K. Wickramasinghe, J.**

**COUNSEL** : D.S.G. Varunika Hettige for the Petitioner  
Anil Silva P.C. with A A L D. Gunaratne for the Respondent

**ARGUED ON** : 6<sup>th</sup> July 2017

**DECIDED ON** : 1<sup>st</sup> November 2017

**K. K. WICKRAMASINGHE, J.**

The Complainant Petitioner (herein after referred to as the Petitioner) filed this revision application seeking to set aside the order of the Learned High Court Judge dated 29.09.2016. At the stage of the argument it was agreed by both parties to file written submissions on the legal ground of the requirement of exceptional circumstances, before granting bail, as envisaged by the Poisons, Opium and Dangerous Drugs Ordinance was demonstrated.

**Facts of the case:-**

The Accused Respondent was indicted in the High Court of Colombo for trafficking and possession of 343.08 grams of heroin for an offence punishable under sections 54 A (c) and 54 A (b) of the Poisons, Opium and Dangerous Drugs Ordinance. When the indictment was read over to accused respondent, he had pleaded 'not guilty' to the indictment and accordingly the trial was commenced before the learned High Court Judge. The prosecution witness No.1 was giving evidence. On 29.09.2016 the learned counsel for the accused made an application for bail citing as a ground that the accused respondent was in the remand for a period of 2 years and the respondent is married with three children.

The prosecuting counsel has objected for granting bail on the ground that exceptional circumstances were not demonstrated by the respondent as a pre-condition for bail and the net quantity is 343.08 grams. Also mentioned that period of remand cannot be considered as an exceptional ground for bail.

The Learned High Court Judge had pronounced the order dated 29.09.2016 granting bail on the accused respondent on the ground that the high court has a shortage of staff, prosecution witness No1 has not concluded evidence, also considering the remand period.

Being aggrieved by the said order made by the Learned High Court Judge, the Complainant Petitioner has filed this application for revision in this court on the ground that the bail was granted without the demonstration of exceptional grounds which deemed necessary under section 83 (1) of the Poisons, Opium and Dangerous Drugs Ordinance.

The Learned Counsel for the Petitioner states that the aforesaid order is illegal, wrongful and contrary to law and /or unreasonable for any one or more of the following reasons: -

The Learned counsel for the Petitioner states that the matters set out in above mentioned paragraphs constitute exceptional circumstances, which warrant exercising revisionary jurisdiction of this court.

Considering the above submissions made by the learned counsel for the petitioner it is evident that the above mentioned grounds submitted by the counsel for respondent in the high Court does not constitute exceptional circumstances for the purpose of releasing the respondent on bail. The Learned High Court Judge should have taken into consideration the nature, gravity of offence and the quantity of heroin alleged to have been in possession of the accused respondent. The Learned High Court Judge should have been also mindful of the fact that the gravity of the offence is severe and the sentence to be imposed will be the death penalty if convicted.

In the bench mark decision in the case of **Ramu Thamodarampillai Vs the AG (2004) 3 Sri L.R. 180** has dealt with the identical issue and had observed thus; *"the decision must be in each case depend on its own facts and circumstances. But, in order that like cases will be decided alike, there should be uniformity of decisions, it is necessary that guidance should be laid down for the exercise of that discretion"*.

In the case of **Mohamed Shiyam** it was held that for an offence of committed under the above act , section 83 of the said act will be applicable and according to section 83, bail will be granted only on exceptional circumstances.

In the case of **CA (PHC) APN 110/2009** a case where the quantity was 4.7 gms. It was held that *“the first ground the fact that the suspect had been on remand for over 4 years cannot be taken as constituting the exceptional circumstance in view of the punishment that could be imposed for an offence of this nature where the charge carries a sentence of life imprisonment or death”*

In the case of **Ranil Charuka Kulathunga Vs AG (CA(PHC)APN 134/2015)** it was held that, *“That the petitioner submits several grounds to consider bail. The Petitioner states that he is a married person with two school going children. The persons getting married and having children is not an exceptional ground. It is the normal day to day life of the people.”*

In the above-mentioned case it was further held, *“The quantity of cocaine involved in this case is 62.847 grams, which is a commercial quantity. If the Petitioner is convicted, the punishment is death or life imprisonment. Under these circumstances, it is prudent to conclude the trial early while the Petitioner is kept in custody.”*

In the case of **Labukola Ange Wisin Gedera Ashni Dhanudhika Vs AG (GA PHC APN 4/2016)** it was held that *“in the present case the Petitioner failed to establish any exceptional circumstances warranting this court to exercise the revisionary jurisdiction. The Petitioner’s first point is that the suspect is in remand nearly for two years. The intention of the legislature is to keep in remand any person who is suspected or accused of possessing or trafficking heroin until the conclusion of the case. The section 83(1) of the Poisons, Opium and Dangerous Drugs Ordinance express the intention of the legislature.....”*

In the case of **Lanumoderage Nishanthi Vs AG (CA (PHC)APN 48/2014)** it was held that, *“it is trite law that any accused or suspect of having 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.”*

In the case before us the grounds set out by the Learned High Court Judge was the lack of staff, prosecution witness No. 1 not being concluded, time may be taken to conclude the trial. It is evident that the Learned High Court Judge has failed to consider the gravity of the offence, the sentence to be imposed if the accused get convicted or make any reference to any exceptional

circumstances. The above-mentioned reasons set out by the trial judge cannot be considered as exceptional grounds to enlarge the accused respondent on bail.

When considering the cases mentioned above it is abundantly clear that the intention of the legislature is that, unless the exceptional circumstances demonstrated, bail will not be granted. It is pertinent to note that in the said order, the exceptional circumstances are not even mentioned.

Therefor considering the rationale observed by our superior courts, in granting bail to an accused charged under the said act, it is very clear, that Learned High Court Judge should have considered whether there were exceptional circumstances before granting bail.

Thus, this court set aside the order dated 29.09.2016 of the Learned High Court Judge.

This court also directs that all subsequent steps taken to release the accused Respondent on the above order of High Court be annulled.

Revision Application is allowed.

JUDGE OF THE COURT OF APPEAL

**P.Padman Surasena J**

I agree,

JUDGE OF THE COURT OF APPEAL

Cases Referred to:

1. Ramu Thamodarampillai Vs the AG (2004) 3 Sri L.R. 180
2. Mohamed Shiyam Vs Attorney General (2006) 2 SLR pg 156
3. CA (PHC) APN 110/2009
4. Ranil Charuka Kulathunga Vs AG (CA(PHC)APN 134/2015)
5. Labukola Ange Wisin Gedera Ashni Dhanudhika Vs AG (GA PHC APN 4/2016)
6. Lanumoderage Nishanthi Vs AG (CA (PHC)APN 48/2014)