

IN THE COURT OF APPEAL OF THE DEMOCRATIC SOCIALIST

REPUBLIC OF SRI LANKA

In the matter of an applications for
Revision in terms of the Article 138 of
the Constitution read together with
the Section 364 and 404 of the Code
of Criminal Procedure Act No. 15 of
1979.

Officer in charge

Police Station Bandaragama

Complainant

CA (PHC) APN 15/2020

High Court of Panadura Bail

Application No: Bail/120/2019

Vs.

Magistrate Court of Horana Case

No. B/35352/2018

Rakvanage Dilip Kumara

No.357/B

Raigama West

Bandaragama

(Presently at Kalutara Prison)

Suspect

AND NOW BETWEEN

Rakvanage Dilip Kumara

No.357/B

Raigama West

Bandaragama

(Presently at Kalutara Prison)

Suspect – Petitioner

Vs.

01. The Hon. Attorney General

Attorney General's

Department

Colombo 12

02. The Officer in Charge

Police Station Bandaragama

Respondents.

Before - Menaka Wijesundera J.

Neil Iddawala J.

Counsel – Neranjan Jayasinghe for the

Petitioner

Cathuri Wijesuriya, SC for the

State.

Argued On – 01/02/2021

Decided On – 24/02/2021

MENAKA WIJESUDERA J.

The instant application of revision has been filed to revise the order dated 3.12.2019 of the learned High Court Judge of Panadura.

It is settled law that when a party files a revision application the party filling the same must satisfy this court that there are exceptional circumstances which shocks the conscious of this court in the order to be revised.

In the instant application the grievance of the petitioner is that although the petitioner was in remand for over a year bail was not considered by the learned High Court Judge and further more although the Government Analyst Report was available indictment was delayed in being filed.

The position of the respondents is that the petitioner suspect was arrested by the police for being in possession of 25.300 grams of gross quantity of heroin while he was in his residence on 01.05.2018, and since then he has been in remand custody. Upon receipt of the Government Analyst Report the pure quantity of heroin had been revealed as 5.633 grams. The respondents further states that the indictment had been filed in 2019 December and the matter was delayed in being fixed for trial due to the lockdown period in the country.

The petitioner cited two judgments and urged that even after the receipt of the Government Analyst Report if indictment is not being filed the said delay has to be considered for bail.

But the position of the respondents is that indictment has already been filed and it would be called in relevant High Court in due course.

In the order of the Learned High Court Judge he has drawn his attention to a judgment of another division of this bench and has concluded that the remand period of a suspect cannot be considered as exceptional, when considering grounds for bail.

Therefore when a suspect is taken in to custody for a charge of the above nature it is stated in the relevant act itself that exceptional circumstances should be urged before court to consider an application for bail, the judgment cited by the

Learned High Court Judge discusses this matter at length. (CA (PHC) APN 147/2017) But the Learned High Court Judge has considered the matters urged before him and has concluded that according to the judgment cited by him the matters urged before him are not exceptional.

This court especially takes in to consideration the following paragraph of the judgment cited by the Learned High Court Judge (CA (PHC) APN147/2017) which says as,

*“According to the decisions cited above, our law does not consider the period of remand as an exceptional circumstance. It is well settled law that the principles governing bail under the poisons, Opium and Dangerous Drugs Act are manifestly different from general principles of bail under the Bail Act. As it was pointed out in the case of **Labukola Anga Wisin Gedara Ashani Dhanushshika**(supra) and in the case of **W.R.Wickramasinghe** (supra), the intention of the Legislature can be construed as to keep suspects and accused under the poisons, Opium and Dangerous Drugs Act in remand until the conclusion of the case”*

Hence upon perusal of the said order it is the considered view of this court that in the impugned order this court finds no illegality or an exceptional circumstance which shocks the conscious of this court. This Court also takes into consideration the fact that since the indictment has already been filed the trial can be expedited if the parties urge before the High Court to do so.

Therefore the instant application for revision is hereby dismissed.

Judge of the Court of Appeal

Neil Iddawala J.

I Agree.

Judge of the Court of Appeal