

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.

The Officer in Charge

Ingiriya, Police Station.

CA PHC APN: 119/2020

COMPLAINANT

Horana MC No: 39341/18

Vs.

Panadura Bail App: 130/19

1.Nanomi Aarachchige Nilambara
Sangeeth Perera,

No.29/1/A Wijeya Place,

Madiwela,

Kotte.

Currently held in Remand Custody.

SUSPECT

AND BETWEEN

Nanomi Aarachchige Ajith Ashoka
Perera,

No.29/1/A Wijeya Place,

Madiwela,

Kotte.

PETITIONER

Vs.

1. Officer in Charge
Ingiriya Police Station.
2. The Hon. Attorney General
Attorney General's Department,
Colombo.
3. Nanomi Aarachchige Nilambara
Sangeeth Perera.

RESPONDENTS

AND NOW BETWEEN

Nanomi Aarachchige Ajith Ashoka
Perera,
No.29/1/A Wijeya Place,
Madiwela,
Kotte.

PETITIONER – PETITIONER

Vs.

1. Officer in Charge
Ingiriya Police Station.
2. The Hon. Attorney General,
Attorney General's Department,
Colombo.

RESPONDENTS –

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3. NanomiAarachchige Nilambara
Sangeeth Perera.

Currently in Remand Custody

SUSPECT – RESPONDENT

Before – Menaka Wijesundera J.

Neil Iddawala J.

Counsel – Hafeel Fariz for the

Petitioner.

Chathurangi

Mahawaduge, SC for

the state.

Argued On – 08 / 03/ 2021

Decided On – 17/ 03/2021

MENAKA WIJESUNDERA J.

The instant application for revision has been filed to revise the order of the learned High Court Judge of panadura dated 07.07.2020.

When a party files a revision application the party filling the same must satisfy this court that there is an exceptional circumstance which shocks the conscious of court. Under the provision of the Criminal Procedure Code Act nu 15 of 1979 section 364 it has been set out what should be considered in a revision application. They are

- 1) Legality of any order,
- 2) Propriety of any sentence or order
- 3) Regularity of the proceedings

The above has been discussed in **Attorney General vs. Ranasinghe and others 1993 (2) SLR 81.**

In the instant matter the suspect had been taken in to custody while riding a motor bike with another lady for being in possession of heroin on 13 .9. 2018. The other lady who was on the pillion of the motor bicycle was also taken in to custody for being in possession of heroin. The Government Analyst had identified the amount of heroin taken from the custody of the suspect of this petition to be less than 2 grams, the heroin taken in to custody from the suspect pillion rider also had been identified to be less than two grams.

The contention of the petitioner is that although the Government Analyst Report had been received the indictment had not been filed and the learned High Court Judge had referred to the amount of heroin as being 7 grams. Upon perusal of the initial B report filed the parcels of heroin had been taken in to custody from the custody of the suspects separately and not individual parcels. Therefore making a reference by the learned High Court Judge as to the heroin being 7 grams is not factually correct.

According to the submissions of the respondents the indictment has been dispatched to the High Court but the petitioner pleads ignorance.

Nevertheless according to the act under which the suspect had been taken in to custody that is the, Poisons Opium and Dangerous Drugs Act, for a suspect to be enlarged on bail there has to be exceptional reasons. This is analyzed in the following case, that is

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

"..It is trite law that any accused or suspect 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. Nevertheless it is intensely relevant to note, the term "exceptional circumstances" has not been explained or defined in any of the Statutes. Judges are given a wide discretion in deciding in what creates circumstances 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 view of the submissions made before us at the time of the impugned order the learned High Court Judge had been in possession of the Government Analyst report but he has failed to consider the pure quantity of heroin which was identified from the custody of the suspect pertaining to this case. He has infact considered the full amount of heroin taken from the custody of both suspects and another suspect who was arrested on the same day but produced under a separate B report.

Therefore this court is of the opinion that the instant application for revision should be allowed and the suspect should be enlarged on bail on the following conditions,

- 1) Cash bail of Rs 100000/,
- 2) Two sureties to the value of Rs 50000/ each,
- 3) The suspect should report to the relevant police station on every Sunday of the month.

The registrar of this court is directed to convey this order to the relevant High Court.

Judge of the Court of Appeal.

I agree.

Neil Iddawala J.

Judge of the Court of Appeal.