

**IN THE MATTER OF AN APPLICATION OF THE DEMOCRATIC  
SOCIALIST REPUBLIC OF SRI LANKA**

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

Officer in Charge,  
Police Station,  
Narcotics Bureau.

CA (PHC) APN No: **CPA 41/2021**

**Complainant.**

High Court Chilaw: **BAL 114/2020**

**Vs.**

The Magistrate's Court Of Marawila

Mohamed Anwar Mohamad Fawaz,  
(Presently at Remand Prison)

Case No: **B 481/2020**

**11<sup>th</sup> Suspect.**

**And**

Noorden Jamaldeen Fathima Rizwana.

**Petitioner.**

**Vs.**

1. Officer in Charge,  
Police Station,  
Narcotics Bureau.

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

**Respondents.**

Mohamed Anwar Mohamed Fawaz,  
  
(Presently at Remand Prison)

**11<sup>th</sup> Suspect**

**And Now**

Noorden Jamaldeen Fathima Rizwana  
  
No. 70/H, Maligawatta Lane,  
  
Colombo 10.

**Petitioner – Petitioner**

**Vs.**

1. Officer in Charge,  
Police Station,  
Narcotics Bureau.
2. The Hon. Attorney General,  
Attorney General's Department,  
Colombo 12.

**Respondents – Respondents.**

Mohamad Anwar Mohamed Fawaz,  
  
(Presently in Remand Prison)

**11<sup>th</sup> Suspect.**

Before – Menaka Wijesundera J.

Neil Iddawala J.

Counsel – Anil Silva PC with N. Perera for the Petitioner – petitioner.

Chathurangi Mahawaduge, SC for the state.

Argued On – 03.08.2021

Decided On – 31.08.2021

**MENAKA WIJESUNDERA J.**

The instant application for revision has been filed to revise the order dated 9.2.2021 of the learned High Court Judge of Chilaw.

The suspect by the name of Mohamed Anwer Mohamed Fawaz had been serving as a Warf Clerk in the company by the name of N.M.B Clearing and forwarding Agency at the time of the alleged offence. He had been taken in to custody by the Narcotics Bureau on the 12<sup>th</sup> of March 2020 at Orugodawatta terminal for aiding and abetting to import a gross quantity of heroin 99kg and 478 grams under the Poisons Opium and Dangerous Drugs Ordinance punishable under sections 54A and 54B.

The position of the petitioner is that the above named suspect had been serving as the Warf Clerk at the above mentioned clearing company and when his Superiors ordered him to clear a consignment of potatoes he done so and the Narcotics Bureau on information received had inspected the said consignment at Luniwila and found an alleged substance which was later identified to be heroin, of which he had no knowledge and he only carried out his duty as a Warf Clerk, therefore his incarceration

since March 2020 is not justified and the lack of evidence is exceptional enough to enlarge him on bail.

The position of the learned State Counsel is that the matter is under consideration and concedes that the suspect above named served as the Warf Clerk in the company which cleared the alleged consignment of potatoes.

Upon considering the submissions of both parties this Court takes in to consideration the provisions in the Poisons Opium and Dangerous Drugs Ordinance under which a person suspected of or accused of an offence under section 54A and 54B shall be enlarged on bail only upon exceptional circumstances.

The term exceptional has been defined in many a decided cases in our legal case law and finally it has been decided that exceptionality should be considered as per the circumstances of each case as well stand in **Ramu Thamodarumpillai vs. Attorney General 2004 3 SLR 180.**

In the instant case this Court observes that the suspect above named has served in the capacity of a Warf clerk in the company which cleared the alleged consignment and he had not received it neither has he ordered it, he has only carried out an order by the company he was serving as an employee.

Therefore this Court is of the view that upon such material it is not fair and just to keep the above named suspect in remand, and this Court also observes that the learned State Counsel is unable to furnish any more incriminating evidence against the above named suspect.

But the above mentioned position has not been considered by the learned High Court judge in the impugned order which this Court observes to be sufficiently exceptional to enlarge the suspect namely Mohamed Anwer Mahamed Fawaz the 11<sup>th</sup> suspect on bail.

Hence the instant application for revision is allowed and the suspect Mahamed Anwer Mohamed Fawaz is enlarged on the following conditions of bail,

- 1) A cash bail of Rupees five hundred thousand,
- 2) Two sureties to the value of Rupees one million each,
- 3) The suspect to report to the Narcotics Bureau on every 4<sup>th</sup> Sunday of each month
- 4) The suspect to surrender his passport to the Registrar of the relevant High Court.

The Registrar of this Court is hereby 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.**