

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 Constitutional of
Democratic Socialist Republic of Sri Lanka.

Court of Appeal: CPA 98/21

The officer in Charge
Police Narcotic Bureau,
Colombo 01.

COMPLAINANT

MC Negombo Case No: -
M 5596/2019

Vs.

Rashmika Chandralal Kumaranayaka
No. 80/01
20th Mile Post,
Kurana,
Katunayake.
(Currently held in Remand Custody)

HC Negombo Bail Application:-
HCAB 407/20

SUSPECT

AND BETWEEN

Ranadeva Kumaranayake,
No. 80/01
20th Mile Post,
Kurana,
Katunayake.

PETITIONER

Vs.

1. Officer in Charge
Police Narcotic Bureau,
Colombo 01.
2. The Hon. Attorney General,
Attorney General's Department,
Colombo 12.

RESPONDENTS

AND NOW BETWEEN

Ranadeva Kumaranayake,
No. 80/01
20th Mile Post,
Kurana,
Katunayake.

PETITIONER - PETITIONER

Vs.

1. Officer in Charge
Police Narcotic Bureau,
Colombo 01.
2. The Hon. Attorney General,
Attorney General's Department,
Colombo 12.

RESPONDENT – RESPONDENTS

Before : **Hon. Justice Menaka Wijesundera**

Hon. Justice Neil Iddawala

Counsel : Sathyajith Munasinghe for the Petitioner

Chathuranga Bandara, SC for the State

Decided on : 28 /03 /2022.

Hon. Justice Menaka Wijesundera

The instant application has been filed to revise the order dated 08/07/2021 of the High Court of Negombo. In the instant matter the suspect namely, Rashmika Chandralal Kumaranayake has been taken into custody for possession of 104 grams of heroin on 16/10/2019, thereafter he

has been indicted in the High Court of Negombo for the same but the net amount had been 48.003 grams.

The main contention of the Counsel for the Suspect is that, since he was arrested in 2019 and up to date he has been in remand without trial being concluded.

According to the State Counsel appearing for the Respondents the quantity in possession of the suspect is of a commercial nature and the indictment has been forwarded promptly and the counsel appearing for the suspect has not urged any exceptional circumstances.

According to the Provisions of the Poisons, Opium and Dangerous Drugs Act, a person arrested or indicted under this Act, he or she can be enlarged on bail only upon exceptional circumstances. **The term “exceptional” has not been defined in the Act but in view of the decided cases, the gravity of the offence, the gravity of the sentence and the culpability of the accused have been considered to be exceptional.**

This has been discussed in the case of

*** *Carder Vs. OIC Narcotic Bureau 2006 3SLR 74, By Basnayaka,J***

The delay urged by the petitioner is only 2 years and 6 months. The term “delay” as a ground can be considered only if it is “excessive” and “oppressive”, so it has been heard in the case of ***Attorney General Vs. Ediriweera 2006 BLR page 12*** which had held “.....Delay is always a relative term and the question to be considered is not whether there was mere explicable

delay, as when there is a backlog of cases, but whether there has been excessive or oppressive delay and this always depends on the facts and circumstance of the case

But in the instant case we see no such instances and the other ground urged by the counsel is that some of the officers who have investigated this matter are currently accused of similar offences. But State Counsel denies the same.

Therefore we see no exceptional ground to enlarge the suspect in the instant matter on bail. As such instant application is dismissed.

JUDGE OF THE COURT OF APPEAL

Hon. Justice Neil Iddawala,

I agree.

JUDGE OF THE COURT OF APPEAL

KC/-