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

In the matter of an application for bail in terms of the Section 83 of the Poisons, Opium and Dangerous Drugs Ordinance as amended by the Act No.41 of 2022.

Court of Appeal The Officer-in-Charge

Application No. Police Narcotics Bureau, Colombo-01

CA Bail 0012/2024

COMPLAINANT

Vs.

Magistrate Court Colombo Marakkala Haennaedige Dhanuka

Case No: B/83567/01/2023 Niroshan Gunasekara

1ST SUSPECT

AND NOW BETWEEN

Happawana Vithange Thilini Sewwandi Vithanage

Mirihikanda

Mirissa.

PETITIONER

Vs.

1. The Attorney General
   Attorney General's Department,
   Colombo-12.
2. Th Officer-in-Charge
   Police Narcotics Bureau
   Colombo-01.

RESPONDENTS

BEFORE : **P. Kumararatnam, J.**
K.M.G.H Kulatunga, J.

COUNSEL : **Shabdika Wellapppili with Sharmal Herath, Kavin Rathnayake and Charuka Hiran instructed by Wellappili Associates for the Petitioner.**
Jehan Gunasekara, SC for the Respondents.

ARGUED ON : **07/02/2025.**

DECIDED ON : **11/03/2025.**

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ORDER

P.Kumararatnam,J.

The Petitioner is the wife of the 1st Suspect named in the Colombo Magistrate Case No. B/83567/01/23.

According to the report submitted by the Police Narcotics Bureau, Cololmbo-1, the 1st Suspect and 04 others were arrested upon an investigation carried out consequent to a tip off received by the Sri Lanka Navy Intelligence Unit. Acting on that information a multi-day fishing trawler named as "Kingfisher 06" owned by the 1st Suspect along with 04 others were taken into custody by the Sri Lanka Navy in the Sea and brought to the Beruwala China Harbour on the 05th of January 2023.

Upon reaching the Beruwala China Harbour, the multi-day fishing trawler was subjected to a thorough search by officer of the Sri Lanka Coast Guard Department and had first found 08 parcels of substance hidden inside a tyre which was in the trawler. Further, 14 more parcels of substance and two satellite phones had been recovered from the Radar of the trawler and from the wrench which is used to drag fishing nets.

The detection was promptly informed to the Police Narcotics Bureau Colombo-01 and a police team headed by IP Nalin had gone to Beruwala China Harbour and carried out the field test first. As the substances recovered in 22 parcels reacted for Heroin, the persons in the trawler were arrested and produced before the Colombo Magistrate Court on 11.01.2023 under case number mentioned above.

Upon a Court order the contraband in the 22 parcels had been sent to the Government Analyst's Department and according to the Government Analyst Report dated 30.08.2023, 16.12 Kilograms of pure Heroin (Diacetylmorphine) had been detected in those parcels.

The 1st Suspect and 04 others were produced and facts were reported to the Colombo Magistrate under Section 54A (d), (c) and (b) of the Poisons, Opium and Dangerous Drugs Ordinance as amended by the Act No.13 of 1984.

Upon a Court order the 1st Suspect and four others were placed under a detention order to facilitate the Police Narcotics Bureau to conduct further investigation with regard to the detection. The investigation revealed the 1st Suspect is the owner of the multi-day fishing vessel named "Kingficher-06".

The Petitioner alleges that her 1st Suspect-husband along with four others were taken into custody by the Sri Lanka Navy on a mere conjecture without any reasonable suspicion in the sea. The Petitioner further alleges that no Heroin or any other contraband had been in the trawler at the time of their arrest in the sea.

The Petitioner submit that the 1st Suspect and four had been in remand for nearly 26 six months without filing any charge against them.

The Petitioner has pleaded following exceptional circumstances in support of this Bail Application.

1. Non-existence of a prima-facie case against the 1st Suspect.
2. Improbability of the version of the prosecution.
3. The 1st Suspect has been in remand custody nearly 26 months.
4. Existence of material contradictions in the report filed by the investigation authority.
5. No previous case recorded against the 1st Suspect but has one pending case in the Magistrate Court of Matara.
6. The 1st Suspect is the sole breadwinner of the family.

The State opposing to bail submitted that the dossier of the investigations has been received by the Attorney General's Department and registered under CR3/29/2024. After the consideration an indictment against 1st Suspect along with 04 other had been filed in the High Court of Kalutara. Hence, Learned State Counsel submitted that the delay is not an exceptional circumstance to be considered to enlarge the 1st Suspect on bail. Further, the time spent for preparing the indictment does not constitute an exceptional circumstance.

The 1st Suspect is in remand nearly 26 months. According to Government Analyst Report, the pure quantity of Heroin detected from the possession of the 1st Suspect and others is 16.12 Kilograms.

The exceptional circumstances are not defined in the statute. Hence, what is exceptional circumstances must be considered on its own facts and circumstances on a case by case.

In **Ramu Thamodarampillai v. The Attorney General [2004] 3 SLR 180** the court held that:

> *"the decision must in each case depend on its own peculiar facts and circumstances".*

The Section 83 of the Poison, Opium and Dangerous Drugs Act which was amended by Act No. 41 of 2022 states:

83. (1) Subject to the provisions of sections 84, 85 and subsection (2) of this section, a person suspected or accused of an offence under sections 54A and 54B of this Ordinance, shall not be released on bail by the High Court except in exceptional circumstances.

(2) Notwithstanding the provisions of sections 84 and 85, a person suspected or accused of an offence under subsection (1) of section 54A and section 54B-

(a) of which the pure quantity of the dangerous drug, trafficked, imported, exported, or possessed is ten grammes or above in terms of the report issued by the Government Analyst under section 77A; and

(b) which is punishable with death or life imprisonment,

shall not be released on bail except by the Court of Appeal in exceptional circumstances.

In this case, the pure quantity of Heroin detected in the production by the Government Analyst is 16.12 Kilograms. Hence, this court has jurisdiction to consider granting of bail as per the new amendment.

The Counsel for the Petitioner submits that undue and long delay in keeping the 1st Suspect in remand custody is a clear violation of his human rights and is against the presumption of innocence guaranteed under the Article 13(5) of the Constitution. Further, the Counsel alleges that the necessary witnesses are not mentioned in the indictment filed by the prosecution and the productions were not recovered in the presence of the 1st Suspect and four others.

A court can consider evidence in a bail inquiry. During a bail hearing, the court typically evaluates various factors to determine whether a Suspect should be granted bail, such as the risk of flight, the likelihood of reoffending, and the safety of the community. The court may also review evidence related to the Suspect's criminal history, ties to the community, and the specifics of the current charges.

Ultimately, the court's role during a bail inquiry is to weigh the available evidence to decide if the defendant can be trusted to return for trial or if they pose a danger to public safety.

In this case the 1st Suspect alleged to have committed Offences under Section 54A(d), (c) and (b) of the Poisons Opium and Dangerous Drugs Ordinance as amended by the Act No.13 of 1984.The offences are very

serious offences and the seriousness of the offence should be considered when bail is considered.

I agree with the learned State Counsel that this is not appropriate case to consider the factual and evidentiary matters pertain to the investigations at this stage. It can only be tested at the trial upon the witnesses being cross examined and re-examined.

In **Ranil Charuka Kulatunga v. Attorney General CA (PHC) APN 134/2015** the court held that:

> *"The quantity of cocaine involved in this case is 62.847 grams, which is a commercial quantity. If 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 **Carder (On behalf of Rashid Kahan) v Officer-in-Charge Narcotics Bureau** [2006] 3 SLR 74 the Court held that:

> *"Heroin has become a menace in our society. It is not easily detectable. Due to the fact alone, the tendency to commit this kind of crime repeatedly has become feasible. The repetitive factor prevalent in this sort of crime and the difficulty of detection are significantly strong reasons for refusing bail in this type of cases."*

In this case the pure Heroin detected is 16.12 Kilograms, which certainly a very high commercial quantity. Considering the seriousness of the sentence prescribed under the Poison, Opium and Dangerous Drugs Ordinance, there is a high risk of absconding.

Hence, I do not consider the delay nearly 26 months in remand falls into the category of excessive and oppressive delay considering the circumstances of this case.

Considering all these factors into account, especially the pure quantity of Heroin detected, the charges framed against the 1st Suspect and others and the circumstances of the case, I consider this is not an appropriate case to sanction bail to the 1st Suspect at this stage. Hence, I refuse to release the 1st Suspect on bail.

Hence, this Bail Application is dismissed.

The Registrar of this Court is directed to this order to the Magistrate Court of Colombo and Officer-in-Charge of the Police Narcotics Bureau, Colombo-01.

JUDGE OF THE COURT OF APPEAL

K.M.G.H. Kulatunga, J.

I agree.

JUDGE OF THE COURT OF APPEAL