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

In the matter of an application for Bail made under and in terms of Section 83(2) of the Poisons, Opium and Dangerous Drugs (Amendment) Act No. 41 of 2022 dated 23.11.2022.

The Officer-in-Charge
Police Narcotics Bureau,

Cololmbo-01.

Court of Appeal

Bail Application No: **COMPLAINANT**

CA Bail 0457/2023 **Vs**

MC Mahara

Case No.B/200/2023

1. Dimbulgaha Pathanegedara Iresh Shamika Karunathilake
2. Amarasinghege Hirantha Nimesh Chaturanga Amarasinghe

SUSPECTS

AND NOW BETWEEN

Madawa Wilage Dilani Inoka De Silva.

No.30/1, Railway Station Quarters,

Mirigama.

ON BEHALF OF

Dimbulgaha Pathanegedara Iresh

Shamika Karunathilake

(Currently in remand prison)

PETITIONETR

Vs

1. The Attorney General
   Attorney General's Department,
   Colombo-12

2. The Officer-in Charge,
   Police Narcotics Bureau,
   Colombo-01.

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RESPONDENTS

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

COUNSEL : **Teny Fernando for the Petitioner.**
Jehan Gunasekera, SC for the Respondents.

ARGUED ON : **28/02/2025.**

DECIDED ON : **24/03/2025.**

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ORDER

P.Kumararatnam,J.

The Petitioner is the mother of the 1st Suspect (Hereinafter referred to as the Suspect). The Suspect has been named in M.C. Mahara Case No. B 200/2023. She had applied for bail for her son.

On 17.01.2023, the Suspect was arrested at Mahara Court Complex by the police Officers attached to the Police Narcotics Bureau upon an allegation relating to possession of 100.900 grams of Heroin. According to police the contraband was seized from the pocket of the Suspect at the time of his arrest.

Later the Suspect was taken to his house at Ganemulla for further investigation. Furter investigation let the salutes to detect another quantity of Heroin weighing about 181.300 grams of heroin.

The suspect was produced and facts were reported to the Mahara Magistrate under Section 54A (d) and (b) of the Poisons, Opium and Dangerous Drugs Ordinance as amended by the Act No.13 of 1984.

The production had been sent to the Government Analyst Department on 30/01/2023. After analysis, the Government Analyst had forwarded the report to Court on 09/09/2023. According to the Government Analyst, net quantity of 27.5 grams of Heroin (Diacetylmorphine) detected in the first recovery while 7.50 grams of Heroin (Diacetylmorphine) was detected in the second recovery.

According the Petitioner, the Suspect was arrested without any contraband in his possession. Having introduced heroin to him, he had been produced before the Magistrate Court of Mahara on 17.01.2023.

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

1. No drugs were found in his possession of the Suspect and the drugs is introduced by the police officers to him.
2. The Suspect had been in remand over two years.
3. The Suspect is the sole breadwinner of the family.

The Learned State Counsel opposing for bail, submitted that the delay is not an exceptional circumstance to be considered to enlarge the suspect on bail. Further, the time spent for preparing the indictment does not constitute an exceptional circumstance. The indictment under AG reference No. CR3/167/2024 had been despatched on 14.08.2024.

The suspect is in remand for more than two years. According to the Government Analyst Report, the pure quantity of Heroin detected from the possession of Suspect is 27.5 and 7.50 grams respectively.

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 27.5 grams. Hence, this court has jurisdiction to consider granting of bail as per the new amendment.

The Counsel for the Petitioner submitted that the police have fabricated a case against the Suspect.

I agree with the learned State Counsel that the factual and evidentiary matters pertain to the investigations can only be tested at the trial upon the witnesses being cross examined and shall not be tested at the time of hearing this bail application considering the nature of this case.

Further, I do not consider the delay more than 24 months in remand falls into the category of excessive and oppressive delay considering the circumstances of this case.

Although the Petitioner submitted that the Suspect has no previous or pending cases, the State Counsel informed Court that the Suspect has five previous convictions.

The Offence under Section 54A (d) and (b) of the Poisons Opium and Dangerous Drugs Ordinance as amended by the Act No.13 of 1984 is a serious offence and the seriousness of the offence should be considered when bail is considered.

In this case the pure quantity of Heroin detected is 27.5 grams and 7.50 grams, which certainly a 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, it is prudent to conclude the High Court case expeditiously keeping the Suspect in remand.

Considering all these factors into account, especially the pure quantity of Heroin detected, and other circumstances of the case, I consider this not an appropriate case to grant bail to the Suspect at this stage.

Hence, the bail application is hereby dismissed.

The Registrar of this Court is directed to send a copy of this order to the Magistrate Court of Mahara and Officer-in-Charge of the Police narcotics Bureau, Colombo-10.

JUDGE OF THE COURT OF APPEAL

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

I agree.

JUDGE OF THE COURT OF APPEAL