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 Gamage Don Kalinga Sanjeewa

Application No. No. 83/78, Bimbaduyaya

CA Bail 0011/2024 Nawa Nagaraya

High Court of Colombo No. Embilipitiya.

HC/5302/25 **PETITIONER**

Magistrate Court of Embilipitiya **Vs.**

No. BR 1059/22

1. The Attorney General
   Attorney General's Department
   Colombo-12.
2. The Officer-in-Charge
   Police Station
   Embilipitiya.

RESPONDENTS

1. Pathiranage Sujeewa Malkanthi
   No.6, Old Bus Stand
   Pallegama, Embilipitiya.

1ST ACCUSED

2. Gamage Don Mahesh Santhush
No.6, Old Bus Stand
Pallegama, Embilipitiya.

2ND ACCUSED

BEFORE : **P. Kumararatnam, J.**
Pradeep Hettiarachchi, J.

COUNSEL : **U.R.De Silva, PC with Thilini Atapattu for the Petitioner.**
Wishva Wijesuriya, SC for the Respondents.

ARGUED ON : **04/09/2025.**

DECIDED ON : **07/10/2025.**

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ORDER

P.Kumararatnam,J.

The Petitioner is the husband of the 1st Accused and the father of 2nd Accused (Hereinafter referred to as the Accused) named in the Embilipitiya Magistrate Court Case No. BR/1059/22.

According to the B Report filed by CI/Rathnayake of Embilipitiya Police Station, the Suspects were arrested upon an investigation carried out consequent to a tip off received by them. Acting on that information, police arrested the Accused at their residence while packeting Heroin inside the house around 5.00pm on 11.07.2022. The police had recovered some substances believed to be Heroin (Diacetylmorphine). Total 35.9286 kilograms of substance recovered from the Suspects.

Upon a Court order the contraband in two parcels had been sent to the Government Analyst's Department and according to the Government Analyst Report dated 05.06.2023, 21.4923 Kilograms of pure Heroin (Diacetylmorphine) had been detected in the two parcels.

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

Upon a Court order, the Accused were placed under a detention order to facilitate the Embilipitiya Police to conduct further investigation with regard to the detection.

The Petitioner alleges that the police led by CI/Rathnayake of Embilipitiya Police had introduced Heroin to the Accused and fabricated notes accordingly.

The Petitioner submit that the Accused had been in remand for little more than three years without filing any charge against them. No previous or pending case recorded against the Accused.

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 Accused had been filed in the High Court of Embilipitiya under case No.HCE/64/2023. At present upon an application under Section 47 of the Judicature Act No. 2 of 1978 by the Hon.Attorney General, the case has been transferred to the High Court of Colombo and registered under

case No. HC/5302/25. Hence, Learned State Counsel submitted that the delay is not an exceptional circumstance to be considered to enlarge the Accused on bail. Further, the time spent for preparing the indictment does not constitute an exceptional circumstance.

The Accused have been in remand little more than three years. According to Government Analyst Report, the pure quantity of Heroin detected from the possession of the Accused is 21.4923 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 21.4923 Kilograms. Hence, this court has jurisdiction to consider granting of bail as per the new amendment.

The learned Present's Counsel for the Petitioner submits that undue and long delay in keeping the Accused in remand custody is a clear violation of their human rights and is against the presumption of innocence guaranteed under the Article 13(5) of the Constitution.

A court can consider evidence in a bail inquiry. During a bail hearing, the court typically evaluates various factors to determine whether an Accused 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 Accused'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 Accused alleged to have committed Offences under Section 54A(b) and (d) 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 21.4923 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 little more than three years 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 and 2nd Accused and the circumstances of the case, I consider this is not an appropriate

case to sanction bail to the 1st and 2nd Accused at this stage. Hence, I refuse to release the Suspects 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 Embilipitiya Police Station.

JUDGE OF THE COURT OF APPEAL

Pradeep Hettiarachchi, J.

I agree.

JUDGE OF THE COURT OF APPEAL