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

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

Court of Appeal
Application No:
CA/Bail 0462/24
High Court Negombo
Case No.156/21
MC Welisara case No.
B/3037/2019

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

Complainant

Vs.

Liayanathanthri Gamage Chamara Ruwan Sampath

(Presently in remand custody)

Accused

NOW BETWEEN

Jayasekara Liyanage Chandrawathie
No. D-F 11-U 16, Randiya Uyana,
Henamulla Road, Colombo-15

Petitioner

Vs.

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

2. Hon. Attorney General
Attorney General's Department
Colombo-12.

Respondents

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

R.P.Hettiarachchi, J.

COUNSEL **Isuru Abeygunawardena with Udarika Nawaratna for the Petitioner.**
Tharaka Kodagoda, SC for the Respondents.

ARGUED ON : **21/05/2025.**

DECIDED ON : **16/06/2025.**

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ORDER

P.Kumararatnam,J.

The Petitioner who is the mother of the Accused filing this Application has invoked the jurisdiction of this Court to grant bail to her son upon suitable condition as this Court considers appropriate.

The Accused was arrested on 27/11/2019 for possession of 2.32 Kilograms of substances suspected to be Heroin at Wattala Kalu Ela Walking Track, in the Wattala area of Wattala by officers from the Police

Narcotics Bureau, Colombo-01 and produced under case bearing No. B 3037/19 to the Magistrate Court of Welisara. The Accused was arrested upon information received from an informant. After his arrest, he was placed under a detention order issued by the Learned Magistrate of Welisara.

According to the B report filed, the Accused was produced under Section 54(d) and (b) of the Poisons, Opium and Dangerous Drugs Act No. 13 of 1984 as amended.

The production had been sent to the Government Analyst Department and after analysis, the Government Analyst had forwarded the report to Court. According to the Government Analyst, 615.6 grams of pure Heroin (Diacetylmorphine) had been detected from the substance sent for the analysis.

The contention of the Petitioner is that the Suspect was not arrested as stated by the police. The Accused is remand for five years and six months.

The Petitioner has pleaded following exceptional circumstances in support of the Suspect's Bail Application.

1. The Accused is in remand for about five years and six months.
2. The Accused is 35 years old, married and has daughter of 10 years old.
3. The wellbeing of the child is interrupted by the irrational and illegal assertion of the police.
4. No previous or pending case reported against the Accused.

The Counsel for the Petitioner submits that the Accused is in remand for more than five years and six months. Considering the facts and the circumstances of this case, that the prosecution will not be able to establish a prima facie case against the Accused.

The State Counsel submits that the indictment has already dispatched to the High Court of Negombo and the indictment was served on the Accused on 19.01.2022.

The Section 83 of the Poisons, 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.

(3) For the purpose of this section "dangerous drug" means Morphine, Cocaine, Heroin and Methamphetamine.

In this case, the pure quantity of Heroin detected in the production by the Government Analyst is 615.6 grams. Hence, this court has jurisdiction to consider granting of bail as per the new amendment.

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".*

In **Labynidarage Nishanthi v. Attorney General CA (PHC) APN 48/2014** the court held that:

> *"It is trite law that any accused or suspect having charged under the above act will be admitted to bail only in terms of section 83(1) of the said Act and it is only on exceptional circumstances. Nevertheless, it is intensely relevant to note, the term 'Exceptional circumstances' has not been explained or defined in any of the Statutes. Judges are given a wide discretion in deciding in what creates a circumstance which is exceptional in nature.*
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> *There is plethora of cases in the legal parlor which had identified what creates an 'exceptional circumstances' in relation to granting bail…"*

The Learned Counsel for the Petitioner contended that the Accused has been in remand for about five years and six months. Up to now only evidence of first witness is concluded. Therefore, his detention detained to date is clearly a violation of established legal principles and violation of fundamental rights which enshrined in the Constitution. He further argues that undue and long delay in keeping the Accused 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.

Although 5 years and six months passed after his arrest, the trial before the High Court of Negombo has not been concluded. Expeditious trial is an integral element of a fair trial.

Indictment was served on the Accused on 19.01.2022. Due to various reasons the trial was postponed. The Accused has no previous or pending case in any of the court in Sri Lanka.

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 Accused alleged to have committed Offences under Section 54A(d) and (b) of the Poisons Opium and Dangerous Drugs Ordinance as amended by the Act No.13 of 1984. Above cited offences are no doubt serious offences but seriousness of the offence alone cannot form a ground to refuse bail. In considering these matters, the court must bear in mind the presumption of innocence.

Further, bail should never be withheld as a punishment. Granting of bail is primarily at the discretion of the Court. The discretion should be exercised with due care and caution taking into account the facts and circumstances of each case separately.

Considering all these factors into account, especially the period in remand, the uncertainty of conclusion of trial in the High Court, the circumstances of his arrest and other circumstances of the case, I consider this is an appropriate case to grant bail to the Accused. Hence, I order the Accused be granted bail with following strict conditions.

1. Cash bail of Rs.100,000/=.
2. To provide 02 sureties. They must sign a bond of two million each. The Petitioner should be one of the sureties.

3. The Petitioner and the sureties must reside in the address given until conclusion of his case.
4. Not to approach any prosecution witnesses directly or indirectly or to interfere with.
5. To surrender his passport if any, to court and not to apply for a travel document. The Controller of the Immigration and Emigration is informed of the travel ban on the Accused.
6. To report to the Police Narcotics Bureau, Colombo-01 on the 2nd and last Sunday of every month between 9am to 1pm.
7. Any breach of these conditions is likely to result in the cancellation of his bail.

The Bail is allowed and the Learned High Court Judge of Negombo is hereby directed to enlarge the Accused on bail on the above bail conditions.

The Registrar of this Court is directed to send this Bail Order to the High Court of Negombo, and Officer-in-Charge of the Polce Narcotics Bureau, Cololmbo-01.

JUDGE OF THE COURT OF APPEAL

R.P.Hettiarachchi, J.

I agree.

JUDGE OF THE COURT OF APPEAL