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

Application No.

CA Bail 0142/2024

Democratic Socialist Republic of Sri Lanka

COMPLAINANT

Vs.

High Court of Panadura

Case No. HCC 4430 /2023

1. Maduraperumage Dananjaya Darmakumara
2. Maduraperumage Kanchana Priyadharshani
3. Bethmage Upeksha Piyumani

ACCUSED

AND NOW BETWEEN

Maduraperumage Dananjaya Darmakumara

ACCUSED-PETITIONER

Vs.

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

RESPONDENT

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

COUNSEL : **Asanka Mendis with Tharanga Geekiyanage and Shehan Rajapaksha instructed by Maduranga Wijeratna for the Petitioner.**
Wihva Wijesuriya, SC for the Respondent.

ARGUED ON : **13/02/2025.**

DECIDED ON : **18/03/2025.**

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ORDER

P.Kumararatnam,J.

The Petitioner is the 1st -Accused (Hereinafter referred to as the Petitioner) named in the High Court of Panadura Case No. HCC 4430/2023.

According to the report submitted by a team of police officers attached to the Western Province-North Crime Division of Peliyagoda, and Ahangama Police Station arrested the Petitioner on 30.01.2020 along with his sister who is the 2nd Accused in the High Court Case mentioned above. The Petitioner was arrested while he was riding on a motor bike with his sister.

The raid pertaining to this case was organised by the Senior DIG Westen Province-North upon receiving an information. As per the information the raiding officers had gone to the location and apprehended the Petitioner and his sister, who was the pillion riding on a motor bike. Upon searching the duo, the officers had found five packets of substance suspected to be Heroin in a bag held by the 2nd Accused. Upon further search, a bunch of keys were found inside the cubby hole of the motorbike. Further, interrogation revealed it to be the keys to a wardrobe at their house in Bandaragama.

The house was search in presence of the Petitioner, the 2nd Accused and the 3rd Accused and the police found 07 bags and 01 gunny bag containing substances suspected to be Heroin. The Police further recovered 10 foreign firearms and 19 magazines without due licenses. The Petitioner, the 1st Accused and the 3rd Accused were arrested for possession of dangerous drugs and possession of firearms and ammunitions without valid licences.

Productions were weighed in presence of the Petitioner, the 2nd Accused and the 3rd Accused. The suspected Heroin found in the bag carried by the 2nd Accused at the time of her arrest weighed about 5.515Kg. The suspected Heroin recovered from the wardrobe weighed about 166.352Kg. According to the Government Analyst Report the pure Heroin detected in the bag carried by the Petitioner is 3.729Kg. The pure Heroin detected in the other parcel recovered from the wardrobe is 122.619Kg.

The Petitioner and 02 others were produced and facts were reported to the Panadura Magistrate under Section 54A (b) and (d) of the Poisons, Opium and Dangerous Drugs Ordinance as amended by the Act No.13 of 1984 and under Section 22(1) of the Firearms Ordinance No. 22 of 1986.

Further investigation revealed that the Petitioner and the 2nd Accused are cousins and the 3rd Accused is the wife of the Petitioner.

The Petitioner had been indicted along with the others in the High Court of Panadura for possession and trafficking 102.765Kg of Heroin (Diacetylmorphine) punishable under Sections 54A(b) and (d) of the Poisons, Opium and Dangerous Drugs Act No.13 of 1984 for committing conspiracy, aiding and abetting for trafficking of Heroin. Additionally, the Petitioner had been indicted for possession of firearms under Section 22(1) of the Firearms Ordinance.

The pre-trial in the High Court Case No. is HCC/4430/23 and HCC/4431/23 are over and HCC/4430/23 was fixed for trial.

The Petitioner submit that she and the other two had been in remand over 5 years to date.

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

1. The Petitioner has been in remand custody for over 5 years.
2. The trial has not commenced and it will take an indefinite time period to conclude the trial in the High Court.
3. The prosecution witness No.01 has been in foreign training, hence there is a high possibility of not commencing the trial on the next date.
4. More than 3 ½ years of time period had been taken by the State to file indictment.
5. The Petitioner's wife is the 3rd Accused and his matrimonial life has been destroyed due to this frivolous case.

The State opposing to bail submitted that an indictment against Petitioner along with 02 other had been filed in the High Court of Panadura. Hence, Learned State Counsel submitted that the delay is not an exceptional circumstance to be considered to enlarge the Petitioner on bail. Further, the time spent for preparing the indictment does not constitute an exceptional circumstance.

The Petitioner is in remand over 5 years. According to Government Analyst Report, the pure quantity of Heroin detected from the possession of the Petitioner and others is 102.765 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 102.765 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 Petitioner 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.

The prosecution had filed two indictments against the Petitioner. The two cases are numbered as HCC/4430/2023 and HCC 4431/2023 by the High Court of Panadura. In both cases, the Petitioner has been named as the 1st Accused. After the pre-trial conference the learned Senior State Counsel had informed court that he would start the trial first in the case No. HCC 4430/2023.

When the HCC/4430/2023 taken up for trial on 21.01.2025, the learned Senior State Counsel who appeared for the prosecution informed court that he would like to start the trial in case No. HCC/4431/2023 first as it reflects the 1st incident pertaining to this case. In order to lead evidence in a chronological order he suggested to court that it is prudent to lead evidence in case No. HCC/4431/2023 first.

As no objection raised by the defence, the learned High Court Judge had fixed the case No. HCC/4431/2023 first and ordered to call the case No. HCC/4430/2023 along with case No. HCC/4431/2023.

At the hearing of this application the learned Counsel for the Petitioner strenuously argued that the application made by the Senior State Counsel at the eleventh hour to commence case No. HCC 4431/2023 first has caused great prejudice to the Petitioner. He further argued, that due to this sudden change of commencing trial in a different case has caused uncertainty of conclusion of case No. HCC/4430/2023. According to him this will pave way his client be in remand for an uncertain period. Therefore, considering this as an exceptional circumstance among others, he moves this Court to consider granting of bail to the Petitioner.

In this case the learned Senior State Counsel only made an application to commence the case in a chronological order of the raids conducted. According to him the indictment filed under case No. HCC/4431/2023 is pertaining to the first raid. Hence, his application is perfectly all right. Further, the Petitioner is the 1st Accused in both cases i.e.; HCC/4430/2023 and HCC/4431/2023. As such, no prejudice or uncertainty will occur in this case. Further, the prosecution has the prosecutorial discretion in conducting trials before the High Court.

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.

In this case the Petitioner 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 and under Firearms Ordinance. The charges also coupled with conspiracy under Penal Code. 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.

Further, the Court also should keep in mind the nature of offence, the nature of evidence collected in support thereof, the severity of punishment could be imposed for alleged offences, the conduct of the accused, the circumstances which are peculiar to the accused, the reasonable possibility of securing the presence of the accused during trial, reasonable apprehension of the witnesses being influenced, and the interest of the Public.

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 this case the pure Heroin detected is 102.765 Kilograms, which certainly a very high commercial quantity. Considering the seriousness of the sentence prescribed under the Poison, Opium and Dangerous Drugs Ordinance and under the Firearms Ordinance, there is a high risk of absconding.

Hence, I do not consider the delay over 5 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 Petitioner and others and the circumstances of the case, I consider this is not an appropriate

case to sanction bail to the Petitioner at this stage. Hence, I refuse to release the Petitioner on bail.

Hence, this Bail Application is dismissed.

The Registrar of this Court is directed to this order to the High Court of Panadura and Officer-in-Charge of the Western Province- Crime Division, Peliyagoda.

JUDGE OF THE COURT OF APPEAL

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

I agree.

JUDGE OF THE COURT OF APPEAL