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.

The Officer-in-Charge

Court of Appeal Police Narcotics Bureau, Colombo-01

Application No: **COMPLAINANT**

CA Bail 0304/2024 **Vs.**

High Court of Negombo Hurbert Cooper

Case No. HC 347/2019 No. 102, Liberty Road, Kampala

Magistrate Court Negombo Uganda.

Case No: B/1074/2023 **ACCUSED**

AND NOW BETWEEN

Hurbert Cooper

No.12, Liberty Road, Kampala,

Uganda.

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 : **Shavindra Fernando, P.C, with Nipun Samaratunga for the Petitioner.**
Wishwa Wijesooriya, SC for the Respondents.

ARGUED ON : **23/01/2025.**

DECIDED ON : **21/02/2025.**

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ORDER

P.Kumararatnam,J.

The Petitioner who is the Accused named in the High Court of Negombo Case No. HC 347/19 had applied for bail for him.

On 26.10.2013, the Petitioner was questioned by an officer attached to Sri Lanka Customs Airport Unit when the he was at the departure lounge

in order to inspect the baggage of the Petitioner. At that time the Petitioner was in possession of a Diplomat Passport bearing No. D/005324-09 said to have issued by the Republic of Liberia.

Having resisted the request, the Petitioner had promises that he would come on 28.10.2013 to collect his baggage. As he was not turned up on 28.10.2013, the customs officials had arrested the Petitioner on 04.11.2013 in front of the Foreign Ministry. On 05.11.2013 the Petitioner was taken to the Katunayake Airport and opened his baggage in front of him. The customs had recovered 30.100kg of Heroin (Diacetylmorphine) from his baggage. As such he was arrested and handed over to the Police Narcotics Bureau for further investigation.

The Petitioner was produced and facts were reported to the Negombo Magistrate under Section 54A (b) and (d) and 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 08/11/2013. After analysis, the Government Analyst had forwarded the report to Court. According to the Government Analyst, 22.986 Kilograms of pure Heroin (Diacetylmorphine) had been detected from the substance sent for the analysis.

The Petitioner had been indicted in the High Court of Negombo under case No. 347/2019. The trial had already been commenced and the prosecution witness No.01 is giving evidence. The Petitioner has been incarcerated for more than 12 years.

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

1. The Petitioner has been in remand custody since 04.11.2013.
2. The Petitioner is a foreign diplomat and facing numerous undue hardships and difficulties whilst incarcerated.
3. The Petitioner has been unable to see or even contact his wife who is a resident in Liberia for a period of 11 years.

4. The Petitioner is the sole breadwinner of the family.
5. The Petitioner is an elderly individual of 69 years of age and suffering from a serious case of Hypertension and Hyperglycaemia.
6. The Petitioner was recently subjected to serious assault and injury whilst in remand custody.
7. The Petitioner pleads that no narcotics substance recovered from his luggage.

The State opposing to bail submitted that the indictment pertaining to the offences under the Poisons, Opium and Dangerous Drugs Act is already being sent to the High Court of Negombo. Hence, Learned State Counsel 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 suspect is in remand for more than 12 years. According to Government Analyst Report, the pure quantity of Heroin detected from the possession of the Petitioner is 22.986 Kg.

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 22.986Kg. Hence, this court has jurisdiction to consider granting of bail as per the new amendment.

In this case, as per the submission of the Learned State Counsel, the indictment had already been dispatched to the High Court of Negombo and the trial is already commenced. The recording of evidence of PW1 is started. As the Petitioner is a foreign national there is a high risk of escape, especially considering the pure quantity of Heroin recovered from him.

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 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 **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 22.986Kg, 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 as the Petitioner is a foreign national. Hence, it is prudent to conclude the High Court case expeditiously keeping the Petitioner in remand.

Hence, I do not consider the delay more than 12 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 in the indictment against the Petitioner and other 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 send a copy of this order to the High Court of Negombo 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