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.

The Officer-in-Charge
Police Narcotics Bureau
Cololmbo-01.

Court of Appeal **Complainant**

Application No: **Vs**

CA/Bail 0614/23 Rathnaweera Patabendige Chandrika

MC Colombo case No. Priyadharshani

B/92746/02/2023

Suspect

NOW AND BETWEEN

Thalagala Arachchige Sunil

No.T/19, Samithpura, Mattakkuliya,

Colombo Road,

Colombo-15.

Petitioner

1. The Officer-in-Charge

   Police Narcotics Bureau,

   Colombo-01.

2. The Attorney General

   Attorney General's Department

   Colombo-12.

Respondents

Rathnaweera Patabendige Chandrika Priyadharshani

Suspect-Respondent

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

COUNSEL : **Isuri Cooray for the Petitioner.**
N.Nagaratnam, SC for the Respondents.

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

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

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ORDER

P.Kumararatnam,J.

The Petitioner is the husband of the Suspect named in the Petition. The Petitioner filing this Application has invoked the jurisdiction of this Court to grant bail to the Suspect upon suitable condition as this Court considers appropriate.

The Accused is the 2nd Suspect in the case bearing No. B/92746/02/23 of the Magistrate Court of Colombo.

According to the B report filed in the Magistrate Court of Colombo, the 1st Suspect in this case was arrested by the police officers attached to Special Task Force Camp in Gonahena on 26.05.2023 on the allegation of possession and trafficking of 92 grams of Heroin (Diacetylmorphine).Upon further investigation the Suspect in this case was arrested on the same day and recovered 32 grams of Heroin (Diacetylmorphine) which is punishable under Sections 54A (d) and (b) of the Poisons, Opium and Dangerous Drugs Ordinance No.17 of 1929. Subsequently, the STF Personnel had arrested another person and all are produced to Court in the same case.

The substances recovered from the Suspect and the two other persons had been sent to Government Analyst Department. According to Government Analyst Report, 17.7 grams of pure Heroin detected in the parcel recovered from the Suspect.

According to the Petitioner, the Accused vehemently denies the charges levelled against him. The Suspect takes up the position that this a fabricated case against her by the STF.

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

1. Extended incarceration could cause irreparable damage to the Suspect.
2. Heroin was not found in the Suspect's possession. It was introduced by the 1st Respondent when she was taken in to custody.
3. The Suspect had been engaged in a small family business when she was arrested.

The Counsel for the Petitioner submits that the Suspect is in remand for 01 year and seven months. Considering the facts and the circumstances of this case, the Petitioner states that the prosecution will not be able to establish a prima facie case against the Suspect.

According to the Learned State Counsel, the Suspect had been indicted in the High Court of Colombo.

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.

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.

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.*
>
> *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 Suspect has been in remand 01 year and 07 months. Hence, invite this Court to consider this as an exceptional circumstance.

Period in remand custody cannot be considered as an exceptional circumstance in all case. It has to be decided on a case-by-case basis to consider whether the remand period already spent could be considered as an exceptional circumstance.

In **Ashani Dhanushshika v. Attorney General [CA (PHC) APN 04/2016]** the court held that:

> *" In the present case the petitioner failed to establish any exceptional circumstances warranting this court to exercise the revisionary jurisdiction. The petitioner's first point is that the suspect is in remand nearly for two years. The intention of the legislature is to keep in remand any person who is suspected or accused of possessing or trafficking heroin until the conclusion of the case. The Section 83(1) of the Act expresses the intention of the legislature…"*

In **Carder v. Officer-in-Charge, Narcotics Bureau (2006) 3 SLR 74** the court held that:

> *" …Provision has been made in the Bail Act to release persons on bail if the period of remand extends more than 12 months. No such provision is found in the case of Poison, Opium and Dangerous Drugs Ordinance. Although bail was granted in some of the cases mentioned above, none of these cases refer to the time period in remand as constituting an exceptional circumstance. Hence bail cannot be considered on that ground alone.*

According to the decisions cited above, the period spent in the remand custody cannot be considered as an exceptional circumstance in this case.

Further, the Counsel for the Petitioner contended that the prosecution will not succeed in securing a conviction against the Suspect due to the presentation of inadmissible evidence against the Suspect. Hence, he strenuously argued that the Suspect should be released on bail.

I am not inclined to accept this argument as a suspect can only be released on bail under the Poisons, Opium and Dangerous Drugs Act as amended upon successful demonstration of that he has exceptional circumstances to be released on bail.

Further, facts of this case do not constitute exceptional circumstances. Issues pertaining to the case should only be considered at the trial stage.

In the case of **A.K.Nandasena v. The Attorney General CA(PHC) APN 147/2017 the court held that:**

> *"…that facts of a case do not constitute exceptional circumstances and such issues need to be addressed at the trial stage."*

Hence, the facts of the case will not be addressed in considering this bail application.

In this case the pure quantity of the Heroin detected in the production by the Government Analyst is 17.7 grams.

The dangerous drugs found in the possession of the Suspect indicates that she and the other persons are drug dealers of large scale, dealing in commercial quantities and not user quantities.

Further, the delay 01 year and 07 months in remand does not fall into the category of excessive and oppressive delay considering the circumstances of this case as the offences committed under Sections 54A(d) and 54A(b) of the Poisons Opium and Dangerous Drugs Ordinance as amended by the Act No.13 of 1984 and Act No. 41 of 2022.

The Suspect has one previous conviction. The nature of the offence committed by the Suspect not revealed.

Considering all the materials placed before this court, the Petitioner has failed to adduce that the Suspect has exceptional circumstances to free the Suspect on bail. Hence, this bail application is refused.

The Registrar of this Court is directed to send this order to the Magistrate Court of Colombo and the officer-in-Charge of the Police Narcotics Bureau, Cololbo-01.

JUDGE OF THE COURT OF APPEAL

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

I agree.

JUDGE OF THE COURT OF APPEAL