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 0073/2024

HC Negombo Case No. **177/22**

Vs.

Magistrate Court Negombo Case No: M 17463

Salpadoruge Suneth Asanka Fernando
(In remand prison)

SUSPECT

AND NOW BETWEEN

Salpadoruge Achintha Erandaka Fernando
No. 459, Sisil Lane, Kurana,
Katunayake.

PETITIONER

Vs.

1. The Officer-in-Charge
   Police Narcotics Bureau
   Colombo-01.
2. The Attorney General
   Attorney General's Department,
   Colombo-12.

RESPONDENTS

BEFORE : **P. Kumararatnam, J.**
K.M.S.Dissanayake, J.

COUNSEL : **Sachchindra de Zoysa for the Petitioner.**
Oswald Perera, SC for the Respondents.

ARGUED ON : **24/03/2025.**

DECIDED ON : **20/05/2025.**

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ORDER

P.Kumararatnam,J.

The Petitioner who is the son of the Suspect named in the Magistrate Court of Negombo Case No. M 17463 had applied for bail for his father.

On 15.06.2020, upon an information received by the officers attached to the Police Narcotics Bureau, Colombo-01 arrested the Suspect who was walking hanging a travelling bag. When the police officers checked his bag found six white bags which contained some substances believed to be Heroin. The substances in the parcels were weighed at the Police Narcotics Bureau and it weighed about 6.137 kilograms.

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. A detention order was obtained to detain the Suspect under police custody to conduct further investigation.

The production had been sent to the Government Analyst Department. After analysis, the Government Analyst had forwarded the report to Court. According to the Government Analyst, 1.1234 kilograms of pure Heroin (Diacetylmorphine) had been detected from the substance sent for the analysis.

The police had concluded their investigation and forwarded the IBEs to the Attorney General's Department under reference No. CR3/80/2023 and the matter is under consideration at present.

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

1. The Suspect has been in remand custody since 15.06.2020.
2. The Petitioner is unable follow his higher education due to the incarceration of the Suspect.
3. The Suspect is the sole bread winner of the family.

The State opposing to bail submitted that the indictment pertaining to the offences under the Poisons, Opium and Dangerous Drugs Act is already prepared and would be sent to the High Court of Negombo very soon. 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 nearly five years. According to Government Analyst Report, the pure quantity of Heroin detected from the possession of the Petitioner is 1.1234 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 1.1234 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 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 1.1234 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, it is prudent to conclude the High Court case expeditiously keeping the Suspect in remand.

Hence, I do not consider the delay nearly five 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 going to be framed against the Suspect and other circumstances of the case, I consider this is not an appropriate case to sanction bail to the Suspect at this stage. Hence, I refuse to release the Suspect on bail.

Hence, this Bail Application is dismissed.

The Registrar of this Court is directed to send this Bail 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.S Dissanayake, J.

I agree.

JUDGE OF THE COURT OF APPEAL