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 0089/2024

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

Bethmage Upeksha Piumani

73/8, Diyagama,

Kiriwaththuduwa.

ACCUSED-PETITIONER

Vs.

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

RESPONDENT

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

COUNSEL : **Amila Nawalage for the Petitioner.**
Oswald Perera, 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 3rd-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 1st and 2nd Accused on 30.01.2020 while they were travelling on a motor bike.

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 2nd Accused and her 1st Accused brother, who was riding on a motor bike. Upon searching the 1st and 2nd Accused, 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 1st Accused and the 2nd 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 2nd 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 1st Accused and the 2nd 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 2nd Accused 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 1st Accused and the 2nd Accused are cousins and the Petitioner is the wife of the 1st Accused.

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.

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 in case No. HCC/4430/23 has not commenced and it will take an indefinite time period to conclude the trial in the High Court.
3. Long incarceration of the Petitioner will deprive herself to stand for a fair trial.
4. No prospect of the Petitioner getting absconded.
5. The Petitioner has no previous or pending cases.

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.

According to the Petitioner, prior to the service of the indictment, the Petitioner has filed a Revision Application No. CA BAL/246/23 to obtain bail for her in this case. The said application was dismissed by this Court on 19.10.2023.

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 1st and 2nd Accused. The two cases are numbered as HCC/4430/2023 and HCC 4431/2023 by the High Court of Panadura. In case No. HCC/4430/23, the Petitioner has been named as the 3rd 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 in which the Petitioner has been named as 3rd Accused.

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 of time. 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.

The Petitioner is the 3rd Accused named in case No. HCC/4430/2023. She is not an Accused in case No. HCC/4431/2023. By commencing case No. HCC/4431/2023, her case will not be started until the conclusion of case No. HCC/4431/2023. This will certainly cause prejudice to the Petitioner. Uncertainty will further aggravate and affect her right to a fair trial.

In this case the Petitioner alleged to have conspired and aided and abetted 1st and 2nd Accused to 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. The Petitioner has only been charged for three counts. The charges are coupled with conspiracy and aiding and abetting only.

I agree with the learned Counsel for the Petitioner that this an appropriate case to consider the factual and evidentiary matters pertain to the investigations at this stage.

Offences under Section 54A(d) and 54A(b) of the Poisons Opium and Dangerous Drugs Ordinance as amended by the Act No.13 of 1984 is 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 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 commencement of trial in case No. HCC/4430/2023, the circumstances of her arrest and other circumstances of the case, I consider this an appropriate case to grant bail to the Petitioner. Hence, I order the Petitioner be granted bail with following strict conditions.

1. Cash bail of Rs.500,000/=.
2. To provide 02 sureties. They must sign a bond of two million each.
3. The Petitioner and the sureties must reside in the address given until conclusion of her case.
4. Not to approach any prosecution witnesses directly or indirectly or to interfere with.
5. To surrender her 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 Petitioner.
6. To report to the Homagama Police Station 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 her bail.

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

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

JUDGE OF THE COURT OF APPEAL

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

I agree.

JUDGE OF THE COURT OF APPEAL