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 Attorney General

Attorney General's Department

Colombo-12.

Court of Appeal **Complainant**

Application No: **Vs**

CA/Bail 0196/25 Wee Kuan Loong Nicholos

HC Negombo case No. (Presently in remand prison)

HC 494/2019 **Accused**

AND NOW

Wee Kuan Loong Nicholos

2nd Accused-Petitioner

The Attorney General

Attorney General's Department

Colombo-12.

Respondent

BEFORE : **P. Kumararatnam, J.**
R. P. Hettiarachchi, J.

COUNSEL : **U.R.De Silva with Thilini Atapattu for the Petitioner.**
Wishwa Wijesuriya, SC for the Respondent.

ARGUED ON : **26/09/2025.**

DECIDED ON : **07/11/2025.**

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BAIL ORDER

P. Kumararatnam,J.

The Petitioner is the 2nd Accused named in the indictment filed in the High Court of Negombo in the case bearing No. HC 494/2019. The Petitioner filing this Application has invoked the jurisdiction of this Court to grant bail to the Petitioner upon suitable conditions as this Court considers appropriate.

According to the objections filed by the Respondent, the Petitioner was arrested in Negombo on 01.04.2016 upon the allegation that he had coordinated with some others to traffic 111.82 Kilogram of Heroin (Gross) to Sri Lanka.

The detection pertaining to this case is a joint operation carried out by the Police Narcotics Bureau and the Sri Lanka Navy upon an information received from PW01 named in the indictment. This joint operation had

resulted the police officers arresting 17 persons including the Petitioner for offences committed under the Poisons, Opium and Dangerous Drugs Act No.13 of 1984.

The recovered substances were sent to the Government Analysts and the Report confirmed the presence of 48 kilograms, 588 grams and 146 milligrams of pure Heroin in the substances.

The Hon. Attorney General has indicted the Accused in the High Court of Negombo on the allegation that between 01.01.2016 and 31.03.2016 at Negombo, Galle, Colombo and other places unknown to the prosecution that the Petitioner committed the offence of conspiracy, with others, by trafficking, or abetting to traffic a dangerous drug as set out in Section 54A (d) of the Poisons, Opium and Dangerous Drugs Act as amended by Act No. 13 of 1984, to traffic 48 Kilograms 588 grams and 146 milligrams of Heroin punishable under Section 54A (b) the said Ordinance read with sections 113a and 102 of the Penal Code.

It was further alleged that the Petitioner abetted the 14th Accused named in the indictment to traffic 48 kilograms 588 grams and 146 milligrams of Heroin and thereby committed an offence liable to the penalty set out in the indictment.

The Accused vehemently denies the charges levelled against him in the indictment. The Accused takes up the position that this is a fabricated case against him by the police.

The Petitioner is a Singaporean national and came to Sri Lanka in 2016 for business purpose. He wanted to export fish to Singapore under a partnership. During this visit, he was arrested by the Police Narcotics Bureau without any basis.

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

1. The Accused has been in remanded since 01.04.2016. Now he has completed 9 years and 07 months in remand prison.

2. The prosecution had failed to adduce plausible evidence against the Accused.

According to 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.

(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 basis.

On the same subject, the Supreme Court in **Ramu Thamodarampillai v. The Attorney General [2004] 3 SLR 180** held that:

"the decision must in each case depend on its own peculiar facts and circumstances".

Further, 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.*
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> *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 Petitioner has been in remand prison for nine years and seven months and, invites this Court to consider this as an exceptional circumstance.

Learned State Counsel contends that the period in remand custody cannot be considered as an exceptional circumstance in all cases. It has to be decided on a case-by-case basis, whether the remand period already spent could be considered as an exceptional circumstance.

Considering the facts and the circumstances of this case, the President's Counsel further states that the prosecution will not be able to establish a prima facie case against the Petitioner as he is only charged for conspiracy and aiding and abetting the 14th Accused to commit the offence mentioned in the indictment.

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

I agree with the Learned State Counsel that the factual and evidentiary matters pertaining to the investigation can only be tested at the trial upon the witnesses being cross examined and shall not be tested at the time of hearing this bail application considering the nature of this case.

According to the Petitioner, although the case was called numerous times in open court, the trial finally commenced on 22.11.2022. Further, the examination-in-chief of PW1 has been completed on 10.06.2024. Cross examination on behalf of the Petitioner was commenced on the same day. According to the Counsel of the Petitioner, the cross examination is not concluded to date. Hence, the Learned Counsel for the Petitioner as stated above, invites this court to consider the prolonged delay in the conclusion of the trial as an exceptional circumstance.

Bail seeks to strike a balance between the need to ensure that individuals accused of criminal offences appear in court and the fundamental principle that all individuals are presumed innocent until proven guilty and have the right to liberty unless and until convicted by a competent court.

The prosecution openly aims to use pre-trial detention as a means of crime reduction and societal protection. However, denying bail and placing an individual in custody is a serious measure, particularly given that time spent in custody cannot be undone if the individual is ultimately acquitted.

Under the subject of delay, In the case of **Alexopoulos** unreported 23.02.1998 Hampel, J. in the Supreme Court of Victoria, held that:

> *" In my opinion when exceptional circumstances which substantially depend on delay are raised, they cannot be measured simply by what is the normal and usual delay at any particular period of time……..I think there must be some objective criteria which does not depend purely on what the position is at the particular time because of the delays in the system or lack of resources. It must be objective criteria*

based on the concept that we are a humanitarian society which respects the presumption of innocence and finds abhorrent the idea that people are kept in custody for undue time without trial".

Further, in **Nasher v. Director of Public Prosecution [2020] VSCA 144** the court held that:

*"**a combination of delay**, onerous custodial conditions, and the relative weakness of the prosecution case may, when considered with all relevant circumstances, compel the conclusion that exceptional circumstances have been established".* [Emphasis added]

Also, in **CA/0484/2024** order dated 20.05.2025 His Lordship Kulatunga, J. held that:

*"The starting point is that a person being in remand for eleven and half years is extremely serious and significant. Twelve years of a person's life and living is a considerable portion of the lifespan of any average man. As held in the Indian case **Hussain v The State** (NCT of Delhi) 28.03.2023, the right to a speedy trial of offenders facing criminal charges is implicit in the broad sweep and content of Article 21 of the Indian Penal Code corresponds to Article 13(4) of our Constitution which specifically provides that no person shall be punished with death or imprisonment except by order of a competent Court made in accordance with the procedure established by law. No doubt, the detention or remand pending trial does not constitute punishment as provided for by the said Article. The sum total and the relevance are that depriving the person of liberty cannot be reasonable, fair or just unless the procedure ensures a speedy trial for the determination of a guilt of such person. No procedure does not ensure a reasonably quick trial can be regarded as reasonable fair or just."*

Additionally, in **Hussain v The State** the Supreme Court of India in case No. 915 of 2023 judgment dated 28.03.2023 held that:

> *"Now obviously procedure prescribed by law for depriving a person of liberty cannot be 'reasonable, fair or just' unless that procedure ensures a speedy trial for determination of the guilty of such person. No procedure which does not ensure a reasonably quick trial can be regarded as 'reasonable, fair or just' and it would fall foul of Article 21. There can, therefore, be no doubt that speedy trial, is an integral and essential part of the fundamental right to life and liberty enshrined in Article 21.The question which would, however, arise is as to what would be the consequence if a person accused of an offence is denied speedy trial and is sought to be deprived of his liberty by imprisonment as a result of a long delayed trial in violation of his fundamental right under Article 21".*

Dr. A. R. B.Amerasinghe in his book titled "Judicial Conduct, Ethics and Responsibilities" at page 284 observes that:

> "However, Article 13(5) of our Constitution states that every person shall be presumed innocent until he is proved guilty. Article 13(2) further provides that a person shall not be deprived of personal liberty except upon and in terms of the order of a judge made in accordance with procedure established by law.
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> The State imposes a punishment on the suspect indirectly by keeping him in remand custody for an uncertain period. Obviously, that was not the intention of the legislature when it enacted Article 13(5) of the Constitution".

The right to trial without undue delay is found in numerous international and regional human rights instruments; for example, the International Covenant on Civil and Political Rights (Article 14(3)(c), the American Convention on Human Rights (Article 8(1), the African Charter on Human

and People's Rights (Article 7(1)(d), and the European Convention for the Protection of Human Rights and Fundamental Freedoms (Article 6(1)).

When a person is kept in remand without taking up his or her case for trial for a considerable period of time, he or she should be released on bail pending trial. Otherwise, this will not only violate his or her fundamental rights under the Constitution as afore-mentioned but will result in the overcrowding of prisons and eventually would lead to the deprivation of basic human rights for prisoners as well.

In this case the total quantity of pure Heroin detected in the production by the Government Analyst is 48 kilograms, 588 grams and 228 milligrams. Although the Petitioner and the other persons are suspected to be large scale drug dealers, dealing in commercial quantities and no single-user quantities, this does not mean that they should be kept remanded indefinitely. In this case the Petitioner has been in remand custody for about 9 years and 7 months, and the prosecution had only been able to conclude the examination-in-chief of PW1 only to date, of the 78 witnesses listed by the Hon. Attorney General in the indictment.

Under these circumstances, the delay of more than 09 years in remand custody definitely falls into the category of excessive and oppressive delay considering the circumstances of this case. Whatever offences committed under the Poisons Opium and Dangerous Drugs Ordinance as amended by the Act No.13 of 1984, the delay is significant and cannot be considered usual in a case of this nature.

Considering all the materials placed before this court, the Petitioner has successfully adduced that he has exceptional ground/s to be released on bail. Hence, he is granted bail on the following conditions;

1. Cash bail of Rs.2500,000/=.
2. To provide 05 sureties. They must sign a bond of two million each.
3. The Accused and the sureties must reside and not vacate the local address given until the conclusion of his case.

4. Not to approach or interfere with any prosecution witnesses directly nor indirectly.
5. To surrender his 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 Accused.
6. To report to the Police Narcotics Bureau, Colombo-01 on every Wednesday and Sunday of the month between 9am to 1pm.
7. Any breach of these conditions is likely to result in the cancellation of his bail.

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

The Registrar of this Court is directed to send this Bail Order to the High Court of Negombo and the officer-in-Charge of the Police Narcotics Bureau in Colombo-01.

JUDGE OF THE COURT OF APPEAL

R. P. Hettiarachchi, J.

I agree.

JUDGE OF THE COURT OF APPEAL