IN THE COURT OF APPEAL OF THE DEMOCRATIC SOCIALIST REPUBLIC OF SRI LANKA

In the matter of an Application for Bail in terms of Section 83 of the Poisons, Opium and Dangerous Drugs Act as amended by Act No.41 of 2022.

Court of Appeal Bail Application No:
CA Bail/0022/2025

Gangodawilage Pathma Kumari
No. 21/7, Mahajana Mawatha,
Oruwala,
Athurugiriya.

PETITIONETR

High Court of Negombo
HCC No.366/21

Panangala Liyanage Nishan Prabodha
(Presently in remand prison)

ACCUSED

MC Negombo
No.B 9018/2019

Vs.

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

RESPONDENTS

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

COUNSEL : **Eranda Sinharage for the Petitioner.**
Tharaka Kodagoda, SC for the Respondents.

ARGUED ON : **22/05/2025.**

DECIDED ON : **19/06/2025.**

****

ORDER

P.Kumararatnam,J.

The Petitioner had applied for bail on behalf of the Accused under Section 83(2) of the Poisons, Opium and Dangerous Drugs Ordinance amended Act No.41 of 2022. The Petitioner is the mother of the Accrued.

On 21.12.2019, upon receiving an information, the Accused was arrested by officers attached to Police Narcotics Bureau, Colombo-01 and recovered a parcel from the Accused. The Accused was walking along the Nicolas Marcus Fernando Mawatha, Negombo when he was apprehended. After his arrest he was taken up to a parked car said to have used by the Accused. In the car another person was arrested but he was discharged on the advice of the Attorney General.

The parcels recovered from the Accused contained some substances which reacted for Heroin (Diacetylmorphine). The substance weighed about 254.716 grams.

The Accused was produced and facts were reported to the Negombo Magistrate under Section 54A (b) and (d) 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 26/12/2019. After analysis, the Government Analyst had forwarded the report to Court on 12/03/2020. According to the Government Analyst, 126.2 grams of pure Heroin (Diacetylmorphine) had been detected from the substance sent for the analysis. The Accused had been indicted before the High Court of Negombo in the case bearing No. HC 366/21.

The Following exceptional circumstances are submitted by the Petitioner:

1. The suspect is in remand nearly for about 5 years and six months.
2. Up to now only the evidence of chief of the PW1 is concluded.

One of the preliminary objections taken up by the State is that the Petitioner has failed to establish an acceptable "exceptional circumstance" to invoke the jurisdiction of this Court.

The 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.

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 126.2 grams. Hence, this Court has jurisdiction to consider granting of bail as per the new amendment.

The learned Counsel for the Petitioner urged this Court to consider that the detaining an Accused for an extended period of time amounts to a violation of his fundamental rights which can be considered as an exceptional ground.

The Learned Counsel for the Petitioner submitted that the Accused was not in possession any contraband when he was arrested.

The factual and evidentiary matters pertain to the investigations 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.

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".*

Accordingly, considering the fact that there has been a delay of 5 years and 6 months since the remand, it falls into the category of excessive and oppressive delay taking into account the circumstances of this case. Further trial has not concluded in the High Court of Negombo. Hence, this court has come to a conclusion that the Accused has established exceptional grounds for the granting of bail.
The Offences under Section 54A(d) and (b) of the Poisons, Opium and Dangerous Drugs Ordinance as amended by the Act No.13 of 1984 are no doubt serious offences but seriousness of the offences alone cannot form a ground to refuse bail. In considering these matters, the court must bear in mind the presumption of innocence. Further, according to the police, no previous or pending case/s reported against the Accused.

Taking all these into account, especially the pure quantity of Heroin detected, the period in remand, and other circumstances of the case, I consider this an appropriate case to grant bail to the Accused pending trial. Hence, I order the Accused be granted bail with following strict conditions.

1. Cash bail of Rs.50,000/=.

2. To provide 02 sureties. They must sign a bond of Five Hundred Thousand (Rs.500,000/-) each.
3. The Petitioner should be the one of the sureties. T
4. The Accused and the sureties must reside in the address given until conclusion of his case.
5. Not to approach any prosecution witnesses directly or indirectly or to interfere with.
6. 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.
7. To report to the Athurugiriya Police Station on the last Sunday of every month between 9am to 1pm.
8. 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 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 Officer-in-Charge of the Police Narcotics Bureau, Colombo-01.

JUDGE OF THE COURT OF APPEAL

R.P.Hettiarachchci, J.

I agree.

JUDGE OF THE COURT OF APPEA