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 0090/2025

Magistrate Court of Negombo

Case No. B 3939/2023

Liyana Kankanange Padmini
Devika
No.A70/B, Sepala Niwasa,
Nakkavita,Deraniyagala.

PETITIONER

Vs.

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

RESPONDENTS

Ranatunga Arachchige Eranda Udesh Ranatunga
(Presently in Prison)

01st SUSPECT-RESPONDENT

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

COUNSEL : **Sanjith Senanayake instructed by Upul Dissanayake for the Petitioner.**
Tharaka Kodagoda, SC for the Respondents.

ARGUED ON : **07/10/2025.**

DECIDED ON : **13/11/2025.**

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ORDER

P.Kumararatnam,J.

The Petitioner is the wife of the 1st Suspect (Hereinafter referred to as the Suspect) named in the Negombo Magistrate Court Case No. BR/3939/23.

According to the B Report filed by the Police Narcotics Bureau, the Suspect was arrested by the officers attached to the Police Narcotics Bureau, Bandaranayake International Branch, on 21.11.2023 at 8.00pm for illegally importing, possession and trafficking 10.789 kilograms of Heroin(Diacetylmorphine) into Sri Lanka and aiding and abetting the

crime, which are offences punishable under and in terms of Sections 54A(1) (b), (c) and (d) of the Poisons, Opium and Dangerous Ordinance as amended by the Act No. 13 of 1984 along with two others.

The B Report filed by the Police further states, that on 10.11.2023, a consignment of 12 parcels sent from Oman via Pakistan to Sri Lanka under Airways Bill No. 910-6630585, was opened in the presence of the Suspect and a wharf clerk. They were arrested due to suspicion regarding the contents of the parcels. Upon randomly selecting and opening one of the 12 parcels, it was found to have contained 38 white coloured towels. Additionally, two brown-coloured polythene wrappers were discovered inside, which contained a fine brown powder concealed withing various polythene packets. Upon further inspection of the remaining 11 parcels, it was found that 9 of them contained brown-coloured powder packed in brown polythene packets, with 02 such packets in each parcel. Among the remaining two parcels, one contained only one polythene wrapper. In all the parcels, the detectives had found brown coloured substance which reacted for Heroin.

Upon a Court order the contraband had been sent to the Government Analyst's Department and according to the Government Analyst Report dated 24.06.2024, 2.27 Kilograms of pure Heroin (Diacetylmorphine) had been detected in those parcels.

The Suspect were produced and facts were reported to the Negombo Magistrate under Section 54A (b), (c) and (d) of the Poisons, Opium and Dangerous Drugs Ordinance as amended by the Act No.13 of 1984.

Upon a Court order, the Suspect was placed under a detention order to facilitate the Police Narcotics Bureau to conduct further investigation with regard to the detection.

The Petitioner alleges, that the Suspect had no knowledge of illegal substance found in the parcels and the Suspect vehemently denies the allegation levelled against him by the police.

The Petitioner submit that the Suspect had been in remand for little more than 20 months without filing any charge against them. No previous or pending case recorded against the Suspect. According to Government Analyst Report, the pure quantity of Heroin detected from the possession of the Suspect is 2.27 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 2.27 Kilograms. Hence, this court has jurisdiction to consider granting of bail as per the new amendment.

The learned Counsel for the Petitioner submits that undue and long delay in keeping the Suspect in remand custody is a clear violation of their human rights and is against the presumption of innocence guaranteed under the Article 13(5) of the Constitution.

A court can consider evidence in a bail inquiry. During a bail hearing, the court typically evaluates various factors to determine whether an Accused should be granted bail, such as the risk of flight, the likelihood of reoffending, and the safety of the community. The court may also review evidence related to the Suspect's criminal history, ties to the community, and the specifics of the current charges.

Ultimately, the court's role during a bail inquiry is to weigh the available evidence to decide if the defendant can be trusted to return for trial or if they pose a danger to public safety.

In this case the Suspect alleged to have committed Offences under Section 54A(b) (c) and (d) of the Poisons Opium and Dangerous Drugs Ordinance as amended by the Act No.13 of 1984.The offences are very serious offences and the seriousness of the offence should be considered when bail is considered.

I agree with the learned State Counsel that this is not appropriate case to consider the factual and evidentiary matters pertain to the investigations at this stage. It can only be tested at the trial upon the witnesses being cross examined and re-examined.

The learned State Counsel submits that the Suspect had gone to collect the parcel carrying a forged identity card. The number of the forged identity card is 801981316 V and named as Kahatapitiya Arachchige

Ravindra Pushpakumara. Further, the investigation notes have already been received by the Attorney General's Department and registered under CR3/125/25. At present it has been under consideration.

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 **Carder (On behalf of Rashid Kahan) v Officer-in-Charge Narcotics Bureau** [2006] 3 SLR 74 the Court held that:

> *"Heroin has become a menace in our society. It is not easily detectable. Due to the fact alone, the tendency to commit this kind of crime repeatedly has become feasible. The repetitive factor prevalent in this sort of crime and the difficulty of detection are significantly strong reasons for refusing bail in this type of cases."*

In this case the pure Heroin detected is 2.27 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, I do not consider the delay little more than 20 months 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 the 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 this bail order to the Magistrate Court of Negombo and Officer-in-Charge of Police Narcotics Bureau, Colombo-01.

JUDGE OF THE COURT OF APPEAL

Pradeep Hettiarachchi, J.

I agree.

JUDGE OF THE COURT OF APPEAL