

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

*In the matter of an application in terms of
the Article 138 of the Constitution of the
Democratic Socialist Republic of Sri Lanka.*

C.A. Revision Application No: Democratic Socialist Republic of Sri Lanka
CA (PHC) APN 0029/23 **COMPLAINANT**

Provincial High Court of Panadura

No. 4279/2022

Vs.

1. Shamsuddin Mohammad Junaideen
2. Amarapurage Ranuja Salitha Ranatissa

ACCUSED

AND NOW

Walhenage Hansi Madushani,
No. 502/2, Boralessa,
Ambalanthota.

PETITIONER

Vs.

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

2. Officer-in-Charge,
Organized Crime Prevention Division,
No. 9, Mihindu Mawatha, Colombo 12.

RESPONDENT

3. Shamsuddin Mohammad Junaideen

1st ACCUSED-RESPONDENT

Before : Sampath B. Abayakoon, J.

: P. Kumararatnam, J.

Counsel : Anuja Premaratne, P.C. with Tarangee Mutucumarana
and Ishan Gampalage for the Petitioner

: Jayalakshi De Silva, S.S.C. for the Respondent

Argued on : 23-06-2023

Decided on : 10-08-2023

Sampath B. Abayakoon, J.

The petitioner filed this application invoking the revisionary jurisdiction of this Court granted in terms of the Article 138 of the Constitution seeking to set aside and revise the order dated 01-03-2023 pronounced by the learned High Court Judge of Panadura, wherein, the application for bail for the 1st accused-respondent, namely Shamsuddin Mohammad Junaideen (hereinafter referred to as the 1st accused) was refused.

The 1st accused along with another has been indicted before the High Court of Panadura in case no. 4279/2022 for having committed several offences in terms

of Firearms Ordinance, Explosives Ordinance, Poisons, Opium and Dangerous Drugs Ordinance, and also committing an offence in terms of the Prevention of Money Laundering Act.

Out of the 7 charges in the indictment, charges 1, 2, 3, 4 and 7 are charges relating to the 1st accused. In the 3rd and the 4th count preferred against him, it has been charged that he had in possession and trafficked 9.426 grams of Diacetylmorphine commonly known as Heroin on 16-10-2019, and thereby committed an offence punishable in terms of the Poisons, Opium and Dangerous Drugs Ordinance.

After the indictment dated 01-04-2022 was filed before the High Court of Panadura, both the accused had made an application for bail and the learned High Court Judge of Panadura by his order dated 18-11-2022 has refused bail on the basis that the accused have failed to adduced required exceptional circumstances for them to be granted bail.

It is apparent that the learned High Court Judge has pronounced this order based on the provisions of the Poisons, Opium and Dangerous Drugs Ordinance as stood then, where a person who is seeking bail for a charge of having committed an offence in terms of section 54 of the Act as amended by Act No. 13 of 1984 shall establish exceptional circumstances for him to be granted bail, if the alleged quantity of the Heroin is over 2 grams.

It needs to be noted that the counts other than the counts preferred in terms of the Poisons, Opium and Dangerous Drugs Ordinance are offences, which does not attract the requirement of establishing exceptional circumstances in considering bail.

It appears from the proceedings before the High Court of Panadura, that on 01-03-2023, the learned President's Counsel who represented the 1st accused has made a fresh bail application on behalf of him, this time relying on the Poisons, Opium and Dangerous Drugs (Amendment Act) No. 41 of 2022. The basis of the application had been that in terms of section 83 of the Poisons, Opium and

Dangerous Drugs Ordinance as amended by Act No. 41 of 2022, the accused in this matter are entitled to be released on bail as the pure quantity of the drug alleged to have been in possession and trafficked amounts to less than 10 grams, namely 9.426 grams, and the maximum period a person can be kept under remand custody for having possessed such a quantity shall be 12 months in terms of section 84, which can only be extended up to a total period of 24 months in terms of section 85 and nothing more.

The learned State Counsel who represented the Hon. Attorney General at the High Court had objected to the application for bail on the basis that since in terms of the Amendment Act No. 41 of 2022, a person who had in his possession more than 5 grams of Heroin can be sentenced to death, the High Court has no jurisdiction to grant bail.

For matters of clarity, I would now reproduce the relevant order dated 01-03-2023, pronounced by the learned High Court Judge of Panadura in consequent to the application for bail.

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2022 අංක 41 දරණ (සංශෝදන) පනතින් සංශෝදිත විෂ වර්ග, අබිං සහ අන්තරාදායක ඖෂධ වර්ග ආඥා පනතේ 83 (2) උපවගන්තිය යටතේ දක්වා ඇති "අ" සහ "ආ" අනුවේද අතර පවතින අපැහැදිලිතාවය හේතු කොටගෙන ශුද්ධ බර ග්‍රෑම් 9.426 ක හෙරොයින් ප්‍රමාණයක් සන්තකයේ තබාගෙන සිටි බවට චෝදනා ලැබ ඇති පලවන වූදින ඇප මත මුදාහැරීමට මෙම අධිකරණයට අධිකරණ බලයක් නොමැති බව මෙම අධිකරණයේ මතය වේ. ඒ අනුව පලවන වූදින වෙනුවෙන් කරන ලද ඇප අයැදුම් නිශ්චුභ කරමි.

At the hearing of this application, it was the contention of the learned President's Counsel that there was no ambiguity whatsoever between subsection "a" and "b" of section 83 (2) of the Poisons, Opium and Dangerous Drugs Ordinance, as amended by Amendment Act No. 41 of 2022. It was his view that the said section shall be read in conjunction with section 84 and 85 of the Ordinance as amended, and the learned High Court Judge has failed to appreciate the purpose

of the amendment when the application for bail made on behalf of the 1st accused was refused.

The learned State Counsel who represented the Hon. Attorney General agreed that there was no ambiguity between the subsections considered by the learned High Court Judge, and informed the Court that he has no basis to object for the granting of bail for the 1st accused as the provisions of the law now stands after the Amendment Act No. 41 of 2022.

For the purposes of this judgement, I would now reproduce the relevant section 04 of the Amendment Act No. 41 of 2022, which has repealed the section 83 of the Poisons, Opium, and Dangerous Drugs Ordinance amended by Act No. 13 of 1984 and has replaced it with a new section 83.

The replaced section 83 of the principal enactment reads as follows,

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 purposes of this section, “dangerous drug” means Morphine, Cocaine, Heroin and Methamphetamine.”

The following new sections 84 and 85 were also inserted immediately after section 83 of the principal enactment by the same amendment, which reads thus.

84. A suspect or an accused who has not been tried and has not been convicted and sentenced by a Court under the provisions of subsection (1) of section 54A and section 54B, shall not be detained in custody for a period exceeding twelve months from the date of his arrest.

85. Notwithstanding the provisions of section 84, on application made in that behalf by the Attorney-General to the High Court established under Article 105 or a High Court established by Article 154P of the Constitution such Court may, for good and sufficient reasons that shall be recorded, order that a suspect or an accused who has not been tried and has not been convicted and sentenced by a Court under the provisions of subsection (1) of section 54A and section 54B, be detained in custody for a period in excess of twelve months:

Provided that, the period of detention ordered under this section, shall not in any case exceed three months at a time and twenty-four months in the aggregate.

The plain reading of section 83 (1) as it stands now clearly establishes that a person suspected or accused of an offence under section 54 A and section 54 B of the Ordinance shall not be released on bail by the High Court except in exceptional circumstances. However, the above provision is subject to the provisions of section 84, 85 and subsection (2) of section 83.

Therefore, it needs to be noted that granting of bail by a High Court under exceptional circumstances for a suspect or an accused in terms of this section shall have to be read in conjunction with the above sections and not in its isolation.

Section 83 (2) provides that notwithstanding the provisions of section 84 and 85, a person suspected of or accused of under subsection (1) for having committed an offence in terms of section 54 A and section 54 B of the Ordinance shall not be released by the High Court if the pure quantity of the dangerous drug is 10 grams or above in terms of the Government Analyst Report, and it is only the Court of Appeal that has the jurisdiction to consider bail under exceptional circumstances.

I am unable to find any ambiguity between section 83(2)(a) and (b) as contemplated by the learned High Court Judge in his order, which is not a matter that can be considered to refuse bail if the pure quantity of the dangerous drug is less than 10 grams, in view of the provisions of section 84 and 85.

Section 84 and 85 are sections that are applicable to granting of bail by the High Court when the pure quantity of the dangerous drug is less than 10 grams.

Section 84 stipulates that no person to be detained for more than 12 months in custody who has not been tried and not been convicted and sentenced by a Court in terms of section 54 A and section 54 B of the Ordinance for a period exceeding 12 months from the date of his arrest.

Section 84 clearly provides that such a person can be kept in custody for more than 12 months only if the Attorney General has obtained prior permission from the relevant High Court by showing good and sufficient reasons to detain a suspect or an accused for a period in excess of 12 months. This extension shall not in any case exceed 3 months at a time and 24 months in aggregate.

Having considered the above provisions of the law, it is the considered view of this Court that if the pure quantity of the dangerous drug alleged to have been

possessed or trafficked by a person is less than 10 grams, the relevant High Court has no option but to release such a person on bail after 12 months in custody, unless the Attorney General has acted and had obtained an order in terms of section 85 of the Ordinance as amended by the Amendment Act No. 41 of 2022. It is the view of this Court in any case, even if such an order has been obtained, no person shall be detained in custody for more than 24 months if the pure quantity of the dangerous drug is less than 10 grams, unless the accused has been tried, convicted and sentenced by a competent Court.

For the purposes of these provisions as considered earlier, “dangerous drug” means Morphine, Cocaine, Heroin and Methamphetamine.

As the alleged pure quantity of the dangerous drug possessed and trafficked by the 1st accused in the case under consideration was 9.426 grams of Heroin, and he had been in remand custody from the date of his arrest on 16-10-2019 and he has not been tried, convicted and sentenced, it is the view of this Court that the learned High Court Judge has been misdirected as to the relevant law, when bail was refused for the 1st accused.

It is the view of this Court that the 1st accused is entitled to be released on bail in terms of the relevant law, as it stands now, for the reasons as considered above. Hence, this court finds that the petitioner has established sufficient exceptional circumstances for this Court to intervene with the order dated 01-03-2023 of the learned High Court Judge of Panadura.

Accordingly, the order dated 01-03-2023 is hereby set aside as it cannot be allowed to stand.

The 1st accused is granted bail on following bail conditions.

1. Cash bail of Rs. 100000/-
2. Surety bail of Rs. 250000/- each, with two sureties. The petitioner namely, Walhenage Hansi Madushani shall be one of the sureties. The other surety shall be a family member or a close relative of the 1st

- accused, and the said surety shall tender an affidavit to the Court indicating his or her relationship to the 1st accused and that he or she is willing to stand surety for him.
3. The 1st accused shall report to Officer-in-Charge of Organized Crime Prevention Division of at No-09, Mihindu Mawatha, Colombo 12, between 9 am and 12 noon on every last Sunday of the month until the conclusion of this case before the High Court of Panadura.
 4. The 1st accused is prevented from travelling overseas until the conclusion of the High Court case, and he is ordered to hand over his passport if he is in possession of one. If he had not obtained a passport, he shall file an affidavit before the High Court of Panadura in that regard.
 5. The Registrar of the High Court of Panadura is directed to inform The Controller of Immigration and Emigration that a travel ban has been imposed on the 1st accused providing The Controller with necessary details in that regard.

The Registrar of the Court is directed to communicate this judgement to the High Court of Panadura for necessary compliance.

Judge of the Court of Appeal

P. Kumararatnam, J.

I agree.

Judge of the Court of Appeal