

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

*In the matter of an application under  
section 364 and 365 of the Code of  
Criminal Procedure Act No. 15 of  
1979.*

**CA (PHC) APN 0027/23**

Officer-in-Charge,

Police station,

Madampe.

**HC – Chilaw**

**COMPLAINANT**

BA 73/22

**Vs.**

**MC – Chilaw**

B 131/22

Rankoth Pedige Hasan Buddhika,

Mahagama South,

Mugunuwatawana.

**SUSPECT**

**AND**

Lindamulage Anoma Priyanga Silva,

Mahagama South,

Mugunuwatawana.

**PETITIONER**

**Vs.**

1. Officer-in-Charge,  
Police station,  
Madampe.

**COMPLAINANT-RESPONDENT**

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

**RESPONDENT**

3. Rankoth Pedige Hasan  
Buddhika,  
Mahagama South,  
Mugunuwatawana.

**SUSPECT-RESPONDENT**

**AND BETWEEN**

Lindamulage Anoma Priyanga Silva,  
Mahagama South,  
Mugunuwatawana.

**PETITIONER-PETITIONER**

**Vs.**

1. Officer-in-Charge,  
Police station,  
Madampe.

**COMPLAINANT-RESPONDENT-  
RESPONDENT**

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

**RESPONDENT-RESPONDENT**

3. Rankoth Pedige Hasan  
Buddhika,  
Mahagama South,  
Mugunuwatawana.

**SUSPECT-RESPONDENT-  
RESPONDENT**

**Before** : Sampath B. Abayakoon, J.  
: P. Kumararatnam, J.

**Counsel** : Janajith De Silva with Eranga Rathnayake for the  
Petitioner

: Jehan Gunasekara, S.C. for the respondents

**Inquiry on** : 26-07-2023

**Order on** : 01-09-2023

**Sampath B. Abayakoon, J.**

This is an application by the petitioner-petitioner (hereinafter referred to as the petitioner) invoking the revisionary jurisdiction of this Court seeking to revise and set aside the order dated 17-02-2023 of the learned High Court Judge of Chilaw.

From the impugned order, the learned High Court Judge refused to grant bail for Rankoth Pedige Hasan Buddhika, who is the suspect in the Magistrate Court of Chilaw Case No. B 131/22.

The suspect has been arrested by the officers of the Madampe police on 01-02-2022, for an alleged offence of possession and trafficking of 15.85 grams of a substance suspected to be Diacetylmorphine, also known as Heroin.

According to the B-report filed before the Magistrate of Chilaw by the Officer-in-Charge of the relevant police in that regard, this is an offence punishable in terms section 54A(a) and 54A(d) of the Poisons, Opium and Dangerous Drugs Ordinance as amended.

The suspect has been in remand since, and according to the Government Analyst Report dated 02-08-2022, the substances produced before the Government Analyst had been identified as having 2.44 grams of Diacetylmorphine, namely, Heroin.

The suspect had made an application for bail before the High Court of Chilaw, and the learned High Court Judge of Chilaw by her order dated 17-02-2023 has refused bail on the basis that the suspect has several pending cases and previous convictions.

It is apparent that although when the bail application was preferred before the High Court on the 17<sup>th</sup> October 2022 the provisions of the Poisons, Opium and Dangerous Drugs (Amendment) Act No. 41 of 2022 was not in operation, but, when this matter was considered before the Court and the relevant order was pronounced, the Amendment Act was in operation and it has been brought to the attention of the learned High Court Judge.

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 or her to be granted bail if the alleged quantity of the Heroin is over 2 grams.

It appears from the proceedings before the High Court of Chilaw that the learned Counsel who represented the suspect has made the bail application on behalf of him, relying on the Poisons, Opium and Dangerous Drugs (Amendment) Act No. 41 of 2022. The basis of the application had been that the suspect in this matter is entitled to be released on bail as the pure quantity of the drug identified as Heroin, alleged to have been in possession and trafficked amounts to less than 10 grams, namely 2.44 grams, and the maximum period a person can be kept on remand 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 no exceptional circumstances are available for the Court to grant bail.

For matters of clarity, I would now reproduce the relevant portion of the order dated 17-02-2023 pronounced by the learned High Court Judge of Chilaw in consequent to the application for bail.

“මෙම කරුණු සලකා බැලීමේදී මෙම සැකකරුට ඇප ලබාදුනහොත් නැවත නැවතත් මේ හා සමාන වරදවල් සිදු කිරීමට ඉඩ ඇති බවට මා තීරණය කරමි. ඔහුට දැනටමත් අධිචෝදනා දෙකක් මහාධිකරණයේ පවතින බැවින් සහ මෙම නඩුවේ ඔහු සන්නකයේ තබා ගත් ශුද්ධ හෙරොයින් ප්‍රමාණය ග්‍රෑම් 02 යි මිලි ග්‍රෑම් 44 ක් වන බැවින් ඇප ලබාදුනහොත් අධිකරණය මග හැරීමට ඇති ප්‍රවණතාවය අධික වන බැවින් චූදිතට මේ අවස්ථාවේදී ඇප ලබා දීම ප්‍රතික්ෂේප කරමි.”

At the hearing of this application, it was the contention of the learned Counsel for the petitioner that in terms of section 83 (2) of the Poisons, Opium and Dangerous Drugs Ordinance as amended by Amendment Act No. 41 of 2022, which needs to be read with section 84 and 85 of the Ordinance as amended, the learned High Court Judge should have released the suspect as the purpose of the relevant Amendment was to release suspects who alleged to have in his or her possession a pure quantity of less than 10 grams of the dangerous drug on bail.

The learned State Counsel who represented the Hon. Attorney General agreed that he has no basis to object to the granting of bail for the suspect as the provisions of the law now stand after the Amendment Act No. 41 of 2022 is clear. However, he urged the Court to consider imposing strict bail conditions considering the previous history of the suspect.

For the purposes of this order, 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 grams 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.



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 54A and section 54B 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.

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 and if the suspect or the accused had been in incarceration for more than 12 months.

Section 84 stipulates that no person to be detained for more than 12 months in remand 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 85 clearly provides that such a person can be kept in remand 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.

Even 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 remand 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 that in any case, even if such an order has been obtained, no person shall be detained in remand 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.

As the alleged pure quantity of the dangerous drug possessed and trafficked by the suspect in the case under consideration was 2.44 grams of Heroin, he had been in remand custody from the date of his arrest on 01-02-2022 and she has not been tried, convicted, and sentenced. The Attorney General has not taken any steps in terms of section 85 seeking an extension of the remand period.

Therefore, it is the view of this Court that the learned High Court Judge was misdirected as to the relevant law when bail was refused for the suspect. The matters considered by the learned High Court Judge in order to refuse bail for the suspect are matters that should have been considered in imposing suitable bail conditions to the suspect.

It is the view of this Court that the suspect is entitled to be released on bail in terms of the law as it stands now, for the reasons as considered above.

Accordingly, the order dated 17-02-2023 of the learned High Court Judge of Chilaw is set aside as it cannot be allowed to stand, and the suspect is released on bail on the following bail conditions.

1. Cash bail of Rs. 25000/-
2. Surety bail of Rs. 250000/- each with 2 sureties. The petitioner shall be one of the sureties. The other surety shall be a family member or a close relative of the suspect, and the said surety shall tender an affidavit to the Court indicating his or her relationship to the suspect and is willing to stand surety for him.

3. The suspect is prevented from travelling overseas until the conclusion of this 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 Magistrate Court in that regard.
4. The Registrar of the Magistrate Court of Chilaw is directed to inform The Controller of Immigration and Emigration that a travel ban has been imposed on the suspect by providing The Controller with necessary details in that regard.

The Registrar of the Court is directed to communicate this order to the Magistrate Court of Chilaw for necessary compliance and to the High Court of Chilaw for information.

Judge of the Court of Appeal

**P. Kumararatnam, J.**

I agree.

Judge of the Court of Appeal