

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 Poison Opium and Dangerous Drugs Ordinance No. 13 of 1984 as Amended Act No. 41 of 2002 of the Constitution of the Democratic Socialist Republic of Sri Lanka.

CA Case No: BAL/95/22

MC Welisara

Case No: 2192/21

Palliyage Piyadasa

T/150/17, Serpantine Road, Borella

On Behalf of

Palliyage Aruni Nadeeshika

T/150/17, Serpantine Road, Borella

Petitioners

- **Vs** -

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

2. Officer in Charge
Colombo Crime Division
Dematagoda

Respondents

Before : P. Kirtisinghe J

&

R. Gurusinghe J

Counsel : Tenny Fernando for the Petitioner

Kanishka Rajakaruna, S.C. for the State

Argued on : 07.09.2023

Decided on : 03.10.2023

R. Gurusinghe J

The petitioner in this bail application is the sister of the 1st suspect Palliyage Aruni Nadeeshika (hereinafter referred to as the 1st suspect) in B 2192/21 in the Magistrate's Court of Welisara.

The 1st suspect was arrested by the Colombo Crime Division (CCD) on 19.07.2021, while packing heroin in a house at Kotugoda, Ja-ela. She was alleged to have been in possession of 1.225 kilograms of heroin. The police also recovered Rs. 868,900/=, alleged to be the proceeds of heroin trafficking. According to the Government Analyst, the pure quantity of heroin is 809.6 grammes. The first suspect has been in remand custody since 19.07.2021. An application seeking for bail was filed in the High Court of Negombo, which was rejected by the Learned High Court Judge.

Section 83 of the Poison, Opium, and Dangerous Drugs Ordinance as 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 purposes of this section "dangerous drug" means Morphine, Cocaine, Heroin and Methamphetamine".

The petitioner urged the following facts as exceptional circumstances for consideration to grant bail.

1. The police have failed to mention the precise mode of arrest which cast a reasonable suspicion of the entire version.
2. The police version was contradicted by circumstantial evidence and video and audio recordings.
3. The suspect has been denied the right to be tried expeditiously without delay.
4. The provisions under the Poisons, Opium, and Dangerous Drugs Ordinance do not overthrow the provisions under the Constitution that guarantee fundamental rights and substance of fair trial.
5. The suspect is suffering from bone fractures due to an accident and getting sufficient treatment inside the prison is extremely difficult due to the unavailability of medicines. Thereby, her illness is worsened day by day affecting her health condition totally.
6. The parents of the suspect are unable to provide medicine for the suspect inside the prison as they are both suffering from severe health conditions that they are treated by doctors and thereby parents too are unable to attend.

The respondent objected for bail been granted to the 1st suspect on the following grounds:

1. The petitioner has failed to establish exceptional grounds in order to invoke the jurisdiction of this Court.
2. The suspect was in possession of 1.225 Kilograms of heroin which is a commercial quantity and he was also in possession of Rs. 868,900/= alleged to be the proceeds of heroin trafficking. The suspect is a large-scale drug trafficker.

In this case, the productions were sent to the Government Analyst, and according to the Government Analyst's report, the pure quantity of heroin detected is 809.6 grammes.

In the case of *Ranil Charuka Kulatunga vs. Attorney General* CA(PHC) APN134/2015, the Court held that *"the quantity of cocaine involved in this*

case is 62.847 grammes, 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 this case, the pure heroin detected was 809.6 grammes, which is certainly a commercial quantity. Considering the gravity of the offence and the sentence prescribed under the Poison, Opium and Dangerous Drugs Ordinance, there is a high risk of the suspect absconding, if he is enlarged on bail. In view of this, it is prudent to conclude the High Court case expeditiously while the suspect is in remand custody.

The grounds urged by the petitioner, in this case, cannot be considered as exceptional circumstances.

Further, the delay of more than two years in remand does not fall into the category of excessive and oppressive delay, considering the gravity of the offence and other circumstances of this case.

Considering all the material placed before this Court, the petitioner has failed to satisfy that there are exceptional grounds to enlarge the suspect on bail. Therefore, this bail application is refused.

The Registrar of this Court is directed to send copies of this order to the OIC of the Colombo Crime Division, Magistrate’s Court of Welisara and the High Court of Negombo.

Judge of the Court of Appeal

Pradeep Kirtisinghe J.

I agree.

Judge of the Court of Appeal.