

**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 Poisons, 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/193/2023
MC Hambantota
Case No: BR/4622/22

Weerathunga Arachchige Piyasena
(**1st Suspect** – currently in
Angunukolapelassa Remand Prison)

Weerasinghe Weliwaththage Tharaka
Hashan
Office of the Family Health Officer,
Welaycolony, Ruhunu Ridyagama

Petitioner

(On behalf of the suspect
above named)

- **Vs** -

1. Hon. Attorney General
Attorney General's Department
Colombo 12
2. The Officer-in-Charge
Police Station
Ambalanthota.
3. The Officer-in-Charge
Police Narcotic Bureau,
Colombo

Respondents

Before : P. Kirtisinghe J
&
R. Gurusinghe J

Counsel : Eranga Sirisena for the Petitioner
I.M.M. Fahim, S.C. for the Respondent

Argued on : 06.09.2023

Decided on : 03.10.2023

R. Gurusinghe J

The petitioner, Weerathunga Arachchige Piyasena is 67 years old, and the 1st suspect in the case bearing no. BR4622/22 in the Magistrate's Court of Hambantota. According to the 'B' report filed the petitioner, the petitioner's wife (2nd suspect) and the petitioner's daughter (3rd suspect who was discharged by the Learned Magistrate) were arrested on 3.11.2022 by the officers of the Ambalantota Police Station, for suspecting committing or abating to commit offences under section 54 A and B, of the Poisons, Opium, and Dangerous Drugs Ordinance as amended by Act No. 41 of 2022.

Facts of this case, as per the 'B' reports filed in the Magistrate's Court of Hambantota, are briefly as follows:

7th and 8th suspects (who were already discharged by the Learned Magistrate) had found a gas cylinder floating in the sea, and it was sold to the 4th suspect, Tharindu Dilshan. The 4th suspect sold it to the 6th suspect, Preethi Kumara, a scrap metal dealer (also discharged by the Learned Magistrate). The 6th suspect buys metal according to its weight. As the gas cylinder was unusually heavy, the 6th suspect had it opened before the 4th suspect and 10th suspect Sanju alias Kasun Chathuranga who brought the cylinder to sell it. 5th suspect, K.G. Manjula was also there at that time. When the cylinder opened, they found some polythene parcels inside it. The 5th suspect took three parcels and brought them to his home.

The remaining parcels were taken by the 4th and the 10th suspects and given/sold to the 11th suspect, Prabath. The 11th suspect sold one or two parcels to an unknown person and the rest was sold to the 9th suspect, Sajith Thivanka who kept it with him for a few days. Later, the 9th suspect put those parcels into two sacks with paddy and brought them to the 1st, 2nd and 3rd suspects' house and kept those two sacks in the living area of the 1st suspect. 9th suspect is said to be a relative of the 1st suspect's wife (2nd suspect).

The police received information, came to the 1st suspect's house, and checked the two paddy sacks. When they removed the paddy from the sacks, they found parcels of heroin. The weight of those parcels was 25.91 kilogrammes. The police arrested the 1st, 2nd and 3rd suspects. The officers of the Police Narcotics Bureau (PNB) reported to the Learned Magistrate that there was no sufficient material against the 3rd, 6th, 7th and 8th suspects and moved to discharge them. Upon this application, the Learned Magistrate discharged the 3rd, 6th, 7th and 8th suspects.

The PNB also reported to the Magistrate Court that, they were investigating whether the 1st and 2nd suspects had the knowledge that, there was heroin inside the paddy sacks which were brought to their house by the 9th suspect.

All the heroin parcels that were taken into custody by the Police were sent to the Government Analyst in three parcels named A, B and C. In each parcel, there were several packets inside. As per the Government Analyst report the pure quantity of heroin detected in those parcels was as follows:

- A. 6.1232 Kg
- B. 6.323 Kg
- C. 1.8518 Kg

The provisions of section 83 of the Poisons, Opium and Dangerous Drugs Ordinance as amended by Act No. 41 of 2022 state;

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 in 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”.

Under the provisions of section 82, 83(2) a person suspected or accused of an offence under subsection (1) of section 54 (A) and section 54 (B), the pure quantity of dangerous drug trafficked, imported, exported or possessed is 10 grammes or above in terms of the report issued by the Government analyst under section 77A and which is punishable with death or life imprisonment shall not be released on bail except by the Court of Appeal in exceptional circumstances.

The petitioner urged the following facts as exceptional circumstances and seeks to be enlarged on bail;

1. The petitioner was arrested on 3.11.2022 and has been languishing in custody since then. As per the reports filed by the Police in the Magistrate’s Court the 9th suspect had brought the two paddy sacks and kept them at the petitioner’s house. The petitioner pleads that he had no knowledge of whether there was any illegal substance inside the paddy sacks.
2. The petitioner is 67 years old person. The petitioner had a jaw cancer and part of his left jaw has been removed by surgery. The petitioner is suffering from Multiple Myeloma disease, a kind of bone marrow cancer. The petitioner also pleads that they were not arrested when the police found the heroin parcels inside the paddy sacks. The petitioner, his wife and his daughter were asked to be present at the police station to record a statement, and when they went to the police station, they were arrested.

The respondents have objected to bail being granted to the petitioner on the following grounds;

- a. The suspect had been arrested for being in possession and trafficking 25.9 kilogrammes of heroin and the pure quantity of which is 6.3236 kilogrammes.
- b. A sum of Rs.6,634,000.00 has been recovered by the 3rd respondent from the close vicinity of the 11th suspect's residence where it had been kept buried, and it has transpired from the investigation that the said sum of proceeds was of the trafficking of heroin.
- c. The petitioner has failed to demonstrate any exceptional circumstances to invoke the jurisdiction of this Court.
- d. The high quantity of heroin and the gravity of the offence, there is a high possibility and great likelihood of the suspect absconding and /or repeating and/or getting involved over similar offences not only causing a threat to the Criminal Justice System but also society at large.

The Court considered all material placed on record by both parties.

In the case of 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”.

In this case, the petitioner is a 67-year-old person. Part of the left jaw has been removed by surgery as it was a cancer. The medical reports submitted to court indicate that he suffers from Multiple Myeloma disease, a kind of bone marrow cancer. The medical reports also reveal that the petitioner is suffering from constant severe pains and needs to attend regularly for cancer treatment. The petitioner, being a 67 years old person had no any previous convictions. He has no any other pending cases.

In addition, the PNB had reported to the Learned Magistrate on 9.11.2022 that they were investigating whether the petitioner and his wife had any knowledge about the heroin that was hidden inside the paddy sacks which were brought to the 1st suspect's house by the 9th suspect. However, the further reports filed by the PNB thereafter do not reveal any information about the petitioner's or his wife's complicity in the offence.

Taking into consideration of the above material, I am of the view that those grounds can be considered as exceptional circumstances to grant bail.

Hence, I order that the petitioner (Weeratungaarachige Piyasena) be released on bail with the following conditions:

1. Cash bail of Rs. 50,000/=
2. To provide two sureties acceptable to the Learned Magistrate/or to the Learned High Court Judge. They must sign a Bond of Rs. 2,000,000/= each.
3. To surrender his passport if any, to the Court. A travel ban is imposed on the suspect. The controller of Immigration and Emigration is to be informed of the travel ban of the suspect.
4. Report to the Ambalantota police station on the last Sunday of each month between 9.00 a.m. to 1.00 p.m.

The registrar is directed to send copies of this order to the Magistrate's Court, the High Court of Hambantota, and a copy to the OIC of PNB Colombo 1.

Judge of the Court of Appeal

Pradeep Kirtisinghe J.

I agree.

Judge of the Court of Appeal.