

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

In the matter of an application for Bail in terms of Section 83(2) of the Poisons, Opium and Dangerous Drugs (Amendment) Act No 41 of 2022.

Court of Appeal No:

Selladore Vijaya Laxshmi

CA Bail /0061/2023

No.30,Rathnam,Road,

Colombo-13.

PETITIONER

High Court of Gampaha

Vs

Bail Application No.85/16

1. The Attorney General

Attorney General's Department,

Colombo-12.

MC Mahara

2. The Officer-in-Charge

Police Narcotics Bureau

Colombo-01.

Case No. B 2733/2014

RESPONDENTS

Selladore Ravi Kumar

(Presently in remand custody)

1st-ACCUSED

BEFORE : **Sampath B. Abayakoon, J.**

P. Kumararatnam, J.

COUNSEL : **Nalin Weerakoon with Deshapriya
Liyanage for the Petitioner.**

R.Kuruwita, SC for the Respondent.

ARGUED ON : **16/05/2023.**

DECIDED ON : **04/07/2023.**

ORDER

P.Kumararatnam,J.

The Petitioner is the mother of the 1st Accused in the High Court Gampaha Case No.HC/85/2016.

On 11.06.2014, the 1st Accused was arrested at Peliyagoda by officers attached to the Police Special Task Force upon an allegation relating to possession of Heroin in excess of 85.340 Kilograms. After the arrest, the 1st Accused with another suspect were handed over to the Police Narcotics Bureau, Colombo-01 for further investigation and necessary action.

The suspects were produced and facts were reported to the Mahara Magistrate under Section 54A (1) (b) and (d) of the Poisons, Opium and Dangerous Drugs Ordinance as amended by the Act No.13 of 1984 and a detention order was obtained for further investigations under Section 82(3) of the said Act.

The production had been sent to the Government Analyst Department on 13/06/2014. After analysis, the Government Analyst had forwarded the report to the Police Narcotics Bureau on 30/07/2014. According to the Government Analyst, 31.00411 Kilograms of pure Heroin (Diacetylmorphine) had been detected from the substance sent for the analysis.

The Petitioner has pleaded following exceptional circumstances in support of the Bail Application.

1. The 1st Accused was taken into custody on 11th June 2014, then detained and in remand custody for over 08 years and 05 months now.
2. The 1st Accused was in remand for more than 05 years and 18 days without a valid indictment since he was produced before the High Court of Gampaha from 11th June 2016 till 29th June, 2021.
3. The case against the 1st Accused is very weak and 06 other suspects taken into custody in connection to the same matter have already been discharged on the request made by the Hon. Attorney General's letter dated 30th August 2019 under the reference No. CR3/811/2014.

The State opposing to bail submitted that the indictment pertaining to the offences under the Poisons, Opium and Dangerous Drugs Act is already being sent to the High Court of Gampaha on 30.08.2016. Hence, Learned State Counsel submitted that the delay is not an exceptional circumstance to be considered to enlarge the suspect on bail. Further, the time spent for preparing the indictment does not constitute an exceptional circumstance.

The suspect is in remand for about 08 years as at today. According to Government Analyst Report, the pure quantity of Heroin detected from the possession of 1st Accused is 31.00411 Kilograms.

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 31.00411 Kilograms. Hence, this court has jurisdiction to consider granting of bail as per the new amendment.

In this case, as per the submission of the Learned State Counsel, the indictment had already been dispatched to the High Court of Gampaha and the trial is already commenced.

I agree with the learned State Counsel that the factual and evidentiary matters pertain to the investigations can only be tested at the trial upon the witnesses being cross examined and shall not be tested at the time of hearing this bail application considering the nature of this case.

Further, I do not consider the delay about 08 years in remand falls into the category of excessive and oppressive delay considering the circumstances of this case.

The Offence under Section 54A(b) and (d) of the Poisons Opium and Dangerous Drugs Ordinance as amended by the Act No.13 of 1984 is a serious offence and the seriousness of the offence should be considered when bail is considered.

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 this case the pure Heroin detected is 31.00411 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, it is prudent to conclude the High Court case expeditiously keeping the 1st Accused in remand.

Considering all these factors into account, especially the pure quantity of Heroin detected, the charge in the indictment against the 1st Accused and other circumstances of the case, I consider this is not the appropriate time to grant bail to the 1st Accused.

Hence, this bail application is dismissed.

The Registrar of this Court is directed to send a copy of this Order to the High Court of Gampaha and Officer-in-Charge of the Police Narcotics Bureau, Colombo-01.

JUDGE OF THE COURT OF APPEAL

SAMPATH B. ABAYAKOON, J.

I agree.

JUDGE OF THE COURT OF APPEAL