

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

In the matter of an application for Bail made under and in terms of Section 83(2) of the Poisons, Opium and Dangerous Drugs (Amendment) Act No. 41 of 2022 dated 23.11.2022.

The Officer-in-Charge  
Police Station,  
Wattala.

**Court of Appeal**

**Bail Application No:**

**COMPLAINANT**

**CA Bail 0017/2023**

**Vs**

**MC Welisara Case No.**

Balakrishnan Padmini Priyadarshani

**B/910/22**

No.07/13, Sathamma Waththa,

Orugodawatta.

(Presently detained in Welikada Prison)

**SUSPECT**

**AND NOW BETWEEN**

Balakrishnan Padmini Priyadarshani

No.07/13, Sathamma Waththa,

Orugodawatta.

(Presently detained in Welikada Prison)

**SUSPECT-PETITIONETR**

**Vs**

1. The Officer-in Charge,

Police Station,

Wattala.

2. The Attorney General

Attorney General's Department,

Colombo-12.

**RESPONDENTS**

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

**COUNSEL** : **Kasun Liyanage for the Petitioner.**  
**Ridma Kuruwita, SC for the**  
**Respondents.**

**ARGUED ON** : **26/05/2023.**

**DECIDED ON** : **18/07/2023.**

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**ORDER****P.Kumararatnam,J.**

The Petitioner, who is the Suspect named in M.C. Welisara Case No. B 910/2022 had applied for bail for her.

On 11.03.2022, the Petitioner was arrested at Oliyamulla by officers attached to the Wattala Police Station upon an allegation relating to possession of 70 grams of Heroin. According to police the contraband was seized from her private part of her body.

The suspect was produced and facts were reported to the Welisara Magistrate under Section 54A (d) and (b) 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 28/03/2022. After analysis, the Government Analyst had forwarded the report to Court on 23/09/2022. According to the Government Analyst, 11.53 grams of pure Heroin (Diacetylmorphine) had been detected from the substance sent for the analysis. Although police had reported the substance weighed about 70 grams, the Government Analyst noted that the substance weighed about 72.67 grams in excess of 2.67 grams to the weight noted by the police.

According the Petitioner, she was arrested at Orugodawatta without any contraband in her possession. Soon after her arrest, her two sons, her sister and her domestic aid were taken in to custody by the police at Orugoadawata. Having introduced Heroin to them, all had been produced before the Magistrate Court of Welisara on 12.03.2022.

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

1. Weight increase of the contraband sent to the Government Analyst demonstrate suspicious of the raid allegedly conducted by the police.
2. No drugs were found in his possession of the Petitioner by the police officers.
3. The Petitioner had been in remand over 15 months.

The Learned State Counsel opposing for bail, 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 more than 15 months. According to the Government Analyst Report, the pure quantity of Heroin detected from the possession of 1<sup>st</sup> Accused is 11.53 grams.

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

Although a bail application was filed before the High Court of Negombo on behalf of the Petitioner, the Learned High Court Judge had refused bail citing that the Petitioner had failed to adduce exceptional circumstances in her application.

The production was sent to the Government Analyst Department on 28.03.2022 and the report was received by the Magistrate Court of Welisara on 23.09.2022. Although 08 months have passed the prosecution is unable to send out indictment to the High Court.

The Counsel for the Petitioner submitted that the police have fabricated a case against the Petitioner. Further the weight discrepancy of the substance raises reasonable suspicious about the raid conducted by the police.

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 more than 15 months in remand falls into the category of excessive and oppressive delay considering the circumstances of this case.

The Offence under Section 54A (d) and (b) 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.

The Petitioner admitted that she has two previous convictions and three pending cases, all are drugs related offences. This clearly shows her propensity towards committing drug related offences.

In this case the pure Heroin detected is 11.53 grams, which certainly a 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 indict and conclude the High Court case expeditiously keeping the Petitioner in remand.

Considering all these factors into account, especially the pure quantity of Heroin detected, the previous convictions and pending cases related to drug offences and other circumstances of the case, I consider this not an appropriate case to grant bail to the Petitioner at this stage.

Hence, the bail application is hereby dismissed.

The Registrar of this Court is directed to send a copy of this order to the Magistrate Court of Welisara and Officer-in-Charge of the Police Station, Wattala.

**JUDGE OF THE COURT OF APPEAL**

**SAMPATH B. ABAYAKOON, J.**

I agree.

**JUDGE OF THE COURT OF APPEAL**