

**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,
Morawewa.

Court of Appeal

Bail Application No:

COMPLAINANT

CA Bail 0073/2023

Vs

MC Trincomalee Case No.

Junaideen Sarook alias Naslin

BR/489/2/ODD/21

(Presently in Trincomalee Prison)

SUSPECT

AND NOW BETWEEN

Abdul Azeez Farwin Beevee

Main Road, T/Rotawewa,

Trincomalee.

PETITIONER

Vs

1. The Officer-in Charge,

Police Station,

Morawewa.

2. The Attorney General

Attorney General's Department,

Colombo-12.

RESPONDENTS

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

COUNSEL : **K.Kugaraja for the Petitioner.**
Nishanth Nagaratnam, SC for the
Respondents.

ARGUED ON : **06/06/2023.**

DECIDED ON : **26/07/2023.**

ORDER

P.Kumararatnam,J.

The Petitioner is the wife of the Suspect named in M.C. Trincomalee Case No. BR 489/2/ODD/2021. She had applied for bail for her Suspect-husband.

On 25.04.2021, the Suspect was arrested at Morawewa by officers attached to the Morawewa Police Station upon an allegation relating to possession of 40 grams of Heroin. According to police the contraband was seized from his sarong that he was wearing at that time.

The suspect was produced and facts were reported to the Trincomalee 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 27/07/2021. After analysis, the Government Analyst had forwarded the report to Court on 10/01/2023. According to the Government Analyst, 19.86 grams of pure Heroin (Diacetylmorphine) had been detected from the substance sent for the analysis. Although police had reported the substance weighed about 40 grams, the Government Analyst noted that the substance weighed about 37.37 grams.

According to the Petitioner, the Suspect was arrested without any contraband in his possession. Soon after his arrest, he was taken to the Morawewa Police Station and was severely beaten using wooden clubs. Due to this assault the Suspect is now totally lost his hearing in the left ear. On 29.04.2021 he was produced before a JMO upon the order of the Learned Magistrate of Trincomalee.

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

1. No Heroin was recovered from the possession the Suspect at the time of his arrest and which was introduced by the police.
2. The Suspect has two children aged 19 and 13 years.
3. The Suspect is the sole breadwinner of the family.
4. The Petitioner who is the wife of the Suspect is suffering from kidney disease and is still under medical treatment.
5. The Petitioner had been in remand over two years.

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 two years. According to the Government Analyst Report, the pure quantity of Heroin detected from the possession of 1st Accused is 19.86 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 19.86 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 Trincomalee on behalf of the Suspect, the same was withdrawn due to the recent amendment to the Poisons, Opium and Dangerous Drugs Ordinance.

Upon receipt of the Government Analyst Report on 17.11.2021, the Hon. Attorney General has forwarded the indictment to the High Court of Trincomalee on 08.09.2022.

The Counsel for the Petitioner submitted that the police have fabricated a case against the Suspect. 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 two years in remand falls into the category of excessive and oppressive delay considering the circumstances of this case. At present the indictment has already been sent to the High Court of Trincomalee and indictment bearing No. HCT/1140/23 has been served on the Suspect on 19.01. 2023. Further, family situation of the Suspect cannot be considered as an exceptional circumstance, as it is the normal day to day life of the people.

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.

According to the State, the Suspect has 06 previous convictions, which all are drugs related offences. This clearly shows his propensity towards committing drug related offences.

In this case the pure Heroin detected is 19.86 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 conclude the High Court case expeditiously keeping the Suspect in remand.

Considering all these factors into account, especially the pure quantity of Heroin detected, the previous convictions related to drug offences

and other circumstances of the case, I consider this not an appropriate case to grant bail to the Suspect 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 High Court of Trincomalee and Officer-in-Charge of the Police Station, Morawewa.

JUDGE OF THE COURT OF APPEAL

SAMPATH B. ABAYAKOON, J.

I agree.

JUDGE OF THE COURT OF APPEAL