

**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 the Section 83(2) of the Poisons, Opium and Dangerous Drugs Ordinance amended by Act No.41 of 2022.

Court of Appeal

The Headquarters Inspector

Bail Application No:

Police Station

CA Bail 0108/2023

Negombo.

COMPLAINANT

Vs

MC Negombo

Pattiwilage Sudeepa Malanie

Case No.M 50768

No.15/24,Church Road,

Mattakkuliya, Colombo-15.

(Presently in Negombo Prison)

SUSPECT

AND NOW BETWEEN

Pattiwilage Sudeepa Malanie

(Presently in Negombo Prison)

SUSPECT-PETITIONER

Vs

1. The Headquarters Inspector,
Police Station,
Negombo.
2. The Attorney General
Attorney General's Department,
Colombo-12.

RESPONDENTS

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

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

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

DECIDED ON : **28/07/2023.**

ORDER

P.Kumararatnam,J.

The Suspect-Petitioner (hereinafter referred to as the 'Petitioner') who is the 1st Suspect named in M.C.Negombo Case No. M 50768 had applied for bail in terms of Section 83(2) of the Poisons, Opium and Dangerous Drugs Ordinance as amended by the Amendment Act No 41 of 2022.

On 06.06.2022, the Petitioner was arrested at Negombo by officers attached to the Negombo Police Station when they were at a roadblock. It has been alleged that while the Petitioner was travelling as a pillion rider, on a Motor Bike bearing No.WP BHQ 1915 driven by another person, near a temple at Wellaweediya, Negombo when police checked her hand bag found a parcel with some substance which reacted for Heroin. The substance recovered from the Petitioner weighed about 75.100 grams.

The suspect was produced and facts were reported to the Negombo Magistrate under Section 54A (1) (b) and (d) and 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 07/06/2022. After analysis, the Government Analyst had forwarded the report to Court on 09/01/2023. According to the Government Analyst, 38.75 grams of pure Heroin (Diacetylmorphine) had been detected from the substance sent for the analysis.

The Petitioner is 52 years old, married and mother of three children. She has two matters pending before the High Court and one matter pending before the Magistrate Court. She has been incarcerated for nearly one year.

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

1. No drugs were found in her possession of the Petitioner when she was arrested by the police officers.
2. The Petitioner had been in remand nearly year.

The State opposing to bail submitted that when the police signalled to stop the motor bike in which the Petitioner travelled, the rider had tried to escape without stopping the bike. The police had to use minimum

force to stop the bike at that time. As the conduct of the Petitioner and the rider become suspicious, the police checked her hand bag and found the contraband from her possession.

The Learned State Counsel further submitted that the delay is not an exceptional circumstance to be considered to enlarge the suspect on bail.

The suspect is in remand for nearly about one year. According to Government Analyst Report, the pure quantity of Heroin detected from the possession of 1st Accused is 38.75 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 38.75 grams. Hence, this court has jurisdiction to consider granting of bail as per the new amendment.

The Learned Counsel for the Petitioner submitted that although it is alleged that the Heroin parcel was recovered from inside the hand bag of the Petitioner, there was no reference in the B report to the effect that the said hand bag was in the exclusive possession of the Petitioner at the time of detection.

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 nearly about one year 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 this case the pure Heroin detected is 38.75 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.

At present the Government Analyst Report is received by the Court and the Hon. Attorney General will call for the investigation notes in due

course. Hence, it is prudent to send out the indictment against the Petitioner to the High Court without further delay and expedite the trial.

Considering all these factors into account, especially the pure quantity of Heroin detected, the charge going to be against the Petitioner, the pending cases in the High Court and in the Magistrate Court and other circumstances of the case, I consider this is not an appropriate case to grant bail to the Petitioner. Hence, I refuse to release the Petitioner on bail.

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 Negombo and the Headquarters Inspector, Police Station, Negombo.

JUDGE OF THE COURT OF APPEAL

SAMPATH B. ABAYAKOON, J.

I agree.

JUDGE OF THE COURT OF APPEAL