

**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 Head Quarters Inspector

Bail Application No:

Police Station

CA Bail 0109/2023

Negombo.

COMPLAINANT

Vs

MC Negombo

Panambara Arachchige Sampath

Case No.M 50768

Madhushan

No.114/A/04, Watawana,

Puttalam Road, Chilaw.

(Presently in Negombo Prison)

SUSPECT

AND NOW BETWEEN

Aluth Hewage Dinusha Thamali

No.114/A/04, Watawana,

Puttalam Road, Chilaw.

PETITIONER

Vs

1. The Headquarters Inspector,

Police Station,

Negombo.

2. The Attorney General

Attorney General's Department,

Colombo-12.

RESPONDENTS

Panambara Archchige Sampath

Madhusan

(Presently at Negombo Prison)

SUSPECT-RESPONDENT

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 Petitioner is the wife of the Suspect named in this application. The Suspect is named as 2nd Suspect in M.C.Negombo Case No. M 50768. The Petitioner 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 Suspect was arrested at Negombo by officers attached to the Negombo Police Station when they were at a roadblock. It has been alleged that the Suspect was riding a Motor Bike bearing No.WP BHQ 1915 with a pillion rider who is named as the 1st Suspect, near a temple at Wellaweediya, Negombo. When police checked the hand bag of the pillion rider found a parcel with some substance which reacted for Heroin. The substance recovered from the pillion rider 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 read with Section 102 of the Penal Code. Further, 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 Suspect is a father of twin girls aged 08 years old. He is the sole breadwinner of the family. The safety of the two girls also at a stake without the protection of the Suspect.

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

1. No drugs were found in his possession of the Petitioner by the police officers.
2. Absence of any manifest evidence which could have attributed the element of 'knowledge' of the whereabouts of the Heroin to the Suspect.
3. The Petitioner had been in remand nearly year.

The State opposing to bail submitted that when the police signalled to stop the motor bike, the Suspect who drove the bike had tried to escape without stopping. The police had to use minimum force to stop the bike at that time. As the conduct of the pillion rider and the Suspect become suspicious, the police checked the pillion rider's 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 the pillion rider 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 pillion rider, what has been produced as production on the B report is a 'purse'.

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 read with Section 102 of the Penal Code, 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 Suspect 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 Suspect, the suspicious conduct of the Suspect and other circumstances of the case,

I consider this is not an appropriate case to grant bail to the Suspect at this stage. Hence, I refuse to release the Suspect 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