

**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 of the Poisons, Opium and Dangerous Drugs Ordinance as amended by Ac No.41 of 2022.

Senerath Mohotige Prasanna Rohita
Perera

(Presently in Colombo Remand Prison)

ACCUSED

Senerath Mohotige Dedunu Kumari

Court of Appeal

Perera

Bail Application No:

70/2, Kohilawatta, Wellampitiya.

CA/Bail/0079/2023

PETITIONER

HC Colombo

Vs

Case No. HC 3683/22

The Attorney General
Attorney General's Department,
Colombo-12.

RESPONDENT

BEFORE

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

COUNSEL : **M.S.M.Imtias for the Petitioner.**
Ridma Kuruwita, SC for the
Respondent.

ARGUED ON : **19/06/2023.**

DECIDED ON : **02/08/2023.**

ORDER

P.Kumararatnam,J.

The Petitioner had applied for bail to the Accused (hereinafter referred to as the 'Accused') named in Magistrate Court of Colombo Case No. B/2763/04/2018. The Petitioner is the daughter of the Accused.

On 15.11.2018, on an information the officers attached to the Police Narcotics Bureau arrested the Accused with the contraband while he was in a three-wheeler. As the three parcels recovered from the Accused reacted for Heroin, he was arrested and produced before the Magistrate Court of Colombo. Upon further inquiry two others also arrested and produced them before the Magistrate. The contraband which recovered from the Accused was weighed at the Police Narcotics Bureau. The total gross weight of the substance in the parcels showed 01 Kilogram and 242.05 grams of Heroin.

The Accused and other two were produced and facts were reported to the Colombo Magistrate under Section 54A (c) 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 19/11/2018. After analysis, the Government Analyst had forwarded the report to Court on 24/01/2019. According to the Government Analyst, 990.906 grams of pure Heroin (Diacetylmorphine) had been detected from the substance sent for the analysis.

The three-wheeler in which the Accused arrived was also taken in to the custody of the police.

According to the Petitioner the Accused is a sick person and his wife had passed away while he was in custody due to cancer. He has no previous or pending cases reported.

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

1. The Accused has been in remand custody for nearly five years and the indictment was filed after a lapse of 3 years of his arrest and the trial has been not yet commenced.
2. The accused had undergone a hernia surgery and in need of care and assistance.
3. The 4th and 5th witnesses named in the indictment have been tried for drug related offences in case no. B/35602/1/20 which drastically vitiate the prosecution case.
4. The Accused is 67 years old now.

The State opposing to bail submitted that the investigation notes pertaining to this case has been very carefully considered and the Accused has been indicted in the High Court of Colombo. At present the pre-trial conference was over and the case is fixed for trial on 24.08. 2023. The witness No. 01 is already warned to appear on the trial date. Further, the Respondent is undertaking to conclude the trial expeditiously and without any explicable delay on their part.

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.

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 grams 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 999.906 grams. Hence, this court has jurisdiction to consider granting of bail as per the new amendment.

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 remand period falls into the category of excessive and oppressive delay considering the circumstances of this case.

The Offence under Section 54A (c) 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 999.906 grams, 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 Accused in remand.

Considering all these factors into account, especially the pure quantity of Heroin detected, the nature of the charges framed against the Accused and other circumstances of the case, I consider this is not an appropriate case to grant bail to the Accused at this stage. Hence, I refuse to release the Accused 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 High Court of Colombo 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