

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

In the matter of an application for Revision in terms of Article 138 and 145 of the Constitution of Sri Lanka read with Section 364 of the Code of Criminal Procedure Act No.15 of 1979.

Court of Appeal
Revision Application No:
CA(PHC)APN/0028/2023

Democratic Socialist Republic
of Sri Lanka

Complainant

Vs

High Court of Chilaw
Bail Application No.119/21

Ranaweera Arachchilage Shanuka
Madushan

ACCUSED

MC Marawila
No.B 1793/2019

AND NOW BETWEEN

Ranaweera Arachchilage Shanuka
Madushan

ACCUSED-PETITIONER

Vs

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

RESPONDENT

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

COUNSEL : **Neranja Jayasinghe with Harshana**
Ananda for the Petitioner.
Jehan Gunasekera, SC for the
Respondent.

ARGUED ON : **07/06/2023.**

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

JUDGMENT

P.Kumararatnam,J.

The Accused-Petitioner (hereinafter referred to as the Petitioner) was indicted in the High Court of Chilaw for being in possession of 3.13 grams of Heroin and trafficking 3.13 grams Heroin in the High Court case No. HC 119/21. The Petitioner had filed two applications for bail in the High Court of Chilaw seeking bail for him, but the Learned High Court Judge had refused granting bail by her orders dated 20.09.2022 and 27.01.2023. Aggrieved by the said orders, the Petitioner had filed this Revision Application to revise the said orders.

On 12.10.2019, upon receiving an information, the Petitioner was arrested by officers attached to Wennappuwa Police Station while he was taking his wife and 10 days old child to the hospital in a three-wheeler. Upon search a parcel was recovered from the possession of the

Petitioner. The parcel contained some substances which reacted for Heroin (Diacetylmorphine). The substance weighed about 11.690 grams.

The Petitioner was produced and facts were reported to the Marawila Magistrate under Section 54A (b) and (d) of the Poisons, Opium and Dangerous Drugs Ordinance as amended by the Act No.13 of 1984. A detention order was obtained to conduct further investigations.

The production had been sent to the Government Analyst Department on 17/10/2019. After analysis, the Government Analyst had forwarded the report to Court on 03/07/2020. According to the Government Analyst, 3.130 grams of pure Heroin (Diacetylmorphine) had been detected from the substance sent for the analysis. The Petitioner had been indicted before the High Court of Chilaw on 09.08.2021.

The Petitioner had been in remand custody for more than three years and eight months and according to the Act No.41 of 2022, it is a mandatory ground to enlarge the Petitioner on bail. It is also brought to the attention of the Court that taking into consideration the above ground the Respondent on 27.01.2023 had not objected for granting bail to the Petitioner in the High Court of Chilaw.

According to the State, the Petitioner had been indicted under AG reference No.CR3/764/2021 in the High Court of Chilaw and the trial has already commenced. The Petitioner is in remand for more than 33 months.

According to Section 83(1) of the Poisons, Opium and Dangerous Drugs Amendment Act No.41 of 2022 states:

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.

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”.

According to Section 84 of the Poisons, Opium and Dangerous Drugs Amendment Act No.41 of 2022 states:

A suspect or an accused who has not been tried and has not been convicted and sentenced by a Court under the provisions of subsection (1) of section 54A and section 54B, shall not be detained in custody for a period exceeding twelve months from the date of his arrest.

In this case the Petitioner has been indicted and the trial is started. Examination-in-chief of PW1 is over on 07.02.2023. No information is provided as to the stage of the trial thereafter. The Petitioner has already in remand more than 33 months.

According to Section 85 of the Poisons, Opium and Dangerous Drugs Amendment Act No.41 of 2022 states:

Notwithstanding the provisions of section 84, on application made in that behalf by the Attorney-General to the High Court established under Article 105 or a High Court established by Article 154P of the Constitution such court may, for good and sufficient reasons that shall be recorded, order that a suspect or an accused who has not been tried and has not been convicted and sentenced by a Court under the provisions of subsection (1)

of section 54A and section 54B, be detained in custody for a period in excess of twelve months:

Provided that, the period of detention ordered under this section, shall not in any case exceed three months at a time and twenty-four months in the aggregate.

Considering the Section 84 of the above-mentioned amended Act No.41 of 2022, when the trial is commenced but not concluded within 12 months the Petitioner is entitled to bail, unless the Hon. Attorney General extend the period of remand as per section 85 of the amended Act No.41 of 2022 which is mentioned above.

Although this position was correctly comprehended and submitted to Court at the bail inquiry held before the Learned High Court of Chilaw by the prosecuting State Counsel, the Learned High Court Judge misdirecting the legal position of the said amended Act No.41 of 2022 has refused bail to the Petitioner.

According to the Learned High Court Judge, the sole reason for rejection of bail to the Petitioner is the record of high number of previous convictions and pending cases against the Petitioner.

The Learned Counsel for the Petitioner contended that although three affidavits were filed in support of the Petitioner's case, none of the affidavits were taken into consideration by the Learned High Court Judge when she adjudicated the bail applications filed by the Petitioner.

In this case the detection was done on 12.10.2019 and the Government Analyst Report was received by the Court on 03.07.2022. The Hon. Attorney General has already dispatched the indictment against the Petitioner to the High Court of Chilaw and the trial is already commenced.

In this case pure quantity of Heroin detected is 3.13 grams. Hence the Learned High Court has the jurisdiction to grant bail to the Petitioner.

Further, in this case no application has been made by the Attorney General for the extension of remand period of the Petitioner.

Hence, I do consider the delay more than 33 months in remand falls into the category of excessive and oppressive delay considering the circumstances of this case.

The Offences under Section 54A(d) and (b) of the Poisons, Opium and Dangerous Drugs Ordinance as amended by the Act No.13 of 1984 are no doubt serious offences but seriousness of the offences alone cannot form a ground to refuse bail. In considering these matters, the court must bear in mind the presumption of innocence.

Taking all these into account, especially the pure quantity of Heroin detected, the period in remand, and other circumstances of the case, I consider this is an appropriate case to grant bail to the Petitioner. Hence, I order the Petitioner be granted bail with following strict conditions.

1. Cash bail of Rs.50,000/=.
2. To provide 02 sureties. They must sign a bond of two million each.
3. The Petitioner and the sureties must reside in the address given until conclusion of his case.
4. Not to approach any prosecution witnesses directly or indirectly or to interfere with.
5. To surrender his passport if any, to court and not to apply for a travel document. The Controller of the Immigration and Emigration is informed of the travel ban on the Petitioner.
6. To report to the Wennappuwa Police Station on the last Sunday of every month between 9am to 1pm.
7. Any breach of these conditions is likely to result in the cancellation of his bail.

The Revision Application is allowed and the learned High Court Judge of Chilaw is hereby directed to enlarge the Petitioner on bail on the above bail conditions.

The Registrar of this Court is directed to send a copy of this Judgment to the High Court of Chilaw and Officer-in-Charge of the Police Station, Wennappuwa.

JUDGE OF THE COURT OF APPEAL

SAMPATH B. ABAYAKOON, J.

I agree.

JUDGE OF THE COURT OF APPEAL