

**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 Act as amended by Act No.41 of 2022.

**Court of Appeal Bail
Application No:
CA Bail/0076/2023**

Hewa Kondilage Ajith Suranjith
No.320, 1st Step,
Medirigiriya.

PETITIONER

**High Court of Kuliyaipitiya
HCC No.163/21**

Gamaralalage Anoja Shiyamali
No.320, 1st Step,
Medirigiriya.

SUSPECT

**MC Hettipola
No.B 673/2019**

Vs.

1. The Attorney General
Attorney General's Department,
Colombo-12.
2. Officer-in Charge,
Police Narcotics Bureau,
Colombo-01.

RESPONDENTS

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

COUNSEL : **Janaki Navaratne with U.Fonseka for**
the Petitioner.
Kanishka Rajakaruna, SC for the
Respondents.

ARGUED ON : **08/06/2023.**

DECIDED ON : **10/08/2023.**

ORDER

P.Kumararatnam,J.

The Petitioner had applied for bail on behalf of the suspect under Section 83(2) of the Poisons, Opium and Dangerous Drugs Ordinance amended Act No.41 of 2022. The Petitioner is the husband of the suspect.

On 17.06.2019, upon receiving an information, the suspect was arrested by officers attached to Police Narcotics Bureau, Colombo-01 and recovered a parcel from the Suspect. The Suspect had arrived in a three-wheeler driven the 2nd Suspect named in the B Report. When the Suspect about to enter into a coconut estate, she was arrested by the police. The parcels contained some substances which reacted for Heroin (Diacetylmorphine). The substance weighed about 303.3 grams. The police also taken into their custody the three-wheeler bearing No. NW AAO 4043 driven by the 2nd Suspect named in the B Report.

The Suspect and the 2nd Suspect were produced and facts were reported to the Hettipola Magistrate under Section 54A (b) and (d) of the Poisons, Opium and Dangerous Drugs Ordinance as amended by the Act No.13 of 1984.

The production had been sent to the Government Analyst Department on 20/06/2019. After analysis, the Government Analyst had forwarded the report to Court on 02/01/2020. According to the Government Analyst, 162.2 grams of pure Heroin (Diacetylmorphine) had been detected from the substance sent for the analysis. The Suspect had been indicted before the High Court of Kuliyaipitiya in the case bearing No.163/21.

The Following exceptional circumstances are submitted by the Petitioner:

1. The suspect is in remand nearly for about 4 years.
2. No suspicious substance recovered from the Suspect at the time of her arrest.
3. The Suspect is a mother of three children and the sole breadwinner of the family as she separated from the Petitioner due to the addiction to liquor by the Petitioner.
4. As the mother of the Suspect who had looked after her children after her arrest has passed away, the children are now exposed to vulnerable circumstances.
5. Due to unsecured circumstances in the family, her elder daughter has eloped with a person.

One of the preliminary objections taken up by the State is that the Petitioner has failed to establish an acceptable “exceptional circumstance” to invoke revisionary jurisdiction of this Court.

Next, the State pleads that this matter should be dismissed *in limine* as the Petitioner has suppressed material facts to the Court.

The 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. According to the State, the Suspect had been indicted under AG reference No.CR3/586/2021 in the High Court of Kuliyaipitiya.

The suspect is in remand for nearly 4 years.

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.

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

The learned Counsel for the Petitioner urged this Court to consider that the detaining a suspect for an extended period of time amounts to a violation of his fundamental rights which can be considered as an exceptional ground.

The Learned Counsel for the Petitioner submitted that the Suspect was not in possession any contraband when she was arrested. She was implicated by a person who was employed the Suspect in his hotel.

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.

In **Nasher v. Director of Public Prosecution [2020] VSCA 144** the court held that:

“a combination of delay, onerous custodial conditions, and the relative weakness of the prosecution case may, when considered

with all relevant circumstances, compel the conclusion that exceptional circumstances have been established”.

Accordingly, considering the fact that there has been a delay of 4 years since the remand, it falls into the category of excessive and oppressive delay taking into account the circumstances of this case. Further trial has not commenced in the High Court of Kuliyaipitiya. Hence, this court has come to a conclusion that the Suspect has established exceptional grounds for the granting of bail.

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. Further, the according to the police, no previous or pending case/s reported against the Suspect.

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 an appropriate case to grant bail to the Suspect pending trial. Hence, I order the Suspect be granted bail with following strict conditions.

1. Cash bail of Rs.100,000/=.
2. To provide 02 sureties. They must sign a bond of two million each.
3. The Suspect 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 her 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 Suspect.

6. To report to the Medirigiriya 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 her bail.

The Bail Application is allowed and the learned High Court Judge of Kuliyaipitiya is hereby directed to enlarge the Suspect on bail on the above bail conditions.

The Registrar of this Court is directed to send a copy of this order to the High Court of Kuliyaipitiya 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