

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

The Democratic Socialist Republic of Sri Lanka

Court of Appeal

COMPLAINANT

Bail Application No:

Vs

CA Bail 0080/2023

1. Samsuddin Mohomed Junaideen

HC Panadura Case No.

2. Amarapurage Ranju Salitha

HC 4279/22

Ranathissa

ACCUSED

AND NOW BETWEEN

Daundage Nadeesha Dilshani

No.70/21, P.B.Alwis Perera Mawatha,

Katubedda,

Moratuwa.

PETITIONER

Vs

1. The Officer-in-Charge

The Headquarters

Police Special Task Force

No.223, Bauddhaloka Mawatha

Colombo-07.

2. The Officer-in-Charge
The Organized Crime Prevention Division
No.145, Main Street,
Battaramulla.

3. The Hon. Attorney General
The Attorney General's Department
Colombo-12.

RESPONDENTS

AND

Amarapurage Ranuja Salitha Ranathissa

2nd ACCUSED

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

COUNSEL : **Punarji Karunasekara for the**
Petitioner.
Lakmini Garihagama, DSG with Ridma
Kuruwita, SC for the Respondents.

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

DECIDED ON : **28/08/2023.**

ORDER**P.Kumararatnam,J.**

The Petitioner is the wife of the 2nd Accused (hereinafter referred to as the Accused). She had applied for bail to the Accused who has been named in the Indictment as the 2nd Accused in the High Court of Panadura Case No. HC 4279/22.

According to the B report filed in the MC on 16.10.2019 the Accused along with 1st Accused were arrested by on an information by the officers of the Police Special Task Force attached to STF Headquarters. As per the information when the police officers had checked a car bearing No.NW CAI 0456 which was parked near the “Katubedde Walking Path” two persons found inside at that time. When they were checked by the officers had found a pistol with five bullets and some substances suspected to be Heroin weighing about 15.630 grams from the 1st Accused who is not the applicant in this bail application. From the Accused, for whom this bail application is filed, the police had recovered 68.973 grams of substances suspected to be Heroin from his trouser pocket. In addition, the police had recovered Rs.2,025,070/- liquid cash from the cabby hole of the car.

The Accused along with other person were produced and facts were reported to the Moratuwa 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 03/12/2019. After analysis, the Government Analyst had forwarded the report on 25/08/2020. According to the Government Analyst, 25.756 grams of pure Heroin (Diacetylmorphine) had been detected from the substance recovered from the Accused.

According to the Petitioner on the date of the arrest of the Accused, he was distributing his wedding card to the invitees with a friend. He and

his friend had gone passing Boralesgamuwa, Mount Laninia, Piliyandala and Moratuwa for the distribution of his wedding card. For this purpose he had rented a car bearing No.NW CAI 0456.

On the way while the Accused and other person were consuming liquor inside the car a fight erupted between some STF personnel and them. Due to this the police had introduced Heroin to him and the other person. Further the money had been recovered from the Accused's house by the police. According to the Petitioner the said money was kept in the Accused's house for the wedding expenses.

Although several bail applications were filed before the High Court of Panadura, but were dismissed by the High Court.

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

1. The Accused is a married person and is 33 years of age.
2. Tough the police have intensively proceeded not to disclose even in the initial B Report the fact that they had visited and searched the house of the Accused, but the same is revealed by the CCTV footage which has already been produced to the Magistrate's Court of Moratuwa.
3. The Accused is the owner of a mobile phone selling and repairing shop and was 30 years old who was engaged and getting ready and looking forward for his marriage ceremony at the time of the arrest.
4. The Accused is the sole breadwinner of the family and the Petitioner and entire family is facing various financial difficulties subsequent to this illegal arrest.
5. The Petitioner and the Accused have been deprived from the privilege of having a matrimonial life up to now, because of this illegal arrest.
6. The Accused is in remand custody for nearly 40 months as at now.

7. The trial against the Accused has not been commenced yet.

The Learned Deputy Solicitor General opposing for bail, submitted that the Respondent has considered all evidence carefully and filed an indictment in the High Court of Panadura within reasonable time period. At present the pre-trial conference was over and the case will be called for trial on 24.08. 2023. Further, summons have been issued to PW1.

The suspect is in remand for more than 40 months. According to the Government Analyst Report, the pure quantity of Heroin detected from the possession of the Accused is 25.756 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 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 25.756 grams. Hence, this court has jurisdiction to consider granting of bail as per the new amendment.

The Counsel for the Petitioner submitted that the police have fabricated a case against the Accused. Further the money which said to have recovered from the Accused was belonging to him and kept for his wedding expenses.

I agree with the learned Deputy Solicitor General 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 more than 40 months 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 25.756 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. Hence, it is prudent to commence

and conclude the High Court case expeditiously keeping the Accused in remand.

Considering all these factors into account, especially the pure quantity of Heroin detected and other circumstances of the case, I consider this is not an appropriate case to grant bail to the Accused at this stage.

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 Panadura, Officer-in-Charge, Headquarters, The Police Special Task Force, No.223, Bauddhaloka Mawatha Colombo-07 and Officer-in-Charge, The Organized Crime Prevention Division, No.145, Main Street,Battaramulla.

JUDGE OF THE COURT OF APPEAL

SAMPATH B. ABAYAKOON, J.

I agree.

JUDGE OF THE COURT OF APPEAL