

**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 04 of the Amendment Act No.41 of 2022 to the Poisons Opium and dangerous Drugs Ordinance No. 17 of 1929.

The Hon. Attorney General

Court of Appeal

COMPLAINANT

Bail Application No:

Vs

CA Bail 0110/2022

Warnakulasooriya Arachchige Padma

HC Homagama Case No.

Ranjani alias Kudu Noni

HC 110/22

No.670/08 Sumanatissa Mawatha,
Nawagamuwa, Ranala South.

And

A/F 11/U3 Methsada Sewana,
Henamulla, Colombo-15.

ACCUSED

AND NOW BETWEEN

Thotagama Widanalage Chandani

No.46 Dawson Street

Colombo-02.

PETITIONER

Vs

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

RESPONDENT

Warnakulasooriya Arachchige Padma
Ranjani alias Kudu Noni
(Presently at Welikada Prisons)

ACCUSED

BEFORE

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

COUNSEL

**: Gayan Perera for the Petitioner.
Jehan Gunasekara, SC for the
Respondent.**

ARGUED ON

: 13/05/2023.

DECIDED ON

: 28/08/2023.

ORDER**P.Kumararatnam,J.**

The Petitioner is the sister-in-law of the Accused. The Accused is indicted in the High Court of Homagama for possession and trafficking of 34.77 grams of Heroin (Diacetylmorphine) on 11.07.2021 under Sections 54A (d) and (b) of the Poisons Opium and Dangerous Drugs (Amendment) Act No.13 of 1984. Now the Petitioner had applied for bail for the Accused before this Court under Poisons Opium and Dangerous Drugs (Amendment) Act No. 41 of 2022.

On 11.07.2021, the Accused was arrested at her residence by officers attached to the Police Narcotics Bureau upon an information provided by some other arrested suspects. Upon inquiry when she was asked to open an almirah a parcel was recovered from the almirah by the police. As the content of the parcel reacted for Heroin she was arrested and brought to the Police Narcotics Bureau and weighed the substance. The gross weight of the substance showed 56.670 grams. The production was sent to the Government Analyst Department. According to the analyst report 34.77 grams of Heroin (Diacetylmorphine) was detected from the substances sent for analysis.

The suspect was produced and facts were reported to the Kaduwela Magistrate under Section 54A (d) and (b) 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.

According the Petitioner, nothing has been recovered from the Accused on that day. She was arrested at her son's rented house by the police and introduced Heroin to her and produced before the Magistrate Court of Kaduwela on 12.07.2021.

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

1. The Accused married and 50 years old and suffering from high blood pressure and asthma.
2. No drugs were found in her possession of the Accused by the police officers.
3. The Petitioner had been in remand nearly 24 months.

The Learned State Counsel opposing for bail, 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.

The indictment has been forwarded to the High Court of Homagama on 26.08.2022 by the Hon. Attorney General. The trial is not commenced yet.

The suspect is in remand for nearly 24 months. According to the Government Analyst Report, the pure quantity of Heroin detected from the possession of the Accused is 34.77 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 34.77 grams. Hence, this court has jurisdiction to consider granting of bail as per the new amendment.

The production was sent to the Government Analyst Department on 19.08.2021 and the report was received by the Magistrate Court of Kaduwela on 27.11.2021. Nearly 10 months has passed to forward indictment to the High Court after receiving the Government Analyst Report. Even the indictment is received by the High Court of Homagama, no pre-trial conference is held so far in this case.

The Counsel for the Accused submitted that the police have fabricated a case against the Accused. Further, the contraband was recovered from an almirah in her son's rented house.

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 consider the delay nearly 24 months in remand falls into the category of excessive and oppressive delay considering the circumstances of this case.

The Accused has no any previous or pending cases.

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

Further, bail should never be withheld as punishment. Granting of bail is primarily at the discretion of the Courts. The discretion should be exercised with due care and caution taking into account the facts and circumstances of each case.

Considering all these factors into account, especially the pure quantity of Heroin detected and the circumstances of the case, I consider this an appropriate case to grant bail to the Accused. Hence, I order the Accused 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 Accused 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 Accused.
6. To report to the Police Narcotics Bureau, Colombo-01 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 Bail Application is allowed and the Learned High Court Judge of Homagama is hereby directed to enlarge the Accused 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 Homagama and Officer-in-Charge, Narcotics Bureau, Police Station, Colombo-01.

JUDGE OF THE COURT OF APPEAL

SAMPATH B. ABAYAKOON, J.

I agree.

JUDGE OF THE COURT OF APPEAL