

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

In the matter of an application for Bail as under and in terms of Section 83(2) of the Poisons, Opium and Dangerous Drugs Ordinance of 17 of 1929 as amended by section 04 of the Act No.41 of 2022.

Court of Appeal Bail Application Officer-in-Charge
CA Bail/0109/22 Police Narcotics Bureau
Colombo-01.

Complainant

MC Avissawella
No. B 6679/2022

1. Gamage Sunil
2. Mahabalage Don Sachini Dilanjika
3. Amarathunga Arachchige Kavithra
Ruwan Kumara

Suspects

AND NOW BETWEEN

Mahabalage Don Sachini Dilanjika
169/D, Kanukatiya, Angamuwa,
Padukka South.
(Presently in Kuruwita Prison)

2nd Suspect-Petitioner

Vs

1. The Officer-in-Charge
Police Narcotics Bureau
Colombo-01.

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

Respondents

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

COUNSEL : **Dimuthu Bandara with Malindu Peiris**
for the Petitioner.
Ridma Kuruwita, SC for the
Respondents.

ARGUED ON : **12/06/2023.**

DECIDED ON : **31/08/2023.**

ORDER

P.Kumararatnam,J.

The 2nd Suspect Petitioner (Hereinafter referred to as the Petitioner) is the 2nd Suspect in the Magistrate Court of Avissawella case bearing No. B 6679/2022.The 1st Suspect is one of her relatives also in remand

custody. The 3rd Suspect who is the husband of the Petitioner lives in Dubai at present.

According to the B report filed by the police, upon information derived by a person called Kamal Sampath arrested on 18.05.2022, the 1st Suspect was arrested at Padukka South on the same day with 3 kilograms and 300 grams of Heroin which he was carrying at the time of his arrest.

The 1st Suspect was produced in the Court under Section 54A (b) and (c) of the Poisons, Opium and Dangerous Drugs Ordinance as amended by Act No. 13 of 1984.

Upon information derived from the 1st Suspect the Petitioner's house which was situated nearby of the place of arrest of 1st Suspect, was searched and recovered sum of Rupees seventeen million nine hundred thirty-six thousand and five hundred (Rs.17,936,500/-) said have proceeds of sale of Heroin. The Petitioner was also produced before the Court under the Poisons, Opium and Dangerous Drugs Amendment Act No.13 of 1984 for aiding and abetting of 1st Suspect on the same day i.e., on 18.05.2022.

According to the Petitioner, she has been in remand for more than one year to date. The Petitioner has also been produced in the Magistrate Court of Avissawella under case No. B/7135/22 for the Anti Money Laundering. In that case the Petitioner has been granted bail by the Learned Magistrate of Avissawella on 21.02.2023.

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

1. The Petitioner's conduct as disclosed by the 1st Suspect does not satisfy the legal requirement of the offence of "abetting" as defined in section 54B of the Act or in general principles of criminal liability envisaged in the Penal Code.

2. The Petitioner is married with children and the sole bread winner of the family.
3. The Petitioner does not have any previous or pending cases.
4. She is in remand tittle more than one year to date.

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”.

In **CA(PHC)APN 107/2018** decided on 19.03.2019 the court held that remanding for a period of one year and five months without being served with the in indictment was considered inter alia in releasing the suspect on bail. According to the Petitioner, at present her family is going through untold hardship without proper income and care.

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.

The Counsel for the Petitioner urged this Court to consider that detaining a suspect without any legal action for an extended period of time amounts to a violation of his fundamental rights which can be considered as an exceptional ground.

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”. [Emphasis added]

In this case the information pertaining to possessing of money by the Petitioner was provided by the 1st Suspect which is contrary to the Section 30 of the Evidence Ordinance. She was also produced for adding and abetting to 1st Suspect for possession and trafficking of Heroin of the same evidence.

Further, the Petitioner has been separately produced under the Anti Money Laundering Act in the Magistrate Court of Avissawella and at present she is on bail granted by the Learned Magistrate of Avissawella.

Hence, I consider the delay little more than one year in remand falls into the category of excessive and oppressive delay considering the circumstances of this case.

Offences under Section 54A(b) and 54A(c) 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 period in remand, the circumstances of arrest and the other circumstances of the case, I consider this 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.100,000/=.
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 her 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 Padukka 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 is allowed and the Learned Magistrate of Avissawella 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 order to the Magistrate of Avissawella and the 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