

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

In the matter of an application for Bail under Section 83(2) of the Poisons, Opium and Dangerous Drugs Ordinance (Amendment) Act No. 41 of 2022.

**Court of Appeal**

The Officer-in-Charge

**Application No:**

Police Narcotics Bureau

**CA/Bail 0074/23**

Colombo-01.

**Complainant**

**MC Kuliypitiya case No.**

**B/91931/2021**

**High Court Kuliypitiya**

**HBA 68/21**

**Vs.**

Vas Ranga Nalaka Peiris

(Now in remand)

**Accused**

**And Now**

Pearl Mirani Anderson

No.43/1, Halpe Road, Kandana.

**Petitioner**

**Vs.**

1. Hon. Attorney General  
Attorney General's Department  
Colombo-12.

**1<sup>st</sup> Respondent**

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

**2<sup>nd</sup> Respondent**

Vas Ranga Nalaka Peiris  
(Now in remand)

**Accused**

**Now And Between**

Pearl Mirani Anderson  
No.43/1, Halpe Road, Kandana.

**Petitioner-Petitioner**

1. Hon. Attorney General  
Attorney General's Department  
Colombo-12.

**1<sup>st</sup> Respondent-Respondent**

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

**2<sup>nd</sup> Respondent-Respondent**

Vas Ranga Nalaka Peiris  
(Now in remand)

**Accused**

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

**P. Kumararatnam, J.**

**COUNSEL** **A.D.W.Gunawardena with Shanaka  
Warnakulasooriya for the Petitioner.  
Kanishka Rajakaruna, SC for the  
Respondents.**

**ARGUED ON** : **15/06/2023.**

**DECIDED ON** : **01/09/2023.**

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**BAIL ORDER****P.Kumararatnam,J.**

The Petitioner-Petitioner (hereinafter referred to as the Petitioner) who is the mother of the Accused filing this Application has invoked the jurisdiction of this Court to grant bail to the Accused upon suitable condition as this Court considers appropriate.

Although the Petitioner has filed a bail application before the High Court of Kuliyaipitiya on 18/03/2022, she was not successful.

The Accused was arrested on 22/07/2021 for possession of 30 grams of substances suspected to be Heroin and 805.920 grams of Methamphetamine at a road block set up by the Special Task Force and produced under case bearing No. 91931/21 to the Magistrate Court of Kuliyaipitiya. A scale which suspected to have been used for drug trafficking was also recovered from the Accused. After his arrest he was placed under a detention order issued by the Learned Magistrate of Kuliyaipitiya.

According to the B report filed, the Accused was produced under Section 54(d) and (b) of the Poisons, Opium and Dangerous Drugs Act No. 13 of 1984 as amended and under Section 2(1) of the Convection Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act No.01 of 2008.The charge of possession of Methamphetamine is only considered to assess this bail application only.

The vehicle bearing number WP-CAY-6952 in which the Accused came was also taken in to police custody.

The production had been sent to the Government Analyst Department and after analysis, the Government Analyst had forwarded the report to Court. According to the Government Analyst, 17.15 grams of pure

Heroin (Diacetylmorphine) and 850.920 grams of Methamphetamine had been detected from the substance sent for the analysis.

Although the Petitioner had filed a bail application in the High Court of Kuliyaipitiya, the Learned High Court Judge had dismissed the same on the premise that the jurisdiction to grant bail is now vested with the Court of Appeal as per the amended Act No. 41 of 2022 of the Poison, Opium and Dangerous Drugs Act.

The contention of the Petitioner is that the Accused was not arrested at the road block as stated by the police. According to the Accused and his neighbours who have given affidavits, the Accused was arrested at the site of his newly constructing house at Thalawa. The Petitioner further contend that these facts have been escaped from the attention of Learned High Court of Kuliyaipitiya.

**The Petitioner has pleaded following exceptional circumstances in support of the Accused's Bail Application.**

1. The Suspect is in remand nearly two years without been indicted.
2. The Suspect was not arrested at the road block as stated by the police. He was arrested at his newly constructing house at Thalawa.
3. The Suspect was not arrested on 22/07/2021 as claimed by the police. He was arrested on 20/07/2021 and detained illegally with some other persons arrested in the course of the same transaction.

The Counsel for the Petitioner submits that the Accused is in remand for nearly two years. Considering the facts and the circumstances of this case, that the prosecution will not be able to establish a prima facie case against the Accused.

The State Counsel submits that the Attorney General's Department awaits the investigation notes from the Police Narcotics Bureau. Hence, the State Counsel submits that the delay cannot not be considered as

an exceptional circumstance to be considered to enlarge the Accused on bail in this case.

**The Section 83 of the Poisons, 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.

(3) For the purpose of this section “dangerous drug” means Morphine, Cocaine, Heroin and Methamphetamine.

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 **Labyndarage Nishanthi v. Attorney General CA (PHC) APN 48/2014** the court held that:

*“It is trite law that any accused or suspect having charged under the above act will be admitted to bail only in terms of section 83(1) of the said Act and it is only on exceptional circumstances. Nevertheless, it is intensely relevant to note, the term ‘Exceptional circumstances’ has not been explained or defined in any of the Statutes. Judges are given a wide discretion in deciding in what creates a circumstance which is exceptional in nature.*

*There is plethora of cases in the legal parlor which had identified what creates an ‘exceptional circumstances’ in relation to granting bail...”*

The Learned Counsel for the Petitioner contended that the Accused has been detained illegally from 20/07/2021 to 22/07/2021 which is clearly a violation of established legal principles and violation of fundamental rights which enshrined in the Constitution.

Period in remand custody cannot be considered as an exceptional circumstance in all case. It has to be decided on a case-by-case basis to consider whether the remand period already spent could be considered as an exceptional circumstance.

In **Ashani Dhanushshika v. Attorney General [CA (PHC) APN 04/2016]** the court held that:

*“ In the present case the petitioner failed to establish any exceptional circumstances warranting this court to exercise the revisionary jurisdiction. The petitioner’s first point is that the suspect is in remand nearly for two years. The intention of the legislature is to keep in remand any person who is suspected or accused of possessing or trafficking heroin until*

*the conclusion of the case. The Section 83(1) of the Act expresses the intention of the legislature...”*

In **Carder v. Officer-in-Charge, Narcotics Bureau (2006) 3 SLR 74** the court held that:

*“ ...Provision has been made in the Bail Act to release persons on bail if the period of remand extends more than 12 months. No such provision is found in the case of Poison, Opium and Dangerous Drugs Ordinance. Although bail was granted in some of the cases mentioned above, none of these cases refer to the time period in remand as constituting an exceptional circumstance. Hence bail cannot be considered on that ground alone.*

According to the decisions cited above, the period spent in the remand custody cannot be considered as an exceptional circumstance in this case.

Further, the Counsel for the Petitioner contended that as the prosecution will not succeed in securing a conviction against the Accused due to the presentation of inadmissible evidence against the Accused. Hence, he strenuously argued that the Accused should be released on bail.

I am not inclined to accept this argument as an Accused can only be released on bail under the Poisons, Opium and Dangerous Drugs Act as amended upon successful demonstration of that he has exceptional circumstances to be released on bail.

Further, facts of a case do not constitute exceptional circumstances. Issues pertaining to the case should only be considered at the trial stage.

In the case of **A.K.Nandasena v. The Attorney General [CA(PHC) APN 147/2017]** the court held that:

*“...that facts of a case do not constitute exceptional circumstances and such issues need to be addressed at the trial stage.”*

In **The Attorney General v. Madapathage Dona Thilaka alias Shyamali [SC Appeal 53/2021]** decided on 30/11/2022, His Lordship Thurairaja, PC, J. held that:

*“Therefore, under these circumstances, no material is before the Court of Appeal to come to a decision regarding if the witness is creditworthy, nor is it relevant to the granting of bail in this application in the first place. Hence, it cannot be considered as an “exceptional ground” in considering an application for revision”.*

Hence, the facts of the case will not be addressed in considering this bail application.

In this case the pure quantity of the Heroin detected in the production by the Government Analyst is 17.15 grams and the pure quantity of Methamphetamine is 850.920 grams.

Considering the pure quantity of the Heroin detected in this case, if convicted, the Accused will either be sentenced to death or life imprisonment. Considering the gravity of the offences committed, there is a high risk of absconding.

Further, the delay nearly two years in remand does not fall into the category of excessive and oppressive delay considering the circumstances of this case as the offences committed under Section 54A(b) and 54A(c) of the Poisons Opium and Dangerous Drugs Ordinance as amended by the Act No.13 of 1984 and under Section 2(1)



of the Convection Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act No.01 of 2008.

Considering all the materials placed before this court, the Petitioner has failed to adduce that Accused has exceptional ground/s to free him on bail. Hence, this bail application is refused.

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**