

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) B of the Poisons, Opium and Dangerous Drugs Ordinance No. 13 of 1984 as amended by Amendment Act No. 41 of 2022.

Court of Appeal No:

CA/BAL/155/23

The Officer-in-Charge,

Police Narcotics Bureau,

Galle.

COMPLAINANT

Magistrate Court Balapitiya

Vs.

Case No: 40371/21

Laththunawahandi Kasun Kumara De

Silva,

Maluwa Temple Road,

Galwehera,

Ahungalla.

SUSPECT

AND NOW BETWEEN

Laththunawahandi Kasun Kumara De
Silva,
Maluwa Temple Road,
Galwehera,
Ahungalla.

ON BEHALF OF

Laththunawahandi Kasun Kumara De
Silva
(Currently in Remand Custody)

PETITIONER

Vs.

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

2. The Officer-in-Charge,
Police Narcotics Bureau,
Galle.

COMPLAINANT-RESPONDENTS

Before : Sampath B. Abayakoon, J.
: P. Kumararatnam, J.
Counsel : Tenny Fernando for the Petitioner
: Jayalakshi de Silva, S.S.C. for the Respondents
Inquiry on : 20-06-2023
Order on : 04-09-2023

Sampath B. Abayakoon, J.

This is an application by the petitioner seeking bail for himself, namely, Laththunawahandi Kasun Kumara De Silva (hereinafter referred to as the suspect) who is the suspect in the Magistrate Court of Balapitiya Case No. 40371/21.

The suspect has been arrested by the officers of the Police Narcotic Bureau (PNB) on 03-08-2021, for an alleged offence of possession and trafficking of Heroin.

According to the B-report filed before the Magistrate of Balapitiya by the Officer-in-Charge of the PNB Galle unit in that regard, at the time of his arrest, he was having in his possession 212 grams and 350 milligrams of a substance suspected to be of Heroin, which is an offence punishable in terms section 54A of the Poisons, Opium and Dangerous Drugs Ordinance as amended. According to the police, he also had in his possession 08 grams and 125 milligrams of methamphetamine a drug commonly called as 'Ice' at the time of his arrest.

The suspect has been in remand since, and according to the Government Analyst Report dated 29-09-2021 the substance produced before the Government Analyst had been identified as a substance having 85.2 grams of Diacetylmorphine, namely, Heroin, and 7.31 grams of methamphetamine.

In his application for bail before this Court, the suspect has claimed that the fact that the suspect being in remand since August 2021, without being charged

before a competent Court as exceptional circumstances for this Court to consider granting of bail for him.

The previous section 83 of the Poisons, Opium and Dangerous Drugs Ordinance as amended by Act No. 13 of 1984 was repealed and replaced by a new section 83 by Poisons, Opium and Dangerous Drugs (Amendment) Act No. 41 of 2022 in the following manner.

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 purposes of this section “dangerous drug” means Morphine, Cocaine, Heroin and Methamphetamine.

Although, section 83 that existed until the Amendment Act No. 41 of 2022 became operative had vested the power to grant bail for a person suspected or accused of an offence committed under section 54A or 54B of the Poisons, Opium and Dangerous Drugs Ordinance to the relevant High Court in exceptional circumstances, the amendment has provided for different jurisdictions to grant bail under mentioned circumstances.

Under the provisions of section 83 (2) of the Amendment Act No. 41 of 2022, notwithstanding the provisions of sections 84 and 85, if the pure quantity of the dangerous drug trafficked, imported, exported or possessed is 10 grams or above in terms of the Government Analyst Report, in such circumstances only the Court of Appeal which has the exclusive jurisdiction to grant bail in exceptional circumstances for a person accused or suspected of committing an offence in terms of section 54A or 54B of the Ordinance.

For the purposes of this section, a dangerous drug has been defined as Morphine, Cocaine, Heroin and Methamphetamine.

Section 84 and 85 are the provisions where it has been stipulated that a suspect or an accused shall not be detained in custody for a period exceeding 12 months from the date of arrest and up to another period of 12 months on an application made by the Attorney General to the High Court.

Since it has been established that the substance alleged to have been found in the possession of the suspect was Heroin, and had a pure quantity of 85.2 grams, this is a matter which comes within the purview of this Court to consider bail for the suspect under exceptional circumstances.

What constitutes exceptional circumstances have not been defined in the Statute.

Our Superior Courts have considered various situations at various times as exceptional in deciding to grant bail for suspects in terms of the Poisons, Opium and Dangerous Drugs Ordinance.

In **CA (PHC) APN No.16-12 decided on 14-06-2012**, the Court of Appeal considered failing to file an indictment even one year after the receipt of the Government Analyst Report as relevant in granting bail for a suspect.

However, it needs to be noted that there are several other instances where the Court of Appeal did not consider the time period a suspect person has been incarcerated as relevant exceptional circumstances in order to grant bail.

In the case of **CA (PHC) APN No. 9-2010 decided on 19-07-2010**, the Court of Appeal considered the facts reported by the police in the B-report as relevant to consider whether there are exceptional circumstances to grant bail to a suspect. Similarly, there are judgements, which say that facts cannot be considered as exceptional circumstances.

The above varied decisions by our Superior Courts clearly establish the fact that whether a certain situation amounts to exceptional circumstances or not, has to be considered on a case-by-case basis, unique to each application before the Court.

It is the view of this Court that if the relevant B-report and other material placed before the Court by the relevant investigation authority, provides a sufficient basis to consider granting bail to a suspect, there exists no impediment for this Court to consider them as relevant in determining whether exceptional circumstances exist under a given situation.

In this matter, the suspect had been allegedly arrested not only with Heroin but also with a quantity of the drug called Ice, and according to the B report filed, at the time of the arrest, he had in his possession Rs. 62200/- in various denominations. It appears from the Magistrate Court record that the police have conducted extensive investigations and had arrested several persons in connection to the investigation for aiding and abating the suspect to commit the offence, and now the suspect is the 1st suspect in the matter.

According to the submission made before the Court by the learned State Counsel, the relevant extracts have now been received by the Hon. Attorney General and it has been decided to indict the suspect, although the indictment has not yet been dispatched to the relevant High Court.

Under the circumstances, and having considered the nature of the investigations that had been carried out by the police, I am not in a position to conclude that there is an unnecessary delay in the part of the investigators and the prosecuting authority in filing charges against the suspect in this matter.

I am of the view that the medical diagnostic reports filed as X-8 and X-9 along with the petition, which are in relation to a road traffic accident that occurred in the year 2018, do not provide sufficient basis to release the suspect on medical grounds.

For the reasons as considered above, I am of the view that there exists no basis to release the suspect on bail under exceptional circumstances.

Accordingly, the application for bail is dismissed for want of merit.

Judge of the Court of Appeal

P. Kumararatnam, J.

I agree.

Judge of the Court of Appeal