

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

*In the matter of an application for bail in terms of section 83 (2) of the Poisons, Opium and Dangerous Drugs Ordinance No. 13 of 1984 as amended by Amendment Act No. 41 of 2022.*

**Court of Appel No:**

CA/BAL/206/23

Palkada Vidanalage Sunanda Ramyalatha,  
No. 823, Shri Mahinda Mawatha,  
Homagama.

**PETITIONER**

**Magistrate Court Kaduwela**

**Vs.**

**Case No:** B 51401/22

1. The Officer-in-Charge,  
Police Station,  
Athurugiriya.

**COMPLAINANT-RESPONDENT**

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

**RESPONDENT**

3. Matarage Gayathri Imasha Erandathi  
Matarage

**SUSPECT-RESPONDENT**

Before : Sampath B. Abayakoon, J.  
: P. Kumararatnam, J.  
Counsel : Sandeepani Wijesooriya and Nuwan Jayawardena for  
the Petitioner  
: Malik Azeez, SC For the Respondents  
Inquiry on : 23-06-2023  
Order on : 05-09-2023

**Sampath B. Abayakoon, J.**

This is an application by the petitioner seeking bail for her daughter namely, Matarage Gayathri Imasha Erandathi Matharage (hereinafter referred to as the suspect) who is the suspect in the Magistrate Court of Kaduwela Case No. B 51401/2022. The suspect has been arrested by the officers of the Police Special Task Force (STF) on 08-07-2022, for an alleged offence of possession and trafficking of Heroin.

According to the B-report filed before the Magistrate of Kaduwela by the Officer-in-Charge of the Athurugiriya police in that regard, at the time of her arrest, she was having in his possession 50 grams and 100 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.

The suspect has been in remand since, and according to the Government Analyst Report Dated 10-11-2022, the substance produced before the Government

Analyst had been identified as a substance having 21.79 grams of Diacetylmorphine, namely, Heroin.

In her application for bail before this Court, the petitioner has claimed the following exceptional circumstances for this Court to consider granting of bail to the suspect.

- (1) The place where the heroin was recovered is contradictory in the B report dated 09-07-2022 and the affidavit filed by the police officer who found the said parcel of heroin.
- (2) The Government Analyst report was received four months ago and no indictment has been filed by the time this bail application was instituted.
- (3) The suspect has been in prison for more than eight months.
- (4) The suspect is 27 years of age and she has a child of age 9 years old.
- (5) Since the husband of the suspect has left the suspect and her child, the suspect is the only parent and or guardian and or financial provider of the child.

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 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 21,79 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 arrested and produced on 08-07-2022 and the Government Analyst Report dated 10-11-2022 had been issued indicating the pure quantity of the drug which has been identified as Heroin.

In the application under consideration, I am not in a position to conclude that there is any unnecessary delay in the investigation process or that of the prosecuting authorities, given the time period between the arrest of the suspect and the time that has been taken so far to initiate charges against her.

In her petition before the court, the petitioner has mentioned several medical conditions of the suspect, and I do not find a basis to consider her conditions or the alleged medical conditions of the petitioner as conditions that cannot be treated while the suspect is in remand custody.

However, I am of the view that the submitted health condition of the child of the suspect can be considered relevant in the application before the Court.

According to the documents tendered to the Court and the submissions made in that regard, the child of the suspect is a child suffering from the medical condition commonly called Autism and therefore, a child with special needs. I am of the view that for such a child the care and the attention of the mother needs on a regular basis.

Having considered the position of the petitioner that the father of the child has left the suspect, and the suspect is the only parent available to care for the child, I am of the view that fact provides a sufficient exceptional ground to grant bail for the suspect in this matter.

Accordingly, the suspect is ordered to be released on the following bail conditions.

1. Cash bail Rs. 50000/-

2. Two sureties with Rs. 250,000/- each surety bail. One of the sureties should be the petitioner.
3. The suspect is ordered to report to the OIC of the Athurugiriya police every last Sunday of the month between 9.00 a.m. and 12 noon until the conclusion of the case.
4. The suspect is prevented from traveling overseas until the conclusion of the trial against him. If she is possessed of a passport, she shall surrender the passport to the Registrar of the Magistrate Court of Kaduwela. If she has not obtained a passport, she shall file an affidavit in that regard.
5. The Registrar of the Magistrate Court of Kaduwela is directed to inform the Controller of Immigration and Emigration that a travel ban has been imposed on the suspect until the conclusion of the case and is also ordered to provide the necessary details in this regard to the Controller.

The Registrar of the Court is directed to communicate this bail order to the Magistrate Court of Kaduwela for necessary compliance.

Judge of the Court of Appeal

**P. Kumararatnam, J.**

I agree.

Judge of the Court of Appeal