

**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 83(2) of the Poisons, Opium and Dangerous Drugs (Amendment) Act No. 41 of 2022.

Kavitha Divyanjali

No. 1C/F6/U3, Muwadora Uyana,

Ferguson Road,

Colombo-14.

Court of Appeal

Bail Application No:

PETITIONER

CA Bail 0202/2023

Vs

MC Maligakanda Case No.

1. The Officer-in Charge

B/27359/22

Police Station

Grandpass.

2. The Attorney General

Attorney General's Department,
Colombo-12.

RESPONDENTS

Sekar Udaya Kumar

SUSPECT

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

COUNSEL : **Punarji Karunasekara for the**
Petitioner.
Ridma Kuruwita, SC for the
Respondents.

ARGUED ON : **16/06/2023.**

DECIDED ON : **06/09/2023.**

ORDER

P.Kumararatnam,J.

The Petitioner is the wife of the Suspect. She had applied for bail to the Suspect who has been produced in the Magistrate Court of Maligakanda under Case No. B 27359/2022.

According to the B report filed in the MC on 29.09.2022 the Suspect was arrested by on an information by the officers of Police Special Task Force attached to the Gonahena Camp. As per the information when the police officers surrounded the house of the Suspect, it was found closed from outside with a padlock. When police officers broke the padlock and entered the house found the Suspect with a bag in his hand tried to escape from the back door with his limping leg. When the officers search the bag it contains number of small packets with some

substance allegedly to be Heroin. Further Rs.2258560/- had been recovered from the Suspect. When the substance was weighed it showed the gross weight of 40.500 grams in total.

The suspect was produced and facts were reported to the Maligakanda Magistrate under Section 54A (b) and (d) of the Poisons, Opium and Dangerous Drugs Ordinance as amended by the Act No.13 of 1984.

The production had been sent to the Government Analyst Department on 18/10/2022. After analysis, the Government Analyst had forwarded the report to Court on 27/02/2023. According to the Government Analyst, 10.49 grams of pure Heroin (Diacetylmorphine) had been detected from the substance sent for the analysis.

According the Petitioner, the Suspect was arrested at his residence without any contraband in his possession. The said Heroin was detected somewhere else and introduced to the Suspect. The money said to have recovered from the Suspect is belonging to the Petitioner which she earned by money lending.

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

1. The Suspect is a father of two small children and sole breadwinner of the family.
2. No drugs were found in his possession of the Suspect by the police officers.
3. The Petitioner had been in remand over 08 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. As the Government Analyst Report was received few months back steps have been taken to call for the investigation notes from the police.

The suspect is in remand for more than 08 months. According to the Government Analyst Report, the pure quantity of Heroin detected from the possession of 1st Accused is 10.49 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 grams 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 10.49 grams. Hence, this court has jurisdiction to consider granting of bail as per the new amendment.

The Counsel for the Petitioner submitted that the police have fabricated a case against the Suspect. Further the money which said to have recovered from the Suspect was not belonging to the Suspect.

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 not consider the delay more than 08 months in remand falls into the category of excessive and oppressive delay considering the circumstances of this case.

The Offence under Section 54A (b) and (d) of the Poisons Opium and Dangerous Drugs Ordinance as amended by the Act No.13 of 1984 is a serious offence and the seriousness of the offence should be considered when bail is considered.

The State submitted that the Suspect has one previous conviction and two pending cases, all are drugs related offences. This clearly shows his propensity towards committing drug related offences.

In this case the pure Heroin detected is 10.49 grams, which certainly a commercial quantity. Considering the seriousness of the sentence prescribed under the Poison, Opium and Dangerous Drugs Ordinance, there is a high risk of absconding. Hence, it is prudent to indict and conclude the High Court case expeditiously keeping the Suspect in remand.

Considering all these factors into account, especially the pure quantity of Heroin detected, the previous conviction and pending cases related to drug offences and other circumstances of the case, I consider this is not an appropriate case to grant bail to the Suspect at this stage.

Hence, the bail application is hereby dismissed.

The Registrar of this Court is directed to send a copy of this order to the Magistrate Court of Maligakanda and Officer-in-Charge of the Police Station, Grandpass.

JUDGE OF THE COURT OF APPEAL

SAMPATH B. ABAYAKOON, J.

I agree.

JUDGE OF THE COURT OF APPEAL