

**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) (A) and 82(2) (B) of the Poisons, Opium and Dangerous Drugs Ordinance as amended by Act No.41 of 2022.

Kanewala Arachchilage Jeewanie

**Court of Appeal**

Samanthika Kumarie Perera

**Application No:**

**SUSPECT-PETITIONER**

**CA/Bail/0069/2023**

**Magistrate Court of Mahara**

**B/2665/20**

**-Vs-**

1. The Officer-in Charge,  
Police Station  
Meegahawatte.
2. The Attorney General  
Attorney General's Department,  
Colombo-12.

**RESPONDENTS**

**BEFORE**

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

**P. Kumararatnam, J.**

**COUNSEL**

**: Kasun Liyanage for the Petitioner.**

**Kanishka Rajakaruna, SC for the Respondents.**

**ARGUED ON** : **20/06/2023.**

**DECIDED ON** : **07/09/2023.**

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**ORDER**

**P.Kumararatnam,J.**

The Petitioner who is the Suspect named in M.C.Mahara Case No. B 2665/2020 initially had applied for bail in the High Court of Gampaha in the case bearing No.HCB 274/2021. After an inquiry, the Learned High Court Judge of Gampaha had refused bail on 01.11.2022. Now the Petitioner has filed this application for bail before this Court under new amendment to the Poisons, Opium and Dangerous Drugs Ordinance.

On 12.08.2020, the Petitioner was arrested at her residence by officers attached to the Meegahawatta Police Station upon an allegation relating to possession of Heroin weighing about 823.244 grams. At the time of arrest the Petitioner was engaged in packeting Heroin in to smaller packets. She was arrested along with the utensils used for packeting Heroin. Upon search of the house the police had recovered Rupees seven million cash (Rs.7,000000/-) in the house. The police had also taken into their custody a vehicle bearing No. WP CAV 6026 and a motor bike bearing No. WP BHX 2359 which were parked outside the house.

The Petitioner was produced and facts were reported to the Mahara Magistrate under Section 54A (1) (b) and (d) and of the Poisons, Opium and Dangerous Drugs Ordinance as amended by the Act No.13 of 1984 and a detention order was obtained for further investigations under Section 82(3) of the said Act.

The production had been sent to the Government Analyst Department on 24/09/2020. After analysis, the Government Analyst had forwarded the report to Court on 12/10/2021. According to the Government Analyst, 447.40 grams of pure Heroin (Diacetylmorphine) had been detected from the substance sent for the analysis.

The Petitioner is a widow and the sole breadwinner of the family. She has 04 children to look after. She has no previous or pending cases. She has been incarcerated for close to three years as at today.

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

1. The adverse impact on the education of minor children due to the death of Petitioner's husband and long-term incarceration of the Petitioner.
2. The Children are being exposed to the risk of malnutrition.
3. There being no person responsible for looking after the four children.
4. The adverse impact under mental condition of the youngest son due to lack of companionship of the Petitioner. (His mother).

The State opposing to bail submitted that the indictment pertaining to the offences under the Poisons, Opium and Dangerous Drugs Act is already being sent to the High Court of Gampaha on 23.01.2023. Hence, Learned State Counsel submitted that the delay is not an exceptional circumstance to be considered to enlarge the Petitioner on bail. Further, the time spent for preparing the indictment does not constitute an exceptional circumstance.

The suspect is in remand for nearly three years. According to Government Analyst Report, the pure quantity of Heroin detected from the possession of 1<sup>st</sup> Accused is 447.4 grams.

Accordingly, 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 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.

In this case, the pure quantity of Heroin detected in the production by the Government Analyst is 447.4 grams. Hence, this court has jurisdiction to consider granting of bail as per the new amendment.

In this case, as per the submission of the Learned State Counsel, the indictment had already been dispatched to the High Court of Gampaha and the trial is yet to be commenced.

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 about three years in remand falls into the category of excessive and oppressive delay considering the circumstances of this case.

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

In **Ranil Charuka Kulatunga v. Attorney General CA (PHC) APN 134/2015** the court held that:

*“The quantity of cocaine involved in this case is 62.847 grams, which is a commercial quantity. If Petitioner is convicted, the punishment is death or life imprisonment. Under these circumstances, it is prudent to conclude the trial early while the Petitioner is kept in custody.”*

In this case the pure Heroin detected is 447.4 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 conclude the High Court case expeditiously keeping the Petitioner in remand.

In series of cases decided by this Court held that the family matters do not constitute exceptional circumstances. Hence, the exceptional

circumstances based on family matters urged by the Petitioner cannot be considered in her favour.

In this case the Petitioner was arrested while she was packeting Heroin. The police had recovered the Heroin from her exclusive possession. Further, the Petitioner has to explain as to how she earned Seven Million cash (Rs.7,000000/-) which was recovered from her possession at the time of her arrest.

Considering all these factors into account, especially the pure quantity of Heroin detected, the charge in the indictment against the Petitioner and other circumstances of the case, I consider this not an appropriate case to grant bail to the Petitioner at this juncture. Hence, I refuse to release the Petitioner on bail.

Hence, the bail application is hereby dismissed.

The Registrar of this Court is directed to send a copy of this Order to the High Court of Gampaha and the Officer-in-Charge Police Station, Meegahawatte.

**JUDGE OF THE COURT OF APPEAL**

**SAMPATH B. ABAYAKOON, J.**

I agree.

**JUDGE OF THE COURT OF APPEAL**