

**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 of the Poisons, Opium and Dangerous Drugs Ordinance as amended by Act No.41 of 2022.

The Democratic Socialist Republic of Sri Lanka.

Court of Appeal No.

COMPLAINANT

CA BAL 0028/2023

High Court of Colombo

Vs.

Case No. HC 4040/22

Sheik Shiras Mohammed Sabrin

MC Maligakanda

ACCUSED

Case No. B/1472/21

AND NOW BETWEEN

Rajapathiranalage Singithi Dedunu
Perera

No.177/14, Mohideen Masjid Road,
Colombo-10.

(Temporally resides at
No.127/02/01/01, Mayfield Road,
Colombo-13)

PETITIONER

Vs.

1. The Officer-in-Charge
Criminal Intelligence Analysis and
Prevention Division,
Battaramulla.
2. The Hon. Attorney General
Attorney General's Department
Colombo-12

RESPONDENTS

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

COUNSEL : **Harith Hettiarachchi with Mark Anton**
for the Petitioner.
Kanishka Rajakaruna, SC for the
Respondents.

ARGUED ON : **26/06/ 2023**

DECIDED ON : **08/09/2023.**

ORDER

P.Kumararatnam,J.

The Petitioner is the wife of the Accused in the High Court of Colombo case bearing No. HC 4040/2022. In view of the Amendment Act No.41 of 2022 to the Poisons, Opium and Dangerous Drugs Ordinance Act No.41 of 2022, the Petitioner has filed this bail application before this Court.

The Petitioner states, that on or about 09.02.2021 officers attached to the Criminal Intelligence Analyst and Prevention Division, Batharamulla had arrested the Accused at 19.45 hours on an allegation that he possessed 250 grams of Heroin in his right-side trouser pocket when he was operating as the driver of the vehicle registration bearing No. WP CAY-5036, near the Cargills Food City located at George De Silva Mawatha, within the police area of the Foreshore Police Station. The Accused was then produced before the Magistrate of Maligakanda under case No. B 1472/2021 on 10.02.2021 and facts were reported under Section 54A (b) and (d) 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 productions recovered from the Accused was sent to the Government Analyst Department on 12/02/2021. After analysis, the Government Analyst had forwarded the report to Court on 04/10/2021. According to the Government Analyst, 78.2 grams of pure Heroin (Diacetylmorphine) had been detected from the substance recovered from the Accused.

The Accused was indicted in the High Court of Colombo in the case bearing No. HC 4040/2022 and the indictment was served on him on 08.12.2022.

The Petitioner has been in remand for little more than 29 months as at now.

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

1. The Petitioner had been in remand for little over 29 months.
2. The Accused is 27 years and a married person with two little daughters. He is the sole breadwinner of the family.

According to the Petitioner the Accused had never possessed or trafficked any illegal substances. The police had introduced the said amount of Heroin on him by force.

The State opposing to bail submitted that the indictment had already been served on the Accused and trial will commence shortly. Hence, Learned State Counsel submitted that the delay is not an exceptional circumstance to be considered to enlarge the suspect on bail. Further, the time spent for preparing the indictment does not constitute an exceptional circumstance.

Exceptional circumstances are not defined in the statute. Hence, what constitutes 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 **CA(PHC)APN 107/2018** decided on 19.03.2019 the court held that remanding for a period of one year and five months without being served with the indictment was considered inter alia in releasing the suspect on bail.

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 78.2 grams. Hence, this court has jurisdiction to consider granting of bail as per the new amendment.

In a bail inquiry when the Petitioner brings to the notice of the Court the circumstances which could be capable of shaking the prosecution case, the Court has the discretion to tentatively look to the facts and circumstances of the case to ascertain whether a reasonable ground exists or not either to grant or refuse bail. The Court should not probe into the merits of the case, but restrict itself to the material placed before it. But, even for the purpose of bail any benefit of doubt arising in the case must accrue to the Suspect.

Dr.A.R.B.Amerasinghe in his book titled “Judicial Conduct, Ethics and Responsibilities” at page 284 observes that:

“However, Article 13(5) of our Constitution states that every person shall be presumed innocent until he is proved guilty. Article 13(2) further provides that a person shall not be deprived of personal liberty except upon and in terms of the order of a judge made in accordance with procedure established by law.

The State imposes a punishment on the suspect indirectly by keeping him in remand custody for an uncertain period. Obviously, that was not the intention of the legislature when it enacted Article 13(5) of the Constitution”.

One of the grounds urged by the Learned Counsel is that Heroin said to have recovered from the Accused was an introduction. At any time the Accused never possessed any illegal substances.

Further the Accused had been in remand little more than 29 months. Although the Government Analyst Report was received by the Court on 04.10.2021, the indictment was only served on the Accused on 18.12.2022 after more than 01 year. Further, the trial has not been commenced to date. Hence, the period in remand without trial being commenced should be considered in favour of the Accused in this case. The Accused has no previous or pending cases before any court.

The Offences under Section 54A(d) and (b) of the Poisons, Opium and Dangerous Drugs Ordinance as amended by the Act No.13 of 1984 are no doubt serious offences but seriousness of the offences alone cannot form a ground to refuse bail. In considering these matters, the court must bear in mind the presumption of innocence.

Taking all these into account, especially the pure quantity of Heroin detected, the period in remand, and other circumstances of the case, I consider this is an appropriate case to grant bail to the Accused. Hence, I order the Accused be granted bail with following strict conditions.

1. Cash bail of Rs.100,000/=.
2. To provide 02 sureties. They must sign a bond of two million each.
3. The Accused and the sureties must reside in the address given until conclusion of his case.
4. Not to approach any prosecution witnesses directly or indirectly or to interfere with.

5. To surrender his passport if any, to court and not to apply for a travel document. The Controller of the Immigration and Emigration is informed of the travel ban on the Accused.
6. To report to the Criminal Intelligence Analysis and Prevention Division, Battaramulla on the last Sunday of every month between 9am to 1pm.
7. Any breach of these conditions is likely to result in the cancellation of his bail.

The Bail Application is allowed and the learned High Court Judge of Colombo is hereby directed to enlarge the Accused on bail on the above bail conditions.

The Registrar of this Court is directed to send a copy of this order to the High Court of Colombo and the Officer-in-Charge of the Criminal Intelligence Analysis and Prevention Division, Battaramulla.

JUDGE OF THE COURT OF APPEAL

SAMPATH B. ABAYAKOON, J.

I agree.

JUDGE OF THE COURT OF APPEAL