

**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 (Amendment) Act No 41 of 2022.

Court of Appeal No:

The Officer-in-Charge

CA Bail / 0118/22

Police Narcotics Bureau
Colombo-01.

COMPLAINANT

MC Negombo

Vs

Case No. M 49829/22

1. Jesmin B.Fareed
2. Arumugam Yohan Samuel

SUSPECTS

AND NOW BETWEEN

Dilshan Daniella Arumugam
No.542/2/B/1/2,
Aluthmawatha,
Colombo-15.

PETITIONER

On behalf of 2nd Suspect
Arumugam Yohan Samuel
(Presently in Negombo Prison)

Vs.

1. The Attorney General
Attorney General's Department
Colombo-12.
2. The Officer-in-Charge
Police Narcotics Bureau
Colombo-12.

RESPONDENTS

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

P. Kumararatnam, J.

COUNSEL : **Lelani Sirisena for the Petitioner.**
Kanishka Rajakaruna, SC for the Respondents.

ARGUED ON : **05/07/2023.**

DECIDED ON : **20/09/2023.**

ORDER

P.Kumararatnam,J.

The Petitioner is the brother of the 2nd Suspect (hereinafter referred to as the Suspect) in the Magistrate Court Negombo Court Case No.M/49829/2022.

Upon an information received by the officers of Police Narcotics Bureau of Katunayake Airport B had Branch had arrested the 1st Suspect named in the Petitioner, who had returned from Dubai in UL 226 aircraft on 04.05. 2022. Upon search of her luggage a false bottom was discovered. In that false bottom, a small bag was discovered. In which the salutes had detected 2 kilograms and 210 grams of substances believed to be Heroin (Diacetylmorphine). The 1st Suspect was arrested and produced before the Learned Magistrate of Negombo and continued investigation after obtaining a detention order issued by the Learned Magistrate.

During the investigation it was revealed that the Suspect named in the Petitioner had gone to Dubai with 1st Suspect and had given the particular bag to 1st Suspect to pack her thing. The investigation had further revealed that the Suspect also returned in the same flight and the bag in which the substances was found contained baggage tag in the name of the Suspect. As such the police had conducted investigation about the Suspect and they could only arrest him at a night club on 26.05.2022. He too had been remanded in the same Negombo Magistrate Court case No. M 49829/2022 upon the charges of aiding and abetting 1st Suspect to commit an offence under the Poisons, Opium and Dangerous Drugs Act No.13 of 1984.

The suspects were produced and facts were reported to the Negombo Magistrate under Section 54A (d) (b) and (c) 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 and after analysis, the Government Analyst had forwarded the report to the Police Narcotics Bureau. According to the Government Analyst, 1.3239 Kilograms of pure Heroin (Diacetylmorphine) had been detected from the substance sent for the analysis.

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

1. The Suspect was taken into custody 23 days after the arrest of 1st Suspect with the Heroin which he has no connection whatsoever.
2. The Suspect was in remand for more than 02 years without a valid indictment since he was produced before court.
3. The case against the Suspect is very weak as nothing was recovered from him at the time of his arrest.

The State opposing to bail submitted that the investigation notes had been received by the Attorney General Department and matter is being considered under AG Reference No. CR3/24/23. 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.

The suspect is in remand little more than two years as at today. According to Government Analyst Report, the pure quantity of Heroin detected from the possession of 1st Accused is 1.3239 Kilograms.

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 1.3239 Kilograms. Hence, this court has jurisdiction to consider granting of bail as per the new amendment.

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 little more than two years in remand falls into the category of excessive and oppressive delay considering the circumstances of this case.

The Offence under Section 54A (d) (b) and (c) 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.

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 1.3239 Kilograms, which certainly a very high 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 Suspect in remand.

Considering all these factors into account, especially the pure quantity of Heroin detected, the charge in the indictment against the Suspect and other circumstances of the case, I consider this is not the appropriate time to grant bail to the Suspect.

Hence, this bail application is dismissed.

The Registrar of this Court is directed to send a copy of this Order to the Magistrate Court of Negombo and Officer-in-Charge of the Police Narcotics Bureau, Colombo-01.

JUDGE OF THE COURT OF APPEAL

SAMPATH B. ABAYAKOON, J.

I agree.

JUDGE OF THE COURT OF APPEAL