

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 as amended by Act No. 41 of 2022.

Court of Appeal No:

CA/BAL/233/2023

Maramba Hewage Chanuka Sandaruwan,

Mullagewatta,

Mudungamuwa,

Weligama.

PETITIONER

Magistrate Court Matara

Vs.

Case No: BR 931/22

1. The Officer-in-Charge,

Anti-Vice Unit,

Police Station,

Matara.

COMPLAINANT-RESPONDENT

2. The Hon. Attorney General,

Attorney General's Department,

Colombo 12.

RESPONDENT

3. Maramba Hewage Rajitha

Sandaruwan

SUSPECT-RESPONDENT

Before : Sampath B. Abayakoon, J.

: P. Kumararatnam, J.

Counsel : Asanka Mendis with Sandeepani Wijesooriya for
the Petitioner

: Malik Aziz, S.C. for the Respondent

Inquiry on : 10-07-2023

Order on : 22-09-2023

Sampath B. Abayakoon, J.

This is an application by the petitioner seeking bail for his brother namely, Maramba Hewage Rajitha Sandaruwan (hereinafter referred to as the suspect) who is the suspect in the Magistrate Court of Matara Case No. BR 931/2022. The suspect has been arrested by the officers of the Anti-vice Unit of Matara police on 04-03-2022, for an alleged offence of possession and trafficking of Heroin and Methamphetamine.

According to the B-report filed before the Magistrate of Matara by the Officer in Charge of Matara police in that regard, at the time of his arrest, he was having in his possession 23300 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 quantity of Methamphetamine allegedly found in the possession of the suspect was 32000 milligrams.

At the time of his arrest the police have recovered a sum of Rs. 133000/- as well from his custody.

The suspect has been in remand since, and according to the Government Analyst Report dated 18-04-2022, the substance produced before the Government Analyst had been identified as a substance having 13.95 grams of diacetylmorphine, namely, Heroin.

The government Analyst has identified 31.11 grams of Methamphetamine as well in the productions forwarded. However, since the offence in relation to the drug Methamphetamine had allegedly been committed before the Amendment Act No 41 of 2022 became effective, the quantity of the Methamphetamine alleged to have been found in the possession of the suspect has no relevancy in terms of the Poisons Opium and Dangerous Drugs Ordinance for the purposes of the bail application before this Court.

In his application for bail, the petitioner has denied that his brother was arrested as the police claimed in the B-report, or had any dangerous drug in his possession.

The petitioner has pleaded that the long incarceration of the suspect without being charged before a competent Court as a ground that should be considered as an exceptional circumstance for this Court to grant bail on the suspect.

It was also alleged that the police have failed to mention in detail as to from where the drugs were recovered, but has made only a general statement that the drugs were recovered from the possession of the suspect.

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 came into being, 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 under 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 54 A or 54 B 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 13.95 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 04-03-2022 and the Government Analyst Report dated 18-04-2022 in that regard has been issued without any delay.

According to the submission made before the Court by the learned State Counsel, the Attorney General's department has now dispatched the indictment to the High Court of Colombo, on 22-06-2023.

Under the circumstances, I am in no position to conclude that there had been any delay on the part of the investigations and the prosecuting authority in relation to the preferring of the charges against the suspect.

The application for bail is refused as I find no exceptional circumstances to grant bail to the suspect.

Registrar of the Court is directed to communicate this bail order to the Magistrate Court of Matara and to the relevant OIC of the police unit for necessary information.

Judge of the Court of Appeal

P. Kumararatnam, J.

I agree.

Judge of the Court of Appeal