

**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 Amended Act No.41 of 2022 to the Poisons, Opium and Dangerous Drugs Act No.17 of 1929.

Court of Appeal Bail The Officer-in-Charge
Application No. Police Narcotics Bureau
CA Bail/0199/23 Colombo-01.

COMPLAINANT

High Court of Negombo Rashmika Chandramal Kumaranayake
Case No. HC 332/21 87/55,
MC Negombo Mankuliya,
Case No. M 5596/19 Negombo.

SUSPECT

NOW BETWEEN

Democratic Socialist Republic of
Sri Lanka

COMPLAINANT

Vs

Rashmika Chandramal Kumaranayake
87/55, Mankuliya,
Negombo.

ACCUSED

AND NOW BETWEEN

Rashmika Chandramal Kumaranayake
87/55, Mankuliya,
Negombo.

(Presently in Negombo Prison)

ACCUSED-PETITIONER

1. The Officer-in-Charge
Police Narcotics Bureau
Colombo-01

COMPLAINANT-RESPONDENT

2. The Attorney General
Attorney General's Department,
Colombo-12.

2ND RESPONDENT

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

COUNSEL : **Asela Serasinghe for the Petitioner.**
Ridma Kuruwita, SC for the
Respondent.

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

DECIDED ON : **27/09/2023.**

ORDER

P.Kumararatnam,J.

The Accused-Petitioner (hereinafter referred to as the Petitioner) filing this Application has invoked the jurisdiction of this Court to grant bail to him upon suitable condition as this Court considers appropriate.

The Petitioner was arrested on 16.10.2019 by the officers attached to the Police Narcotics Bureau. He was produced before the Magistrate of Negombo in the case bearing No. M/5569/19. It was mentioned that the Petitioner was to go abroad on the date of his arrest. According to the detectives, some substances which reacted for Heroin (Diacetylmorphine) was recovered from the Petitioner and the substance weighed about 99.651 grams.

The production had been sent to the Government Analyst Department on 21/0710019. After analysis, the Government Analyst had forwarded the report to Negombo Magistrate Court on 20/07/2020. According to the Government Analyst, 48.003 grams of pure Heroin (Diacetylmorphine) had been detected from the substance sent for the analysis.

According to the Petitioner, at the time of his arrest, no drugs were recovered from his custody.

Although a bail application was filed before the High court of Negombo, but was dismissed by the Learned High Court Judge on 08.07.2021. Further, a revision application was filed in the Court of Appeal to revise the said order of the High Court, it too had been dismissed by the Court on 28.03.2021.

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

1. The Petitioner has been incarcerated from 16.10.2019.
2. The parents of the Petitioner have been seriously ill.
3. The Petitioner has been incarcerated for nearly three and half years without the High Court trial against the him being commenced.

The 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. Further, indictment has already been sent to the High Court of Negombo and the pre-trial conference was over and the case is fixed doe trial on 23.11.2023.

The suspect is in remand almost three and half years. According to Government Analyst Report the pure quantity of Heroin detected is 48.003 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 basis.

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 in indictment was considered inter alia in releasing the suspect on bail. According to the Petitioner, at present her family is going through untold hardship without proper income and care.

The Section 83 of the Poisons, 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.

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

The Counsel for the Petitioner urged this Court to consider that detaining a suspect without trial being commenced for an extended period of time amounts to a violation of his fundamental rights which can be considered as an exceptional ground.

In **Nasher v. Director of Public Prosecution [2020] VSCA 144** the court held that:

“a combination of delay, onerous custodial conditions, and the relative weakness of the prosecution case may, when considered with all relevant circumstances, compel the conclusion that exceptional circumstances have been established”. [Emphasis added]

In **Union of India v K.A.Najeeb Cri.Appeal 98 of 2021**, the Supreme of India held that:

“Adverting to the case at hand, we are conscious of the fact that the charge levelled against the respondent are grave and a serious threat to societal harmony. Had it been a case at the threshold, we would have outrightly turned down the respondent’s prayer. However, keeping in mind the length of the period spent by him in custody and the unlikelihood of the trial being completed anytime soon, the High Court appears to have been left with no other option except to grant bail.”

The right to trial without undue delay is found in numerous international and regional human rights instruments; for example, the International Covenant on Civil and Political Rights (Article 14(3)(c), the American Convention on Human Rights (Article 8(1), the African Charter on Human and People’s Rights (Article 7(1)(d), and the European Convention for the Protection of Human Rights and Fundamental Freedoms (Article 6(1).

Hence, I consider the delay more than three and half years in remand falls into the category of excessive and oppressive delay considering the circumstances of this case. Hence, considering all the circumstances of

this case, the suspect has very good exceptional circumstances to consider this application in his favour.

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

Further, bail should never be withheld as punishment. Granting of bail is primarily at the discretion of the Courts. The discretion should be exercised with due care and caution taking into account the facts and circumstances of each case.

Considering all these factors into account, especially the period in remand, the pure quantity of Heroin detected and the circumstances of the case, I consider this an appropriate case to grant bail to the Petitioner. Hence, I order the Petitioner 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 Petitioner 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 Petitioner.
6. To report to the Police Narcotics Bureau, Colombo-01 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 Negombo is hereby directed to enlarge the Petitioner 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 Negombo and the Officer-in-Charge, Police Narcotics Bureau, Colombo-01.

JUDGE OF THE COURT OF APPEAL

SAMPATH B. ABAYAKOON, J.

I agree.

JUDGE OF THE COURT OF APPEAL