

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

**Court of Appeal Bail Application
No.CA Bail/0114/23**

Sarukkali Patabendige Tashma
Damayanthi
663, Nakuttiyagama, Thal pawila,
Kekanadura.

MC Matara

Case No. BR 632/21

PETITIONER

Vs.

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

1st -RESPONDENT

2. The Officer-in Charge
Anti-Corruption Unit,
Police Station,
Matara.

2nd -RESPONDENT

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

3rd -RESPONDENT

AND

Hewa Yaddehige Wijayaratne

SUSPECT

(Presently in remand custody)

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

COUNSEL : **Neranja Jayasinghe for the**
Petitioner.
Jehan Gunasekara, SC for the
Respondents.

ARGUED ON : **13/07/2023.**

DECIDED ON : **10/10/2023.**

ORDER

P.Kumararatnam,J.

The Petitioner filing this Application has invoked the jurisdiction of this Court to grant bail to her husband who is the Suspect in this case upon suitable condition as this Court considers appropriate.

The Suspect was arrested on 04.03.2021 by the Police officers attached to Anti-Corruption Unit Matara. He was produced before the Magistrate of Matara in the case bearing No. BR/632/2021.

The Suspect was arrested upon an information at his resident bearing No.663, Nakuttiya,Thalpwila,Kekandura. Upon entering the house, the officers found the Suspect with a black coloured 'Tulip' bag and upon searching the same, found some brown coloured substance suspected to be Heroin, (Diacetylmorphine). The substance weighed about 480 grams.

The Suspect was produced and facts were reported to the Matara Magistrate under Sections 54A (b) and (d) 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 Matara Magistrate Court on 06/10/2021. According to the Government Analyst, 178.32 grams of pure Heroin (Diacetylmorphine) had been detected from the substance sent for the analysis.

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

1. The Suspect has been in remand custody more than two years.
2. The Suspect is the sole breadwinner of the family.

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. According to the State, indictment has not been forwarded to the High Court yet.

The suspect is in remand more than two years. According to Government Analyst Report the pure quantity of Heroin detected is 178.32 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”.

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

The State Counsel submits that the large quantities of the dangerous drugs found in the possession of the Suspect indicates that he is a drug dealer of large scale, dealing in commercial quantities and not user quantities. Further, these fact draws reasonable inference that the Suspect had been involved in drug dealing for long period of time.

Hence, I do not consider the delay little more than 24 months 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 is a serious offence and the seriousness of the offence should be considered when bail is considered.

In this case the pure Heroin detected is 178.32 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.

Considering all these factors into account, especially the pure quantity of Heroin detected and other circumstances of the case, I consider this is not an appropriate case to grant bail to the Suspect at this stage.

Hence, the bail application is hereby dismissed.

The Registrar of this Court is directed to send a copy of this order to the Magistrate Court of Matara and Officer-in-Charge, Anti-Corruption Unit, Police Station, Matara.

JUDGE OF THE COURT OF APPEAL

SAMPATH B. ABAYAKOON, J.

I agree.

JUDGE OF THE COURT OF APPEAL