

**IN THE COURT OF APPEAL OF THE DEMOCRATIC SOCIALIST**  
**REPUBLIC OF SRI LANKA**

In the matter of an application for Bail under Section 83 (2) of the Poisons, Opium and Dangerous Drugs Ordinance No. 13 of 1984 as Amended Act No. 41 of 2002 of the Constitution of the Democratic Socialist Republic of Sri Lanka.

**CA Case No: BAL/359/2023**

MC Matara

Case No: BR 1686/21

The Officer-in-Charge,

Vice-Prevention Unit,

Police Station

Matara

**Complainant**

- **Vs** -

Thilina Nethmika Vimal Witharana

Arachchi

**Suspect**

**AND NOW BETWEEN**

Dehi Ange Gedara Nuradha Nuwanthi

Disanayake

No. 614, Nakuttiyagama,

Kakunadura, Kandy

**Petitioner**

**ON BEHALF OF THE SUSPECT**

Thilina Nethmika Vimal Witharana

Arachchi

(Presently in Prison Custody)

**Suspect**

**Vs**

1. The Officer-in-Charge

Vice-Prevention Unit,

Police Station,

Matara.

2. Hon. Attorney General,  
Attorney General's Department,  
Colombo 12

**Respondents**

Before : P. Kirtisinghe J  
&  
R. Gurusinghe J

Counsel : I.B.S. Harshana with Amila Udayangani

**for the Petitioner**

Jehan Gunasekara, S.C. **for the Respondents**

Argued on : 21.09.2023

Decided on : 16.10.2023

**ORDER**

R. Gurusinghe J

This is an application by the petitioner seeking bail for her husband, namely Thilina Nethmika Vimal Witharana (suspect), who is the suspect in the Magistrate Court of Matara, Case No. BR 1586/21. The suspect was arrested by the officers attached to the Matara Police station on 16.06.2021 for allegedly having in possession of a quantity of 160 grams of heroin, which is an offence punishable under section 54A of the Poisons, Opium and Dangerous Drugs Ordinance (Ordinance) as amended.

The petitioner has been languishing in remand since 16.06.2021. According to the Government Analyst's report, the substance produced before the Government Analyst has been identified as 39.44 grams of heroin (diacetylmorphine). The petitioner denies the allegation levelled against the suspect.

In her application, the petitioner pleads that the long incarceration of the suspect without being charged before a competent court is a ground that

should be considered as an exceptional circumstance for this Court to grant bail to the suspect.

The respondents have filed objections and stated that the petitioner had failed to demonstrate exceptional circumstances to invoke the jurisdiction of this Court. The respondents further stated that considering the gravity of the offence, there is a high probability and likelihood of the suspect absconding and getting involved in similar offences.

The provisions of section 83 of the Poisons, Opium and Dangerous Drugs Ordinance as amended by Act No. 41 of 2022 state;

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 in 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”.

Under the above provisions, if the pure quantity of dangerous drugs trafficked, imported or exported is 10 grams or above in terms of the Government Analyst’s report, only the Court of Appeal has the exclusive jurisdiction to grant bail in exceptional circumstances for a person accused or suspected of committing an offence under section 54A and 54B of the Ordinance.

What constitutes exceptional circumstances is not defined in the statute. Our Superior Courts have considered various situations as exceptional circumstances to grant bail for suspects in terms of the Ordinance.

In this matter, the Government Analyst's report is dated 14.10.2021. So far, no indictment has been filed before the High Court against the suspect. In the case of Kariyakarawanage Sithum Shamika Fernando v O.I.C. Police Station , Kuliypitiya 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. However, Courts have emphasised that delay alone cannot be considered an exceptional circumstance in terms of Section 83 of the Ordinance.

Taking into consideration the pure quantity of heroin detected, the period of incarceration without being charged and other circumstances, I consider this is an appropriate case to grant bail to the suspect. Hence, I order the suspect to be released on bail on the following conditions:

1. Cash bail of Rs. 100,000/-.
2. To provide two sureties. One of the sureties should be the petitioner. They must sign a bond for Rs.500,000.00 each.
3. To surrender his passport, if any, to the Court. An overseas travel ban is imposed on the suspect until the conclusion of the case.
4. To report to the police station in Matara on the Third Sunday of every month between 9.00 a.m. and 1.00 p.m.

The Registrar of this Court is directed to send copies of this Order to the Magistrate's Court in Matara and to the Officer-in-Charge of the Police Station in Matara.

Judge of the Court of Appeal

Pradeep Kirtisinghe J.

I agree.

Judge of the Court of Appeal.