

**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 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/0285/2023**

MC Welisara

Case No: B 763/2021

Officer-in-Charge,  
Organized Crimes and Corruption  
Prevention Division,  
No. 09, Mihindu Mawatha,  
Colombo 12

**Complainant**

**Vs**

John Lewis Vinod Kumar

**Suspect**

**AND**

Pathmanadan Kovaneswari  
268/58, Aluthmawatha Road,  
Modara, Colombo 15.

**Petitioner**

**Vs**

1. Officer-in-Charge,  
Organized Crimes and Corruption  
Prevention Division,  
No. 09, Mihindu Mawatha,  
Colombo 12

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

**Respondents**

3. John Lewis Vinod Kumar  
(Presently in remand Custody)

**Suspect - Respondent**

Before : P. Kirtisinghe J  
&  
R. Gurusinghe J

Counsel : Chamara Wannisekera, for the Petitioner  
Jehan Gunasekera, S.C. for the Respondent

Argued on : 14.09.2023

Decided on : 18.10.2023

### **ORDER**

R. Gurusinghe J

This is an application by the petitioner seeking bail for her husband, namely John Lewis Vinod Kumar, who the suspect in case is bearing No. B 763/2021 in the Magistrate's Court of Welisara. The suspect was arrested on 27-03-2021 near the Commercial Bank in Kerawalapitiya by the officers of the Organized Crimes and Corruption Prevention Division of Colombo 12 for allegedly having in possession a quantity of 54.0 grams of heroin, which is an offence punishable under section 54 (a) of the Poisons, Opium and Dangerous Drugs Ordinance (Ordinance) as amended.

The petitioner has been languishing in remand since 27-03-2021. According to the Government Analyst's report, the substance produced before the Government Analyst has been identified as 14.37 grams of heroin (diacetylmorphine). In the petitioner's application, the following facts were pleaded as exceptional circumstances for consideration by Court;

- a. Since being produced before Magistrate's Court on 28-03-2021, the suspect has been in remand custody.
- b. Suspect is the sole breadwinner of the family.
- c. The hardships experienced by the family members of the petitioner without the care and the protection of the suspect.
- d. The suspect's mother is suffering from breast cancer and the suspect is the only child who was taking care of all the expenses of his mother's treatment.

- e. Extended incarceration would cause irreparable damage to the suspect.

The suspect has no previous convictions or other pending cases.

The respondents have filed objections and stated that the petitioner has failed to establish exceptional circumstances.

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 grams 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”.

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 report is dated 30.07.2021. To date, no indictment has been filed before a 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 emphasized 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 more than two years and Five months without being charged and the 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/- each.
3. To surrender the suspect's 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 Organized Crimes and Corruption Prevention division of the Police, at No. 9, Mihindu Mawatha, Colombo 12, on the last 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 of Case No. B 763/2021, to the Magistrate's Court in Welisara and the Officer-in-Charge of Organized Crimes and Corruption Prevention division, No 9 Mihindu Mawatha, Colombo 12.

Judge of the Court of Appeal

Pradeep Kirtisinghe J.

I agree.

Judge of the Court of Appeal.