

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/274/2023

MC Gampaha

Case No: B 491/2021/21

Wattoru Thantrige Nihal Fernando,
28/12/3/F, St. Sebastian Mawatha,
Galgaduwa, Matagoda, Hendala
Wattala.

Petitioner

- **Vs** -

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

1st Respondent

2. The Officer-In-Charge,
Police Station,
Ganemulla

2nd Respondent

AND

Welambage Sudarshanie Nilanthi Perera

The suspect

Before : P. Kirtisinghe J

&

R. Gurusinghe J

Counsel : Niranjan Jayasinghe with Harshana Ananda

for the Petitioner

Jayalakshi de Silva, S.C. **for the Respondents**

Argued on : 11.10.2023

Decided on : 19.10.2023

ORDER

R. Gurusinghe J

This is an application by the petitioner seeking bail for his niece, namely, Welambage Sudarshanie Nilanthi Perera, who is the 1st suspect in the Magistrate's Court of Gampaha, bearing case no. BR 491/2021. The suspect along with two others was arrested by the officers attached to the Ganemulla Police Station on 25.02.2021, allegedly having been in possession of 2 parcels of heroin. According to the Government Analyst's report, each parcel contained 34.49 grams and 31.03 grams (65.52 grams) of heroin, which is an offence punishable under Section 54 A of the Poisons, Opium and Dangerous Drugs Ordinance (Ordinance) as amended by Act No. 41 of 2022.

The petitioner has been remanded since 26.02.2021. The respondents have sent one of the parcels to the Government Analyst and as per the Government Analyst's report dated 30.07.2021 the said parcel contains 31.03 grams of heroin. The respondents have made an application before the Magistrate's Court stating that inadvertently they have sent only one parcel to the Government Analyst and moved that the second parcel be sent to the Government Analyst. Application was allowed and according to the second Government Analyst's report dated 09.03.2022, the said parcel contained 34.49 grams of heroin.

The petitioner states that the negligent conduct of the 2nd respondent had caused an inordinate delay and the suspect is now in remand for more than two years without any legal remedy. The petitioner further states that the suspect had one previous connection on 18.07.2018, for having in possession of 111 milligrams of heroin, which was dealt with by way of a fine and one pending case bearing no. HC 8334/2016, pending before the High Court of Colombo. The petitioner also states that the suspect is a mother of four children and two are still schooling. Since her husband had long

deserted her, the whole burden of nourishing her two minor children still rests on her shoulder. The petitioner further states that one of the daughters had undergone an operation and the care and protection of the suspect is needed for that child.

The respondents have filed objections to this application and stated that the pending case against the suspect is for 10.14 grams of heroin. Further, states that the present case involves 65.52 grams of heroin and if convicted, the punishment is death or life imprisonment. Under these circumstances, there is a high risk of absconding.

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.”

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 **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”.

Failure of the 2nd respondent to send the two parcels together to the Government Analyst caused more than eight months of unnecessary delay in receiving the 2nd Government Analyst's report. The suspect has been in custody for more than two years and eight months without being indicted in the High Court.

The presumption of innocence ends only upon conviction. In considering these matters, the Court must bear in mind the presumption of innocence.

Taking into account the quantity of heroin detected, the period in remand, negligent acts of the police officers that caused unnecessary delay in sending the productions to the Government Analyst and other circumstances of the case, I consider this is an appropriate case to grant bail to the suspect. Hence, I order the suspect to be released on bail with the following conditions;

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

Registrar of this Court is directed to send copies of this Order to the Magistrate's Court of Gampaha and to the OIC Police Station, Ganemulla.

Judge of the Court of Appeal

Pradeep Kirtisinghe J.

I agree.

Judge of the Court of Appeal.