

**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/266/2023**  
MC Maligakanda  
Case No: B 8082/22

The Officer-in-Charge,  
Police Station  
Modara

**Complainant**

- Vs -

Mohamed Rasikul Ansar Mohamed  
Irshan,  
E/F3/U2, Randiya Uayana,  
Modara, Colombo 15

Presently of Welikada Prison.

**2<sup>nd</sup> Suspect**

**And Now Between**

Mohamed Thaufi Sharifa Hani  
E/F3/U2 Randiya Uayana,  
Modara, Colombo 15

- Vs -

The Officer-in-Charge  
Police Station  
Modara

**Complainant-Respondent**

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

**Respondent**

Before : P. Kirtisinghe J  
&  
R. Gurusinghe J

Counsel : Shamindra Rodrigo with Eranda Sinharage  
**for the Petitioner**  
I.M.M. Fahim, S.C. **for the Respondent**

Argued on : 11.10.2023

Decided on : 19.10.2023

### **ORDER**

R. Gurusinghe J

The petitioner in this bail application is the mother-in-law of the suspect in the case bearing No. B 8082/22 in the Magistrate's Court of Maligakanda.

The suspect was arrested by the Officers of the Modera Police Station on 17-03-2022, allegedly being in possession of 519.78 grams of heroin, which is an offence punishable in terms of Section 54A of the Poisons, Opium and Dangerous Drugs Ordinance as amended by Act No. 41 of 2022.

According to the Government Analyst's report, the pure quantity of heroin alleged to have been recovered from the suspect is 278.3 grams.

Section 83 of the Poisons, Opium, and Dangerous Drugs Ordinance, as 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 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”.

As per the above provisions of law, the suspect can only be released by the Court of Appeal, if there are exceptional circumstances.

The petitioner pleaded the following facts as exceptional circumstances for consideration of Court to release the suspect on bail.

1. *“Suspect has been in remand for more than one year.*
2. *In spite of the Government Analyst report having been received an indictment had not been served on the suspect, causing the suspect to experience indefinite detention without hope of the future.*
3. *The suspect's wife had abandoned the two children without having anyone to provide them parental care.”*

The respondents have filed objections to the application and stated that the petitioner has failed to establish exceptional circumstances to invoke the jurisdiction of this Court. Further, it was submitted that considering the high quantity of heroin and the gravity of the offence, there is a high possibility and great likelihood of the suspect absconding and repeating or getting involved in similar offences.

In **Ranil Charuka Kulatunga v. Attorney General CA (PHC) APN 134/2015** the court held that:

*“The quantity of cocaine involved in this case is 62.847 grams, which is a commercial quantity. If Petitioner is convicted, the punishment is death or life imprisonment. Under these circumstances, it is prudent to conclude the trial early while the Petitioner is kept in custody..”*

The period of remand, in this case, cannot be considered as exceptional circumstances.

In the case of *CA (PHC) APN 64/2009 dated 07/08/2009 W.L.R Silva J* interpreted the provisions of Poisons, Opium, and Dangerous Drugs Ordinance amended Act No 13 of 1984 and held that an accused had been in remand for more than three years would not constitute an “exceptional circumstance” warranted by s.83 of the Act. His Lordships Justice Silva further stated that *“if that was the intention of the legislature, the section itself would have stated the exceptional circumstances should not be insisted after three years and there is no such qualification”*.

In the case of *Attorney General v Ediriweera (2006) BLR pg.12*, it has been stated that *“delay is always a relative term and the question to be considered is not whether there was mere explicable delay, as when there was a backlog of cases, but whether there has been excessive or oppressive delay”*.

The grounds pleaded by the petitioner do not constitute exceptional circumstances.

Considering all the materials placed before this Court, the petitioner has failed to establish that there are exceptional circumstances to release the suspect on bail. As such this bail application is refused.

The Registrar of this Court is directed to send copies of this Order to the OIC Police Station of Modera, and the Magistrate’s Court of Maligakanda.

Judge of the Court of Appeal

Pradeep Kirtisinghe J.

I agree.

Judge of the Court of Appeal.