

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/247/23
MC Panadura
Case No: B 71557/20

Galhenage Mangalika Priyanthi,
No 457/M/1 Wilfred Senanayakapura,
Kahathuduwa, Polgasovita.

Petitioner

- **Vs** -

1. Hon. Attorney General,
Attorney General's Department
Colombo 12
2. Officer-in-Charge,
Crime Division, Western Province North
Peliyagoda

Respondents

Madurrapperumage Kanchana Priyadarshani
Madurrapperuma,
No. 457/M/1 Wilfred Senanayakapura,
Kahathuduwa, Polgasovita.

2nd Suspect

Before : P. Kirtisinghe J
&
R. Gurusinghe J

Counsel : Jaliya Samarasinghe
for the Petitioner

Lakmini Girihagama, DSG.
for the Respondent

Argued on : 10.10.2023

Decided on : 12.10.2023

R. Gurusinghe J.

The petitioner in this bail application is the mother of the second suspect. The second suspect is Madurapperumage Kanchana Priyadarshani Madurrapperuma (hereinafter referred to as the 2nd suspect) in B 71557/20 in the Magistrates Court of Panadura.

The 2nd suspect was arrested by the Crime Division, Western Province North, Peliyagoda on 30.01.2020 near Galanigama entrance of the Southern Highway, while she was travelling on a motorbike with the 1st suspect. She was alleged to be in possession of 5.515kg of heroin hidden in a bag that she was carrying at the time of her arrest. Three keys were discovered hidden in the cubbyhole of the motorbike. Upon further questioning, it was revealed that the keys were to their almirah, which was kept in their rented house and following the directions of the suspects, police were able to open the almirah by using those keys and recovered 187.348kg of heroin and foreign-made ten firearms and nineteen magazines.

According to the Government Analyst reports, the pure quantity of heroin is 126.348 kg. All ten pistols were foreign-made self-loading pistols and they are firearms within the meaning of section 2A of the Firearms Ordinance.

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 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”.

The petitioner urged the following facts at the inquiry as exceptional circumstances for consideration to grant bail.

1. The fundamental rights of the 2nd suspect were violated as she has been detained for more than three years since 30.01.2020.
2. As per the provisions of section 84 and section 85, the 2nd suspect cannot be detained in custody for more than 24 months.

The respondent objected to bail being granted to the 2nd suspect on the ground that the petitioner has failed to establish exceptional circumstances and the petitioner has suppressed material facts.

The main ground urged by the petitioner as exceptional circumstances is that the suspect has been in custody for more than two years. The main argument is that as per the provisions of sections 84 and 85, a suspect cannot be kept in remand for more than two years. As two years have already lapsed, keeping the suspect in remand is illegal.

The above argument cannot be accepted. Section 83(2) of the Poisons, Opium, and Dangerous Drugs Ordinance, as amended by Act No.41 of 2022, specifically provided that notwithstanding the provisions of sections 84 and 85, a person suspected or accused of an offence under subsection 1 of section 54A and 54B of which the pure quantity of the dangerous drug, trafficked or imported, exported or possessed is ten grammes or above in

terms of the Government Analyst's report under section 77A and which is punishable with death or life imprisonment shall not be released on bail except by the Court of Appeal in exceptional circumstances.

The law, therefore, envisages keeping suspects or those accused of an offence under of sections 54A and 54B, of which the pure quantity of the dangerous drug, trafficked or imported, exported or possessed is ten grams or above, in custody until the conclusion of the trial. However, the suspect can be released on bail as stipulated in section 83(2) of the Ordinance only if he can show that there exist exceptional circumstances on which he could invoke the jurisdiction of this court.

The law clearly sets out that the limitation of the period of remand stipulated in sections 84 and 85 does not apply to a person suspected or accused of an offence under sections 54A and 54B as provided in section 83(2) of the Ordinance.

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 circumstances" 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"*.

In this case, the quantity of the drugs involved is 126.348 kg of heroin, which is without doubt a commercial quantity.

In the case of Ranil Charuka Kulatunga Vs Attorney General CA (PHC) APN134/2015, the Court held that,

"the quantity of cocaine involved in this case is 62.847 grammes, 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."

Considering the material placed before this court, the petitioner has failed to adduce that there are exceptional circumstances to release the 2nd suspect on bail. Hence, this bail application is refused.

The Registrar of this court is directed to send copies of this order to the OIC Crime Division Western Province North, Peliyagoda and to the High Court of Panadura.

Judge of the Court of Appeal

Pradeep Kirtisinghe J.

I agree.

Judge of the Court of Appeal.