

**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/245/2023**  
MC Panadura  
Case No: B 71557/20

Galhenage Mangalika Priyanthi,

**Petitioner**

- **Vs** -

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

Madurapperumage Dhananjaya  
Dharmkumar

**1<sup>st</sup> Suspect**

Bethmage Upeksha Piumini Madushika

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

Before : P. Kirtisinghe J  
&  
R. Gurusinghe J

Counsel : Jaliya Samarasinghe **for the Petitioner**  
M. Fahim S.C. **for the Respondent**

Argued on : 08.09.2023

Decided on : 19.10.2023

## **ORDER**

R. Gurusinghe J

The petitioner in this bail application is the mother of the 1<sup>st</sup> suspect namely, Madurapperumage Dhananjaya Dharma Kumar (hereinafter referred to as the 1<sup>st</sup> Suspect) case bearing No. B 71557/20 in the Magistrate's Court of Panadura.

The 1<sup>st</sup> suspect was arrested by the Crime Division, Western Province North, Peliyagoda on 30-01-2020 near the Galinigama interchange of the Southern Expressway, while he was travelling by a motorcycle with the 2<sup>nd</sup> suspect. The 2<sup>nd</sup> suspect was alleged to have been in possession of 5.515 Kilograms of heroin hidden in the bag which was carried by her at the time she was arrested. The 1<sup>st</sup> suspect was the rider of the motorcycle at that time. The police officers found three keys hidden in the cubby hole under the seat of the motorcycle. 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, the police were able to open the almirah by using those keys and recovered 187.348 kilograms of heroin and ten foreign-made firearms and nine magazines with live cartridges.

According to the Government Analyst's report, the pure quantity of heroin detected in the substance sent to the Government Analyst was 126.348 Kilograms. All ten firearms were foreign-made and 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 10 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 of Court to grant bail.

1. The fundamental rights of the 1<sup>st</sup> suspect were violated as he has been in custody for more than three years since 30-01-2020.
2. As per the provisions of sections 84 and 85 of the Ordinance, the 1<sup>st</sup> suspect cannot be kept in remand for more than 24 months.

The respondents objected to bail being granted to the 1<sup>st</sup> suspect on the grounds that the petitioner had failed to establish exceptional circumstances and that the petitioner had suppressed material facts.

The main ground urged on behalf of the petitioner at the inquiry as exceptional circumstances was that the suspect had been in custody for more than two years. The argument is that as per the provisions of sections 84 and 85 the suspect cannot be kept in remand for more than two years and as the two years have already lapsed, keeping the suspect in remand is illegal.

The above contention cannot be accepted. Section 83 (2) of the Poisons, Opium, and Dangerous Drugs Ordinance Act, as amended by Act No. 41 of 2022, specifically provides 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 dangerous drugs trafficked, imported, exported or possessed is ten grams 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 accused of an offence under sections 54A and 54B, or which the pure quantity of dangerous drugs trafficked, imported, exported or possessed is 10.0 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."*

The suspect, having been in possession of 10 pistols and 19 magazines with live cartridges is aggravated against granting of bail to the suspect.

Considering the material placed before this Court, the petitioner has failed to produce that there are exceptional circumstances that warrant releasing the 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.