

**IN THE COURT OF APPEAL OF THE DEMOCRATIC SOCIALIST
REPUBLIC OF SRI LANKA**

In the matter of an application for Bail made under and in terms of Section 83(2) of the Poisons, Opium and Dangerous Drugs (Amendment) Act No. 41 of 2022 dated 23.11.2022.

Court of Appeal

Bail Application No:

CA Bail 0256/2023

HC Negombo

Case No. HC 288/19

The Democratic Socialist Republic of
Sri Lanka.

COMPLAINANT

Vs.

1. Noorbhoy Shaheeda
2. Mohomad Ishak Mohomad Nazar

ACCUSED

AND NOW BETWEEN

Noorbhoy Shaheeda

(Presently detained in Negombo Prison)

ACCUSED-PETITIONER

Vs.

1. The Officer-in Charge,

Police Narcotics Bureau,

Colombo-01.

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

RESPONDENTS

BEFORE : **Sampath B. Abayakoon, J.**
P. Kumararatnam, J.

COUNSEL : **Punarji Karunasekara for the**
Petitioner.
Kanishka Rajakaruna, SC for the
Respondents.

ARGUED ON : **19/07/2023.**

DECIDED ON : **20/10/2023.**

ORDER

P.Kumararatnam,J.

The Petitioner, who is the 1st Accused named in HC. Negombo Case No. HC 288/2019 had applied for bail for her.

On 09.09.2015, the Petitioner was arrested at the Bandaranayake International Airport by officers attached to the Police Narcotics Bureau with the assistance of Sri Lanka Customs upon an allegation relating to possession of 190 grams of Heroin. According to police the contraband was seized from two packets of Cadbury Chocolate put in a duty free bag. Three other persons also arrested after the arrest of the Petitioner.

The Petitioner and three others were produced and facts were reported to the Negombo Magistrate under Section 54A (c) and (d) of the Poisons, Opium and Dangerous Drugs Ordinance as amended by the Act No.13 of 1984 and a detention orders were obtained for Petitioner and others for further investigations under Section 82(3) of the said Act.

The production had been sent to the Government Analyst Department on 28/09/2015. After analysis, the Government Analyst had forwarded the report to Court on 17/11/2015. According to the Government Analyst, 101.81 grams of pure Heroin (Diacetylmorphine) had been detected from the substance sent for the analysis. The Petitioner and the 2nd Accused were indicted in the High Court Negombo on 07.03.2019. The 3rd and 4th Suspects were discharged by the Court on the recommendation of the Attorney General.

According the Petitioner, her belongings including the questioned bag were in control of a third party while she was having tea at the Chennai Airport before she gets in to the flight. Hence, she takes up the position that the bag in which the contraband was recovered was not in her exclusive possession.

The Petitioner has pleaded following exceptional circumstances in support of her Bail Application.

1. The Petitioner had been in remand over 08 years.
2. The alleged drug parcel was not recovered from her exclusive possession.
3. Due to non-appearance of PW3 the trial is unnecessarily being delayed in the High Court.
4. The scarcity of medicine in the hospital had aggravated her health condition.

The Learned State Counsel opposing for bail, submitted that the delay is not an exceptional circumstance to be considered to enlarge the

suspect on bail. Further, the time spent for preparing the indictment does not constitute an exceptional circumstance.

The suspect is in remand for nearly 08 years. According to the Government Analyst Report, the pure quantity of Heroin detected from the possession of the Petitioner is 101.81 grams.

Exceptional circumstances are not defined in the statute. Hence, what is exceptional circumstances must be considered on its own facts and circumstances on a case by case.

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”.

The Section 83 of the Poison, Opium and Dangerous Drugs Act which was 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 is 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.

In this case, the pure quantity of Heroin detected in the production by the Government Analyst is 101.81 grams. Hence, this court has jurisdiction to consider granting of bail as per the new amendment.

Although two bail applications were filed before the High Court of Negombo on behalf of the Petitioner, the Learned High Court Judge had refused bail citing that the Petitioner had failed to adduce exceptional circumstances in her applications.

The production was sent to the Government Analyst Department on 28.09.2015 and the report was received by the Magistrate Court of Negombo on 17.11.2015. The Attorney General had taken more than 3 years send out indictment to the High Court of Negombo.

The Counsel for the Petitioner submitted that the police have fabricated a case against the Petitioner as the contraband was never in her exclusive possession.

I agree with the learned State Counsel that the factual and evidentiary matters pertain to the investigations can only be tested at the trial upon the witnesses being cross examined and shall not be tested at the time of hearing this bail application considering the nature of this case.

AS the trial is commenced and PW 01 had given evidence and PW3 was summoned on 03.02.2023, I do not consider the delay more than 08 years in remand falls into the category of excessive and oppressive delay considering the circumstances of this case.

The Offence under Section 54A (c) (d) and (b) of the Poisons Opium and Dangerous Drugs Ordinance as amended by the Act No.13 of 1984 is a serious offence and the seriousness of the offence should be considered when bail is considered.

In this case the pure Heroin detected is 101.81 grams, which certainly a commercial quantity. Considering the seriousness of the sentence prescribed under the Poison, Opium and Dangerous Drugs Ordinance, there is a high risk of absconding. Hence, it is prudent to conclude the High Court case expeditiously keeping the Petitioner in remand.

Considering all these factors into account, especially the pure quantity of Heroin detected, how the Heroin was brought in to Sri Lanka and other circumstances of the case, I consider this is not an appropriate case to grant bail to the Petitioner at this stage.

Hence, the bail application is hereby dismissed.

The Registrar of this Court is directed to send this order to the High Court of Negombo and Officer-in-Charge of the Police Narcotics Bureau, Colombo-01

JUDGE OF THE COURT OF APPEAL

SAMPATH B. ABAYAKOON, J.

I agree.

JUDGE OF THE COURT OF APPEAL