

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

In the matter of an application for Bail in terms of 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/201/2023

HC Colombo

Case No: HC 2893/21

Sammugan Sagadevan

Accused-Petitioner

Vs -

1. Hon. Attorney General,
Attorney General's Department,
Colombo 12
2. The Officer-in-Charge
Police Narcotic Bureau,
Colombo

Respondents

Before : P. Kirtisinghe J

&

R. Gurusinghe J

Counsel : I.B.S. Harshana with Dulan Wijewickrama

for the Petitioner

Kanishka Rajakaruna S.C. for the Respondent

Argued on : 19.09.2023

Decided on : 20.10.2023

ORDER

R. Gurusinghe J

This is an application by the petitioner who is the accused in Case bearing No. HC 2893/21 in the High Court of Colombo. The petitioner was arrested on 23-09-2019 by the officials of the Police Narcotics Bureau (PNB) and produced before the Magistrate's Court of Maligakanda in B 28543/19. The petitioner has been in remand custody since 23-09-2019.

The petitioner was charged in the High Court for trafficking and being in possession of 119.2 grams of heroin.

The petitioner pleads that he is a father and was employed as a laborer on a daily basis. The petitioner pleads that he has been in remand for more than three and half years and as a result, his family is undergoing immense difficulties. He has no other pending cases or previous convictions.

The respondents have filed objections to the petitioner's application and stated that the petitioner had failed to establish exceptional circumstances to invoke the jurisdiction of this Court. Further, they have stated that the petitioner had suppressed material facts.

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”.

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 SriLR 180** the court held that:

“the decision must in each case depend on its own peculiar facts and circumstances”.

The petitioner has already been in custody for more than four years. So far the trial has not been started in the High Court and it might take a considerable time to conclude the case.

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

Taking into consideration the quantity of heroin detected, the period of more than four years in custody without the trial being started and the other circumstances, I consider this is an appropriate case to grant bail to the petitioner.

Therefore, I order the accused to be released on the following conditions:

1. Cash bail of Rs. 100,000/-.
2. To provide two sureties acceptable to the Learned High Court Judge. They must sign a bond of Rs. 1,000,000.00 each.
3. To surrender the accused passport, if any, to the Court and an overseas travel ban is imposed on the suspect until the conclusion of the case.
4. To report to the PNB Colombo on the 1st Sunday of every month between 9.00 a.m. and 1.00 p.m.

Registrar of this Court is directed to send copies of this Order to the High Court of Colombo and OIC of the PNB, Colombo.

Judge of the Court of Appeal

Pradeep Kirtisinghe J.

I agree.

Judge of the Court of Appeal.