

**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

The Officer-in Charge

Bail Application No:

Police Narcotics Bureau

CA Bail 0101/2022

Colombo-01

COMPLAINANT

MC Maligakanda

Vs.

Case No. B 22513/22

Amugoda Kankanamage Prabath

Prasanga Priyadarshana

No.59, Mugalan Road,

Colombo-06.

(In Colombo Remand Prison)

SUSPECT

AND NOW BETWEEN

Thyagaraja Chandramathi Monica

No.59, Mugalan Road, Kirulapana,

Colombo-06.

PETITIONER

Vs.

1. The Officer-in Charge,
Police Narcotics Bureau,
Colombo-01.

COMPLAINANT-RESPONDENT

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

RESPONDENT

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

COUNSEL : **Asthika Devendra with Vimukthi
Karunaratne and Eranda Sinharage for
the Petitioner.**
**Kanishka Rajakaruna, SC for the
Respondents.**

ARGUED ON : **20/07/2023.**

DECIDED ON : **23/10/2023.**

ORDER

P.Kumararatnam,J.

The Petitioner, who is the wife of the Suspect named in MC. Maligakanda Case No. B 22513/2022 had applied for bail for her husband.

On 26.08.2022, upon an information, the Suspect was arrested at his resident by officers attached to the Police Narcotics Bureau on an allegation relating to possession of 30.500 grams of Heroin. According to police the contraband was seized from drawer wrapped in a tulip bag. The Salutes also recovered a sum of Rs.2,105,880/- from the same drawer. A electronic scale also had been recovered by the police.

The Suspect was produced and facts were reported to the Maligakanda Magistrate under Section 54A (b) and (d) of the Poisons, Opium and Dangerous Drugs Ordinance as amended by the Act No.13 of 1984 and a detention order was obtained against the Suspect for further investigations under Section 82(3) of the said Act.

The production had been sent to the Government Analyst Department on 29/08/2022. After analysis, the Government Analyst had forwarded the report to Court on 17/11/2022. According to the Government Analyst, 13.43 grams of pure Heroin (Diacetylmorphine) had been detected from the substance sent for the analysis. Traces of Heroin had been identified in the plastic bag and the digital scale. The police also informed court that the trafficker of Heroin in this case is living abroad. Thus, obtained an order to examine the bank accounts which involved in those incidents.

The Petitioner denies that the Suspect never involved in drug trafficking nor possessed any illegal drugs. According to her this a cooked up story created by the police, complaints had already been lodged at the Human Right Commission and the Police Commission. The Petitioner further submits that an investigation had already been commenced by the Police Commission.

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

1. That the Suspect married with 2 children and he is the sole bread winner of the family where his wife the Petitioner is engaging with no occupation.
2. The family members of the Suspect are undergoing many hardships due to the fact that he is languishing in remand custody for a lengthy time period.
3. The educational affairs of the two children of the Suspect also very badly affected due to the mental agony caused to them resulted from the Suspect being kept in remand custody for a long time.

The Learned State Counsel opposing for bail, submitted that the family matters cannot be considered as exceptional circumstances.

The suspect is in remand for nearly 01 year. According to the Government Analyst Report, the pure quantity of Heroin detected from the possession of the Petitioner is 13.43 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 13.43 grams. Hence, this court has jurisdiction to consider granting of bail as per the new amendment.

The production was sent to the Government Analyst Department on 29.08.2022 and the report was received by the Magistrate Court of Maligakanda on 17.11.2022. According to the State Counsel the indictment has been filed in the High Court of Colombo on 26.06.2023. The Attorney General has forwarded indictment within a year in this case.

The Counsel for the Petitioner submitted that the police have fabricated a case against the Suspect as the contraband was never found in his 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.

The Offence under Section 54A (c) and (d) 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 13.43 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 Suspect in remand.

Considering all these factors into account, especially the pure quantity of Heroin detected and other circumstances of the case, I consider this is not an appropriate case to grant bail to the Suspect at this stage.

Hence, the bail application is hereby dismissed.

The Registrar of this Court is directed to send a copy of this order to the Magistrate Court of Maligakanda 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