

**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 of the Poisons, Opium and Dangerous Drugs Ordinance as amended by Ac No.41 of 2022.

**Court of Appeal No.**

The Attorney General

**Court of Appeal Case No.**

Attorney General's Department

**CA /Bail/ 0222/2023**

Colombo-12.

**High Court Chilaw No.**

**COMPLAINANT**

**HC 65/2022**

**Vs.**

**MC Marawila**

1. Edirisinghe Mohandiram Appuhamilage

**No.B/1832/20**

Jayasankha

2. Ambagahawatta Saman Sanjeewa

3. Nissanka Bamunu Arachchilage

Sampath Bandara

**AND NOW BETWEEN**

Edirisinghe Mohandiram Appuhamilage

Jayasankha

**1<sup>ST</sup> ACCUSED-PETITIONER**

**Vs.**

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

**RESPONDENT**

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

**COUNSEL** : **Tenny Fernando for the Petitioner.**  
**Kanishka Rajakaruna, SC for the**  
**Respondent.**

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

**DECIDED ON** : **25/10/2023.**

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**ORDER**

**P.Kumararatnam,J.**

The Petitioner is the 1<sup>st</sup> Suspect named in M.C. Marawila Case No. B 1832/20. He had been indicted along with others in the High Court of Chilaw under case No.HC 65/22. He had filed this bail application under Section 83(2) of Poisons, Opium and Dangerous Drugs Amended Act No.41 of 2022 in this Court.

On 01.10.2020, upon an information the officers from the Police Narcotics Bureau, Colomb-01 had arrested the 2<sup>nd</sup> Accused named in the indictment and recovered 2.232 Kilograms of substance which reacted for Heroin. Although the substance was recovered from the

possession of the 2<sup>nd</sup> Accused named in the indictment, the Petitioner and the 3<sup>rd</sup> Accused in this case were arrested of the allegation that they had aided and abetted the 2<sup>nd</sup> Accused to possess and traffic Heroin. After the arrest of the Petitioner by the officers attached to the Police Narcotics Bureau, they had taken in to their custody a car bearing No. WP CAA 8550 from the possession of the Petitioner.

The Petitioner and other two were produced and facts were reported to the Marawila Magistrate under Section 54A (b) (c) and (d) and of the Poisons, Opium and Dangerous Drugs Ordinance as amended by the Act No.13 of 1984 read with Section 102 of the Penal Code and a detention order was obtained for further investigations under Section 82(3) of the said Act.

The production had been sent to the Government Analyst Department and after analysis, the Government Analyst had forwarded the report to Court. According to the Government Analyst, 1.2936 kilograms of pure Heroin (Diacetylmorphine) had been detected from the substance sent for the analysis.

According to the Petitioner he is the sole breadwinner of the family. He is looking after his sickly mother. He has no previous conviction or pending case. He has been incarcerated nearly about three years as at now.

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

1. There is no positive evidence to establish that the Petitioner had aided and abetted in this case.
2. No drugs were found in his possession by the police officers at the time of his arrest.
3. The Petitioner had been in remand nearly three years to date.

The State opposing to bail submitted that the indictment has already been served, pre-trial is over and the witnesses are summoned to

commence the trial. Hence, Learned State Counsel submitted that the delay is not an exceptional circumstance to be considered to enlarge the Petitioner on bail. Further, the time spent for preparing the indictment does not constitute an exceptional circumstance. The suspect is in remand for nearly about three years.

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 1.2936 kilograms. Hence, this court has jurisdiction to consider granting of bail as per the new amendment.

The Learned Counsel for the Petitioner submitted that the investigation against the Petitioner is not based on substantial grounds and the conduct of the officers of Police Narcotics Bureau is already disbelieved on certain extend by the Attorney General and benefit should be given to the Petitioner by releasing him on bail as the allegation against the Petitioner is only aiding and abetting the second Accused named in the indictment.

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.

Further, I do not consider the delay about two years and 10 months in remand falls into the category of excessive and oppressive delay considering the circumstances of this case.

The Offence under Section 54A (b) of the Poisons Opium and Dangerous Drugs Ordinance as amended by the Act No.13 of 1984 and read with Section 102 of the Penal Code is a serious offence and the seriousness of the offence should be considered when bail is considered.

In **Ranil Charuka Kulatunga v. Attorney General CA (PHC) APN 134/2015** the court held that:

*“The quantity of cocaine involved in this case is 62.847 grams, 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.”*

In this case the pure Heroin detected is 1.2936 kilograms, which certainly a very high 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, the nature of the charge framed against the Petitioner and other circumstances of the case, I consider this is not an appropriate case to grant bail to the Petitioner at this stage. Hence, I refuse to release the Petitioner on bail.

Hence, the bail application is hereby dismissed.

The Registrar of this Court is directed to send a copy of this order to the High Court of Chilaw 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**