

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

*In the matter of an application for bail made  
under section 83 (2) of the Poisons, Opium  
and Dangerous Drugs (Amendment) Act No.  
41 of 2022.*

**Court of Appeal No:**

Dissanayake Mudiyansele Shayma

**CA/BAL/214/23**

Dilrukshi Dissanayake

No. 546, Weediya Mawatha,

**High Court Colombo**

Kandana.

**Case No:** HC 3215/2021

**PETITIONER**

**Vs.**

**Magistrate Court Negombo**

1. The Officer in Charge,

**Case No:** L 98143/2019

Police Narcotics Bureau,

Colombo 01.

2. The Attorney General,

Attorney General's Department,

Colombo 12.

**RESPONDENTS**

3. Dissanayake Mudiyansele Ranjith

Kumara

**ACCUSED**

Before : Sampath B. Abayakoon, J.  
: P. Kumararatnam, J.  
Counsel : Nimal Jayasinghe with Jaliya Samarasinghe for the  
Petitioner  
: Ridma Kuruwita, S.C. for the Respondent  
Inquiry on : 24-07-2023  
Order on : 26-10-2023

**Sampath B. Abayakoon, J.**

This is an application by the petitioner seeking bail for her husband namely, Dissanayaka Mudiyansele Ranjith Kumara (hereinafter referred to as the accused) who is now the 1<sup>st</sup> accused in the High Court of Colombo Case No 3215/21 Case.

The accused, along with another has been arrested by the officers of the Police Narcotic Bureau (PNB) on 23-06-2019 while allegedly being in possession of 2 kilograms and 28 grams of a substance suspected to be Heroin, 12 kilograms and 776 grams of Cannabis, 500 pills of Ecstasy, a firearm and seven rounds of live ammunition.

According to the B-report No-L98145/2019 filed before the Magistrate of Negombo by the Officer-in-Charge of the PNB in that regard, these are offences punishable in terms section 54A (b) and (d) of the Poisons, Opium and Dangerous Drugs Ordinance as amended, Firearms Ordinance, and Conventions Against Illicit Traffic in Narcotics Drugs and Psychotropic Substance Act No-01 of 2008.

The 2<sup>nd</sup> suspect arrested at that time who is now the 2<sup>nd</sup> accused in the High Court Case has been arrested for aiding and abating the accused.

It has been reported that at the time of the arrest, a sum of Rs. 108320/- was also recovered from the house where the drugs were found.

The accused has been in remand from the date of the arrest, and according to the Government Analyst Reports submitted to the Court, the substance produced before the Government Analyst had been identified as a substance having a total of 340.072 grams of Diacetylmorphine, namely, Heroin in the 13 separate packets produced, and the other four packets produced has been identified having parts of the Hemp plant (Cannabis Sativa L). The four packets which contained 500 tablets have been identified as Methylenedioxyphenethylamine having a total weight of 240.2 grams, which is a prohibited drug in terms of Conventions Against Illicit Traffic in Narcotics Drugs and Psychotropic Substance Act No-01 of 2008.

In the application for bail before this Court, the petitioner has claimed that the accused was not arrested in the manner as claimed by the police and had denied the charges against the Accused. It has been submitted that the delay in filing charges against the accused and the delay in concluding the trial against him as exceptional grounds that warrant the intervention of this Court to grant bail for the accused.

At the hearing of this bail application, the learned Counsel for the petitioner contended, among other grounds that the fact of the accused being in remand custody for over four years without the case being heard before the High Court should constitute sufficient exceptional grounds to grant bail for the accused. He also brought to the notice of the Court that the 2<sup>nd</sup> accused indicted has already been granted bail.

The learned State Counsel opposing the bail application submitted that the indictment dated 10-08-2021 in this regard has been filed before the High Court of Colombo and the proceeding has commenced. She justified the time taken for

the filing of the indictment on the basis that this was a matter that needed extensive investigation and consideration.

The previous section 83 of the Poisons, Opium and Dangerous Drugs Ordinance as amended by Act No. 13 of 1984 was repealed and replaced by a new section 83 by Poisons, Opium and Dangerous Drugs (Amendment) Act No. 41 of 2022 in the following manner.

**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.**

**(3) For the purposes of this section “dangerous drug” means Morphine, Cocaine, Heroin and Methamphetamine.**

Although, section 83 that existed until the Amendment Act No. 41 of 2022 became effective had vested the power to grant bail for a person suspected or accused of an offence committed under section 54A or 54B of the Poisons, Opium

and Dangerous Drugs Ordinance to the relevant High Court in exceptional circumstances, the amendment has provided for different jurisdictions to grant bail under mentioned circumstances.

Under the provisions of section 83 (2) of the Amendment Act No. 41 of 2022, notwithstanding the provisions of sections 84 and 85, if the pure quantity of the dangerous drug trafficked, imported, exported or possessed is 10 grams or above in terms of the Government Analyst Report, in such circumstances only the Court of Appeal which has the exclusive jurisdiction to grant bail in exceptional circumstances for a person accused or suspected of committing an offence in terms of section 54A or 54B of the Ordinance.

Section 84 and 85 are the provisions where it has been stipulated that a suspect or an accused shall not be detained in custody for a period exceeding 12 months from the date of arrest and up to another period of 12 months on an application made by the Attorney General to the High Court.

Since it has been established that one of the substances alleged to have been found in the possession of the accused was Heroin, and had a pure quantity of 340.072 grams, this is a matter which comes within the purview of this Court to consider bail for the suspect under exceptional circumstances.

What constitutes exceptional circumstances have not been defined in the Statute.

Our Superior Courts have considered various situations at various times as exceptional in deciding to grant bail for suspects in terms of the Poisons, Opium and Dangerous Drugs Ordinance.

In **CA (PHC) APN No.16-12 decided on 14-06-2012**, the Court of Appeal considered failing to file an indictment even one year after the receipt of the Government Analyst Report as relevant in granting bail for a suspect.

However, it needs to be noted that there are several other instances where the Court of Appeal did not consider the time period a suspect person has been incarcerated as relevant exceptional circumstances in order to grant bail.

In the case of **CA (PHC) APN No. 9-2010 decided on 19-07-2010**, the Court of Appeal considered the facts reported by the police in the B-report as relevant to consider whether there are exceptional circumstances to grant bail to a suspect. Similarly, there are judgements, which say that facts cannot be considered as exceptional circumstances.

The above varied decisions by our Superior Courts clearly establish the fact that whether a certain situation amounts to exceptional circumstances or not, has to be considered on a case-by-case basis, unique to each application before the Court.

It is the view of this Court that if the relevant B-report and other material placed before the Court by the relevant investigation authority, provides a sufficient basis to consider granting bail to a suspect, there exists no impediment for this Court to consider them as relevant in determining whether exceptional circumstances exist under a given situation.

Having considered the relevant facts and the circumstances reported to the Court in relation to this matter, I agree with the contention of the learned State Counsel that although over four years have passed from the arrest of the accused, since the charges have been preferred against the accused, such a time period cannot be considered as an unusual delay in prosecuting the accused.

I am of the view that the multiple charges preferred against the accused are charges of a very serious nature, which needs to be considered in determining whether there are exceptional circumstances to grant bail to the accused and the delay should not be the only basis that should be considered in that regard.

The application for bail is refused, as I find no basis to grant bail for the accused for want of sufficient exceptional circumstances.

The Registrar of the Court is directed to communicate this order to the High Court of Colombo and the OIC of the Police Narcotics Bureau for necessary information.

Judge of the Court of Appeal

**P. Kumararatnam, J.**

I agree.

Judge of the Court of Appeal