

**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/0384/2023**

HC Colombo

Case No: HC 4195/06/2023

The Democratic Socialist Republic of  
Sri Lanka

**Complainant**

Vs

Ratnayake Mudiyanseelage Neranjan  
Dharshana Jayawardana

**Accused**

**AND NOW BETWEEN**

Hettiyadura Chrisanthima Nirmali  
Fernando,  
No. 05, Temple Road,  
Mutwal, Colombo 15

**Petitioner**

**Vs**

1. Officer-in-Charge  
Police Narcotic Bureau (PNB)  
Colombo 01
2. The Hon. Attorney General,  
Attorney General's Department  
Colombo 12

**Respondents**

**AND**

Ratnayake Mudiyansele Neranjan  
Darshana Jayawardana

**Accused**

Before : P. Kirtisinghe J  
&  
R. Gurusinghe J

Counsel : Punarji Karunasekara, for the Petitioner  
Chathurangi Mahawaduge, S.C. for the Respondent

Argued on : 20.09.2023

Decided on : 31.10.2023

**ORDER**

R. Gurusinghe J

The petitioner is the wife of the accused namely, Rathnayaka Mudiyansele Neranjan Darshana Jayawardana, in the case bearing No. HC 4195/23 in the High Court of Colombo. The petitioner filed this bail application in terms of section 83(2) of the Poisons, Opium, and Dangerous Drugs Ordinance as amended by Act No. 41 of 2022.

The accused was arrested on 09-04-2021 by the officers of the Police Narcotic Bureau Colombo at Wattala, for allegedly having in possession of 101 grams of heroin, which is an offence punishable under section 54A(d) of the Poisons, Opium, and Dangerous Drugs Ordinance as amended. According to the Government Analyst Report, the substance produced before the Government Analyst had been identified as 72.2 grams of Methamphetamine and 36.1 grams of Heroin.

The petitioner has pleaded the following facts as exceptional circumstances for consideration of the Court to grant bail:

1. The accused has been in remand for more than two years.
2. The accused is a young person who is 36 years old.
3. The accused has no previous convictions or pending cases.
4. The accused is a businessman who is engaged in the business of motorbike spare parts and the business of money lending to earn interest.
5. The accused is a married person and also a father of two minor children 14 and 8 years old respectively (Copies of birth certificates were annexed to the petition).
6. The daughter of the accused is severely suffering from Leukaemia and with deep inability to fulfil her medical needs; the entire family is in a destitute situation since the father of the ill child is in remand custody (Copies of medical reports were annexed to the petition).
7. Though the indictment was prepared on 30.07.2021, the 2<sup>nd</sup> respondent has spent more than 01 year and 04 months to forward the same to institute the action against the accused.

The respondents have filed objections and stated that the petitioner has failed to submit any exceptional circumstances which warrant intervention in this matter.

The respondents have also submitted that considering the high quantity of heroin and methamphetamine and the gravity of the offence, there is a high probability and great likelihood of the accused absconding and /or repeating and/or getting involved over the same offence, causing and/or posing a threat to the Criminal Justice System and to the society at large.

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 grams 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”.*

In considering these matters, the Court must bear in mind that the presumption of innocence ends only upon conviction. The accused has been languishing in custody for more than two and a half years. The accused has no previous convictions or other pending cases. The trial against the accused in the High Court had not been commenced when this matter was taken up for inquiry.

In the Bail Application of CA Bail/0109/22, P. Kumararatnam, J., quoting from the judgment of the Supreme Court of Victoria stated as follows:

*In Nasher v. Director of Public Prosecution [2020] VSCA 144 the court held that: “a combination of delay, onerous custodial conditions, and the relative weakness of the prosecution case may when considered with all relevant circumstances, compel the conclusion that exceptional circumstances have been established”*

Taking into consideration the quantity of dangerous drugs, the period of incarceration and other circumstances, I consider this is an appropriate case to grant bail, but under strict conditions, to the accused. Hence, I order the accused to be released on the following conditions:

1. Cash bail of Rs. 250,000/=
2. To provide two sureties. One of the sureties should be the petitioner. They must sign a bond of Rs.1.0 million each.
3. To surrender his passport, if any, to the court. An overseas travel ban is imposed on the accused until the conclusion of the case.

4. To report to the Police Narcotic Bureau Colombo on the 1<sup>st</sup> Sunday of every month between 9:00 a.m. and 2.00 p.m.
5. The permanent residing address of the accused should be provided to the High Court and such residence should not be changed without leave of the High Court, until the conclusion of the case.

The Registrar of this Court is directed to send copies of this order to the High Court of Colombo and the Officer in charge of Police Narcotic Bureau Colombo.

Judge of the Court of Appeal

Pradeep Kirtisinghe J.

I agree.

Judge of the Court of Appeal.