

**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 Poisons, Opium and  
Dangerous Drugs (Amendment) Act No. 41  
of 2022.*

**Court of Appeal No:**

**CA/BAL/209/23**

The Officer in Charge,

Police Station,

Wellampitiya.

**COMPLAINANT**

**Magistrate Court Colombo**

**Vs.**

**Case No:** B 69690/22

John Got Brisman Fernando

**SUSPECT**

**AND NOW BETWEEN**

Mary Matilda Balakrishnan,

No. AA/33, St. Anthony Mawatha,

Colombo 13.

**PETITIONER**

**Vs.**

1. The Officer in Charge,  
Police Station,  
Wellampitiya.
2. The Attorney General,  
Attorney General's Department,  
Colombo 12.

**COMPLAINANT-RESPONDENT**

John Got Brisman Fernando  
(Presently detained in Colombo Remand  
Prison)

**SUSPECT-RESPONDENT**

Before : Sampath B. Abayakoon, J.  
: P. Kumararatnam, J.  
Counsel : Vindya Ekanayake for the petitioner  
: Malik Azeez, S.C. for the State  
Inquiry on : 28-08-2023  
Order on : 31-10-2023

**Sampath B. Abayakoon, J.**

This is an application by the petitioner seeking bail for her brother namely, Jhon Got Briman Fernando (hereinafter referred to as the accused) who is now the suspect in the Magistrate's Court of Colombo Case No. B 60690/22.

The suspect has been arrested by the officers of the Police Special Task Force (STF) on 29-04-2022 while allegedly having in his possession a substance believed to be Heroin. When the substance was weighed, it has been found that the substance had a gross weight of 29 grams and 570 milligrams.

According to the B-report filed before the Magistrate of Colombo by the Officer-in-Charge of the Wellampitiya police in that regard, this was an offence punishable in terms section 54A (b) and (d) of the Poisons, Opium and Dangerous Drugs Ordinance as amended.

The accused has been in remand from the date of the arrest, and according to the Government Analyst Report dated 30-09-2022 the substance produced before the Government Analyst had been identified as a substance having 19.36 grams of Diacetylmorphine, namely, Heroin.

In the application for bail before this Court, the petitioner has claimed that the suspect was not arrested in the manner as claimed by the police and had denied the charges against the Accused, She has submitted that the long period of incarceration of the accused without being tried by a competent Court as an exceptional ground that warrants 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 that the fact the accused being in remand custody for nearly one and half years without he being charged if he has committed an offence, should constitute sufficient exceptional grounds to grant bail for the accused.

The learned State Counsel opposing the bail application submitted that the alleged delay should not be considered as a reason to grant bail for the accused. However, he admitted that the relevant extracts of the matter have not been received so far by the Hon. Attorney General for him to consider whether to forward an indictment against the suspect to the relevant High Court.

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 the substance alleged to have been found in the possession of the accused was Heroin, and had a pure quantity of 19.36 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.

In this matter, the accused had been arrested and produced before the Magistrate's Court on 29-04-2022, and although the Government Analyst report has been received some time ago, the indictment against him has not been filed. As admitted by the learned State Counsel even the relevant extracts have not yet been received by the Hon. Attorney General.

It appears from the Magistrate's Court proceedings that that this is not a matter that requires extensive investigations to complete investigation by the investigating authority. I find that the failure of the investigating authority to send the relevant extracts to the Hon. Attorney General shows the lethargic attitude of the police towards this case.

It is my considered view that fact in itself constitute sufficient exceptional ground to release the suspect on bail pending the conclusion of the action against him.

It is ordered that the suspect shall be released on the following conditions of bail.

(1) Cash bail Rs. 100,000/=

(2) Two sureties with Rs. 500,000/= each surety bail. One of the sureties should be the petitioner. The other surety shall also be a close relative or a family member of the suspect and that surety shall tender an

affidavit indicating the relationship he or she is having to the suspect before signing the bail bond.

- (3) The suspect is ordered to report to the OIC of the Wellampitiya police every last Sunday of the month between 9.00 a.m. and 12 noon until the conclusion of the case against him.
- (4) The suspect is prevented from traveling overseas until the conclusion of the case. If he is possessed of a passport, he shall surrender the passport to the Registrar of the Magistrate's Court of Colombo. If he has not obtained a passport, he shall file an affidavit in that regard before being released on bail.
- (5) The Registrar of the Magistrate's Court of Colombo is directed to inform the Controller of Immigration and Emigration that a travel ban has been imposed on the suspect until the conclusion of his case and is also ordered to provide the necessary details in that regard to the Controller.

The Registrar of the Court is directed to communicate this bail order to the Magistrate's Court of Colombo for necessary compliance and also to the OIC of the Wellampitiya Police.

Judge of the Court of Appeal

**P. Kumararatnam, J.**

I agree.

Judge of the Court of Appeal