

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/0315/2023

MC Anuradhapura
Case No: B 2268/22

Officer-in-Charge,
Vice Unit,
Police Station
Anuradhapura

Complainant

Vs

Siyambala Pitiyage Asanka Prasad
Gunasekera
No. 665/A Towerline Road,
Gnanikkulama, Anuradhapura

Suspect

AND NOW BETWEEN

Siyambala Pitiyage Asanka Prasad
Gunasekera
No. 665/A Towerline Road,
Gnanikkulama, Anuradhapura

Suspect -Petitioner

Vs

1. Officer-in-Charge
Vice Unit,
Police Station
Anuradhapura

Complainant-Respondent

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

Respondent

Before : P. Kirtisinghe J
&
R. Gurusinghe J

Counsel : Sahan Kulatunga with Thilini Samarasekara
for the Petitioner
Jehan Gunasekara, S.C. for the State

Argued on : 06.09.2023

Decided on : 01.11.2023

ORDER

R. Gurusinghe J

This application was filed by the petitioner who is the suspect of case bearing no. MC-B2268/2022 in the Magistrate's Court of Anuradhapura, is seeking to be released on bail. The petitioner was arrested on 08-06-2022, for allegedly being in possession of 140 grams of heroin, which is an offence punishable under Section 54A of the Poisons, Opium, and Dangerous Drugs Ordinance as Amended, by the Officers of the Anuradhapura Police Station. According to the Government Analyst report dated 10-11-2022, the substance produced before the Government Analyst had been identified as 63.97 grams of heroin.

The petitioner pleaded the following grounds as exceptional circumstances for consideration of court:

- a. The improbabilities of the version of events as indicated by the Complainant-Respondent in the Reports filed in the Magistrate's Court

of Anuradhapura in Case No. 2268/22 make it clear that this case has been fabricated against the Petitioner.

- b. The high prevalence of drug cases being fabricated by Officers of the Police Department.
- c. The Petitioner had assisted the investigation in its entirety.
- d. The preliminary investigations into the matter have been concluded.
- e. The further/important investigations into the matter have been concluded.
- f. The Petitioner had been in remand custody for close to 10 months.
- g. The Petitioner had no other pending cases or previous convictions with regard to drug offences.
- h. No indictment has been forwarded against the Petitioner even though the government analyst report has already been filed in Court.
- i. The Petitioner has been suffering from fever and an upper respiratory tract infection while in prison which subsides and exacerbates constantly due to the unhygienic conditions in prison.
- j. The Petitioner was the sole breadwinner of his family which included his wife and two children.
- k. The Petitioner's wife is suffering from heart disease and had already suffered from a myocardial infarction which necessitates her to take a significant amount of medication and rest on a daily basis.
- l. Family was subjected to financial difficulties and emotional and societal pressures due to the incarceration of the Petitioner.

The respondents have filed a petition stating that the petitioner has failed to establish exceptional circumstances to invoke the jurisdiction of this Court as warranted by Section 83 of the Poisons, Opium, and Dangerous Drugs Ordinance as amended by Act No. 41 of 2022. The respondents also submitted that none of the grounds submitted by the petitioner cannot be considered as exceptional circumstances to grant bail. The respondents moved the dismissal of the petitioner's application.

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 Sri LR 180** the court held that:

“the decision must in each case depend on its own peculiar facts and circumstances”.

The petitioner has denied the allegation levelled against him. The petitioner has tendered documents showing that he has suffered fever and respiratory tract infections while in prison and the petitioner’s wife is suffering from heart disease and has suffered from myocardial infarction. The petitioner is the father of two minor children and the sole breadwinner of the family. The petitioner has no previous convictions or other pending cases.

The Government Analyst report was issued on 10-11-2022; however, so far no indictment has been filed in the High Court against the petitioner.

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 of the above stated circumstances together, I have decided to grant bail, but under strict conditions, to the petitioner.

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 Station in Anuradhapura on the last 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 Magistrate's Court and such residence should not be changed without leave of the Court, until the conclusion of the case.

The Registrar of this Court is directed to send copies of this order to the Magistrate's Court of Anuradhapura and the Headquarters Inspector of Anuradhapura.

Judge of the Court of Appeal

Pradeep Kirtisinghe J.

I agree.

Judge of the Court of Appeal.