

**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 Amended Act No.41 of 2022 to the Poisons, Opium and Dangerous Drugs Ordinance.

**Court of Appeal Bail Application**

**No.CA Bail/0013/23**

**MC Matara**

**Case No. BR 460/21**

Jooliyaa Baduge Benaji Punya

Kumara

No. 36, Ulugedera Watta,

Deneuwala,

Ahangama.

**PETITIONER**

**Vs.**

1. The Officer-in Charge,

Police Station,

Weligama.

2. The Attorney General

Attorney General's Department,  
Colombo-12.

**RESPONDENTS**

**AND**

Jooliyaa Baduge Benaji Punya

Kumara

**SUSPECT**

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

**COUNSEL** : **Sachithra Harshana for the Petitioner.**  
**Ridma Kuruwita, SC for the**  
**Respondents.**

**ARGUED ON** : **26/07/2023.**

**DECIDED ON** : **06/11/2023.**

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### **ORDER**

**P.Kumararatnam,J.**

The Petitioner filing this Application has invoked the jurisdiction of this Court to grant bail to him in this case upon suitable condition as this Court considers appropriate.

The Petitioner was arrested on 15.02.2021 by the officers attached to the Weligama Police Station. He was produced before the Magistrate of Matara in the case bearing No. BR/460/21.

According to the police, while they were on night patrol duty in a police three-wheeler, intercept a suspicious three-wheeler bearing No. SP ABF-9783 near Denuvala temple within the police area of Weligama. As only the driver was in the vehicle at that time, he was subjected to a search.

A white colour grocery bag was found in his left front side pocket of the short worn by the Petitioner at that time. Inside the grocery bag contained some substances which reacted for Heroin (Diacetylmorphine). The substance weighed about 45.460 grams.

The Petitioner was produced and facts were reported to the Matara Magistrate under Section 54A (a) and (c) and of the Poisons, Opium and Dangerous Drugs Ordinance as amended by the Act No.13 of 1984.

The production had been sent to the Government Analyst Department on 05/04/2021. After analysis, the Government Analyst had forwarded the report to Matara Magistrate Court on 05/07/2021. According to the Government Analyst, 28.14 grams of pure Heroin (Diacetylmorphine) had been detected from the substance sent for the analysis.

While vehemently denying allegation the Petitioner states that he was arrested by the police when he was caring on his dried fish selling business using a three-wheeler owned by a different partner of his business.

**The Petitioner has pleaded following exceptional circumstances in support of her Revision Application.**

1. The Petitioner states that he is languishing in remand custody more than two years.
2. The Petitioner states that it would take a long time to serve an indictment.
3. The Petitioner has no previous convictions nor pending cases.

The Learned State Counsel submitted that the delay is not an exceptional circumstance to be considered to enlarge the suspect on bail. Further, the time spent for preparing the indictment does not constitute an exceptional circumstance. According to the State, all steps has been taken to send out indictment against the Suspect once the investigation notes are received by the Hon. Attorney General.

The Petitioner is in remand over two years. According to Government Analyst Report the pure quantity of Heroin detected is 28.14 grams.

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 basis.

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”.*

In **CA(PHC)APN 107/2018** decided on 19.03.2019 the court held that remanding for a period of one year and five months without being served with the indictment was considered inter alia in releasing the suspect on bail. According to the Petitioner, at present her family is going through untold hardship without proper income and care.

**The Section 83 of the Poisons, 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.

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

The Counsel for the Petitioner urged this Court to consider that detaining a suspect without any legal action for an extended period of time amounts to a violation of his fundamental rights which can be considered as an exceptional ground.

The Learned State Counsel has submitted that the investigation dossier has not been received so far from the Police Narcotics Bureau.

The Government Analyst Report pertaining to this case has been received by the Magistrate Court of Matara on 05.07.2021. Although more than two years have passed since the receipt of the Government Analyst Report by the Court, the investigation agency has failed to submit the relevant investigation dossier to Hon. Attorney General to consider charges against the Petitioner.

Due to inordinate delay in submitting the investigation notes pertaining to this case to Hon. Attorney General, justice has been denied to the Petitioner. The legal maxim portrait that justice delayed is justice denied. Although all the steps are important in criminal cases, sending investigation notes to prosecuting authority is more important among others. Hence, in a case of this nature or in all cases where the investigation is over the prosecuting authority should use their power in the interest of public, to get down all necessary information to decide

whether a prima facie case could be made out against a suspect who has been in remand for a considerable period of time. Further, I consider it is appropriate to call for explanation from the law enforcement agencies for unreasonable delay in forwarding investigation notes to the prosecuting authority. Otherwise, the people will lose trust on the system.

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”*. [Emphasis added]

In **Union of India v K.A.Najeeb Cri.Appeal 98 of 2021**, the Supreme of India held that:

*“Adverting to the case at hand, we are conscious of the fact that the charge levelled against the respondent are grave and a serious threat to societal harmony. Had it been a case at the threshold, we would have outrightly turned down the respondent’s prayer. However, keeping in mind the length of the period spent by him in custody and the unlikelihood of the trial being completed anytime soon, the High Court appears to have been left with no other option except to grant bail.”*

The right to trial without undue delay is found in numerous international and regional human rights instruments; for example, the International Covenant on Civil and Political Rights (Article 14(3)(c), the American Convention on Human Rights (Article 8(1), the African Charter on Human and People’s Rights (Article 7(1)(d), and the European Convention for the Protection of Human Rights and Fundamental Freedoms (Article 6(1).

When a person is kept in remand without filing charges for a considerable period of time, he or she should be released on bail pending indictment. Otherwise, this will lead not only to prison overcrowding but also violates his or her fundamental rights which have been guaranteed under the Constitution.

Hence, I consider the delay more than two years in remand falls into the category of excessive and oppressive delay considering the circumstances of this case. Hence, considering all the circumstances of this case, the Petitioner has very good exceptional circumstances to consider this application in his favour. Further, remanding a suspect without filing any charge will prejudice his rights and his family as well.

Offences under Section 54A(a) and 54A(c) of the Poisons Opium and Dangerous Drugs Ordinance as amended by the Act No.13 of 1984 is no doubt serious offences but seriousness of the offence alone cannot form a ground to refuse bail. In considering these matters, the court must bear in mind the presumption of innocence.

Further, bail should never be withheld as punishment. Granting of bail is primarily at the discretion of the Courts. The discretion should be exercised with due care and caution taking into account the facts and circumstances of each case.

Considering all these factors into account, especially the period in remand, the pure quantity of Heroin detected and the circumstances of the case, I consider this an appropriate case to grant bail to the suspect. Hence, I order the Petitioner be granted bail with following strict conditions.

1. Cash bail of Rs.100,000/=.
2. To provide 02 sureties. They must sign a bond of two million each.
3. The Petitioner and the sureties must reside in the address given until conclusion of her case.

4. Not to approach any prosecution witnesses directly or indirectly or to interfere with.
5. To surrender his passport if any, to court and not to apply for a travel document. The Controller of the Immigration and Emigration is informed of the travel ban on the Petitioner.
6. To report to the Weligama Police Station on the last Sunday of every month between 9am to 1pm.
7. Any breach of these conditions is likely to result in the cancellation of his bail.

The Bail Application is allowed and the Learned Magistrate of Matara is hereby directed to enlarge the Petitioner on bail on the above bail conditions.

The Registrar of this Court is directed to send a copy of this order to the Magistrate Court of Matara and Officer-in-Charge of the Police Station Weligama.

**JUDGE OF THE COURT OF APPEAL**

**SAMPATH B. ABAYAKOON, J.**

I agree.

**JUDGE OF THE COURT OF APPEAL**