

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

In the matter of an Application for Bail under and in terms of Section 83(2) of the Poisons, Opium and Dangerous Drugs Ordinance No. 17 of 1929 as amended by Poisons, Opium and Dangerous Drugs (Amendment) Act No. 41 of 2022.

Officer in Charge,
Colombo Crimes Division,
Dematagoda.

Court of Appeal Case No.

CA/BAL/0279/2024

High Court of Negombo

Case No. 80/23

Complainant

Vs.

Omalpage Dinesh Harsha Ranasinghe.

2nd Accused

AND NOW BETWEEN

Omalpage Dinesh Harsha Ranasinghe.

Petitioner

Vs.

1. Officer in Charge,
Colombo Crimes Division,
Dematagoda.

Complainant-Respondent

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

2nd Respondent

BEFORE : **P. KUMARARATNAM, J.**
 K.M.G.H. KULATUNGA, J.

COUNSEL: Neranjan Jayasinghe with Randunu Heellage for the
 Petitioner.
 Wishwa Wijesuriya, SC for the Respondents.

INQUIRY ON: 03.03.2025

DECIDED ON: 04.04.2025

K.M.G.H. KULATUNGA, J.

ORDER

1. The petitioner has preferred this application seeking bail for himself under the provisions of Section 83(2) of the Poisons, Opium and Dangerous Drugs Ordinance. The petitioner now stands indicted in the High Court of Negombo under case No. HC 80/23. According to the indictment, he is the 2nd accused and is indicted along with another for being in joint possession of 809.6 grammes of heroin (Count No. 01).
2. The petitioner had been arrested on 19.07.2021 and the indictment has been dispatched on 25.07.2023. The same had been served on the petitioner on 22.09.2023. As at now, the trial has commenced with PW 01 and is scheduled for the further trial in May 2025. According to the initial B Report marked 'Y-1', this petitioner along with another had been arrested at a house in Ja-Ela. It is alleged that this petitioner along with the said other person were packeting heroin and a gross amount of 1 kilogram and 500 grammes of heroin was recovered along with Rs. 868,900.00.

3. According to the petitioner, the main ground of exceptionality is the fact that he had been in remand for three years and seven months and the indictment had been forwarded one year and nine months after the receipt of the Government Analyst's Report. It was also submitted that the petitioner does not have any previous convictions or any other pending matters except a money laundering matter in respect of the money recovered during this raid.
4. The learned State Counsel in opposition thereto submitted that the petitioner was apprehended with a commercial quantity and the Attorney General has taken steps to institute action without any undue delay. He further submitted that this matter required the conduct of further investigations into the money laundering aspect which is the reason for taking a little longer to indict in this matter.
5. The trial has now commenced and is in progress in the High Court of Negombo. He submitted that as the High Court of Negombo has heavy case load and a backlog of cases trials do take a little longer than some other Courts. Overall, the learned State Counsel submits that the mere effluxion of time in this matter is certainly not excessive or oppressive. In these circumstances, he argues that the petitioner has failed to make out exceptional circumstances.
6. It is a fact that the petitioner had been in remand for three years and seven months. Certainly, this is appreciably a long period. However, the provisions of Section 83(2) as amended now specifically decrees that person suspected or charged for narcotic offences involving 10 grammes or more be held in remand or detention pending the conclusion of such matter or trial. Certainly, this provision is in direct conflict with the presumption of innocence. The rationale for implementing such statutory provisions appears to be the increase and prevalence of drug related offences in the society. This is a provision which attempts to have a deterrent effect on the prospective offenders by denying bail at the pre-trial and pre-conviction stage. This is a form of pre-conviction

deterrence so to say, which is endorsed by statute. In the Indian case of **Arun v. D. Pakyntein**, 2009(7) SCALE 568, (2009)16 SCC 496 it was opined that, *where a statute confers drastic powers and provides for stringent penal provisions including the matters relating to grant of bail, the conditions precedent therefore must be scrupulously complied with.* That being so unless such suspects or persons indicted are able to satisfy this Court of the existence of some circumstances which is exceptional it is not lawful for this Court to consider bail.

7. The only ground seriously urged is the delay. Justice Ranjith Silva in **CA (PHC) APN 64/2009** (decided on 07.08.2009) as follows;

“...If an accused cannot assign exceptional circumstances he will have to be kept on remand and when an accused had been on remand for 03 years because he had no exceptional circumstances will that by itself constitute exceptional circumstances. If that is treated as an exceptional circumstance, in my view it would be an anomaly because the fact that there aren’t any exceptional circumstances finally mature into exceptional circumstances. The fact that he had no exceptional circumstances becomes a qualification after 03 years. If that was the intention of the legislature, the section itself would have stated the exceptional circumstances should not be insisted after 03 years and there is no such qualification, no such jurisdiction found in the particular provision dealing with bail...”

8. Thus, a person languishing in remand due to lack of exceptional circumstances cannot by itself snowball become a windfall of an exceptional circumstance. This stands to reason if any other construction is given and the mere effluxion of time in remand is considered as being exceptional it will lead to an absurdity of the absence of exceptional circumstances becoming exceptional. Further, this will nullify the entire legislature and the object of such legislation.

9. As time and again observed, the delay in the legal process peculiar to such Court due to the backlog of the cases is a phenomenon common to all litigation pending in such Court. Therefore, such delay so resulting is nothing exceptional and is common to all cases including to cases under the Poisons, Opium and Dangerous Drugs Ordinance. Such factors common to all cannot become or be lawfully interpreted and construed to be exceptional or unusual. The trial in the present matter is now pending and the delay alleged in concluding the trial cannot be considered as being exceptional.
10. In the above circumstances, it is unfortunate that the petitioner had not been able to make out exceptional circumstances which is necessary to consider bail under section 83(2). Accordingly, we are left with no option but to refuse and reject this application to bail.
11. The application is accordingly rejected.

JUDGE OF THE COURT OF APPEAL

P. Kumararatnam, J.

I agree.

JUDGE OF THE COURT OF APPEAL