

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

In the matter of an application for bail in terms of the Section 83 of the Poisons, Opium and Dangerous Drugs Ordinance as amended by the Act No.41 of 2022.

Court of Appeal

Democratic Socialist Republic of Sri

Application No.

Lanka

CA Bail 0466/2024

COMPLAINANT

Vs.

High Court of Homagama

1. Lanka Keerthi Bandara

Case No: 82/2022

Abeynayake

2. Vidanage Don Isuru Prabath

Vidanarachchi

3. Samaratunga Arachchilage Don

Chaminda Samarasinghe

4. Don Thanuja Ranasinghe (Deceased)

ACCUSED

AND NOW BETWEEN

Samaratunga Arachchige Dona Dulanjali
Anjalika Samaratunga
No. 73/B2, Niwdawa Road, Arukgoda,
Alubomulla.

PETITIONER

Vs.

1. The Attorney General
Attorney General's Department,
Colombo-12.
2. Th Officer-in-Charge
Police Narcotics Bureau
Colombo-01.
3. The Officer-in-Charge
Headquarter of Special Task Force,
Gonahena, Kadawatha.

RESPONDENTS

Samaratunga Arachchilage Don
Chaminda Samarasinghe
(Detained in Colombo Remand Prison)

3rd ACCUSED-RESPONDENT

BEFORE

: **P. Kumararatnam, J.**
K.M.S.Dissanayake, J.

COUNSEL : **Kasun Liyanage with Thilakkana Indunil for the Petitioner.**
Tharaka Kodagoda, SC for the Respondents.

ARGUED ON : **26/03/2025.**

DECIDED ON : **21/05/2025.**

ORDER

P.Kumararatnam,J.

The Petitioner is the father of the 3rd Accused (Hereinafter referred to as the Accused) named in the High Court of Homagama bearing case No. HC 82/2022.

According to the B report submitted by the Police Narcotics Bureau, Colombo-1, the Accused and 03 others were arrested upon an investigation carried out consequent to a tip off received by the officers attached to the Special task Force, Gonahena Camp. As per the information when the STF officers entered the suspected house, found the Accused with three other persons seated together and packing some substance. As the substance reacted for Heroin, all were arrested and handed over to the Police Narcotics Bureau for further investigation. The gross quantity of the contraband weighed about 1.068 kilograms.

Upon a Court order the contraband had been sent to the Government Analyst Department and according the Government Analyst Report dated

29.10.2021, 572.16 grams of pure Heroin (Diacetylmorphine) had been detected in parcel sent for analysis.

The Accused was produced along with others in the Magistrate Court of Kesbewa and facts were reported under Section 54A (d) and (b) of the Poisons, Opium and Dangerous Drugs Ordinance as amended by the Act No.13 of 1984.

Upon a Court order the Accused and three others were placed under a detention order to facilitate the Police Narcotics Bureau to conduct further investigation with regard to the detection.

The Petitioner alleges that the Accused along with three others were taken into custody by the Special Task Force on a mere conjecture without any reasonable suspicion. The Petitioner further alleges that no Heroin or any other contraband had been detected from the Accused and the others. At present the 4th Accused had been passed way.

The Petitioner submit that the Accused and two others had been in remand for little over 4 years. Indictment has already been sent to the High Court of Homagama.

The Petitioner has pleaded following exceptional circumstances in support of this Bail Application.

1. Non-existence of a prima-facie case against the Accused.
2. Improbability of the version of the prosecution.
3. The Accused has been in remand custody for little over 4 years.
4. Existence of material contradictions in the report filed by the investigation authority.
5. The Accused is the sole breadwinner of the family.

The State opposing to bail submitted that the dossier of the investigations has been received by the Attorney General's Department and registered under CR3/77/2022. After the consideration of the same an indictment

against the accused along with 03 others had been filed in the High Court of Homagama. Hence, Learned State Counsel submitted that the delay is not an exceptional circumstance to be considered to enlarge the Accused on bail. Further, the time spent for preparing the indictment does not constitute an exceptional circumstance.

The Accused is in remand little over 4 years. According to Government Analyst Report, the pure quantity of Heroin detected from the possession of the 2nd Suspect and others is 572.6 grams.

The 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.

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”.

The Section 83 of the Poison, 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.

In this case, the pure quantity of Heroin detected in the production by the Government Analyst is 572.16 grams. Hence, this court has jurisdiction to consider granting of bail as per the new amendment.

The Counsel for the Petitioner submits that undue and long delay in keeping the Accused in remand custody is a clear violation of his human rights and is against the presumption of innocence guaranteed under the Article 13(5) of the Constitution.

Although 4 years passed after his arrest, the trial before the High Court has not been commenced. Expedited trial is an integral element of a fair trial.

The Accused had committed the offence while he was on bail for a similar offence. An indictment for possession of Heroin is pending against the Accused under case No. HC 3763/19 in the High Court of Panadura.

Pertaining to this case an indictment was served on the Accused on 22.09.2022 in the High Court of Homagama under case No.82/2022. Due to various reasons the trial was postponed and not commenced yet.

A court can consider evidence in a bail inquiry. During a bail hearing, the court typically evaluates various factors to determine whether a Suspect should be granted bail, such as the risk of flight, the likelihood of reoffending, and the safety of the community. The court may also review evidence related to the Suspect's criminal history, ties to the community, and the specifics of the current charges.

Ultimately, the court's role during a bail inquiry is to weigh the available evidence to decide if the defendant can be trusted to return for trial or if they pose a danger to public safety.

In this case the Accused alleged to have committed Offences under Section 54A(d) and (b) of the Poisons Opium and Dangerous Drugs Ordinance as amended by the Act No.13 of 1984.

I agree with the learned State Counsel that this is not appropriate case to consider the factual and evidentiary matters pertain to the investigations at this stage. It can only be tested at the trial upon the witnesses being cross examined and re-examined.

In **Ranil Charuka Kulatunga v. Attorney General CA (PHC) APN 134/2015** the court held that:

"The quantity of cocaine involved in this case is 62.847 grams, which is a commercial quantity. If Petitioner is convicted, the punishment is death or life imprisonment. Under these circumstances, it is prudent to conclude the trial early while the Petitioner is kept in custody."

In this case the pure Heroin detected is 572.16 grams, which certainly a very high commercial quantity. Considering the seriousness of the sentence prescribed under the Poison, Opium and Dangerous Drugs Ordinance, there is a high risk of absconding. Further, the Accused has committed these offences while a similar case is pending before the High Court of Panadura which is a clear testament of his propensity in committing drug related offences.

Hence, I do not consider the delay little over 4 years in remand falls into the category of excessive and oppressive delay considering the circumstances of this case.

Considering all these factors into account, especially the pure quantity of Heroin detected, the charges framed against the Accused, the pending case and other and circumstances of the case, I consider this is not an appropriate case to sanction bail to the Accused at this stage. Hence, I refuse to release the Accused on bail.

Hence, this Bail Application is dismissed.

The Registrar of this Court is directed to this Bail Order to the High Court of Homagama and Officer-in-Charge of the Police Narcotics Bureau, Colombo-01.

JUDGE OF THE COURT OF APPEAL

K.M.S.Dissanayake, J.

I agree.

JUDGE OF THE COURT OF APPEAL