

**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

The Officer-in-Charge

Application No.

Police Station,

CA Bail 0511/2024

Pallekelle.

MC Teldeniya

COMPLAINANT

Case No. B 81/2024

Vs.

Ekanayake Mudiyanselage Chaminda
Bandara

(Presently in remand custody)

SUSPECT

AND NOW BETWEEN

Niyangama Suduhakuru Gedera Indrani
Karunasena

No.396/4/B/1, Weliwala Road,
Kotikawatta, Angoda.

PETITIONER

Vs.

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

RESPONDENTS

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

COUNSEL : **Hansani Ranasinghe for the Petitioner.**
Wishwa Wijesooriya, SC for the Respondents.

ARGUED ON : **04/04/2025.**

DECIDED ON : **26/05/2025.**

ORDER

P.Kumararatnam,J.

The Petitioner is the Wife of the Suspect named in the Magistrate Court of Teldeniya bearing case No. B 81/2024.

According to the B report submitted by the Pallekelle Police Station, on 12.01.2024 while their officers were engaging in routine crime prevention duty, stopped a three-wheeler bearing No.200-4125 and searched. Some substance suspected to be Heroin was recovered from right side trouser pocket of the Suspect. The contraband is weighed about 48.140 grams.

The Suspect was produced in the Magistrate Court of Teldeniya and facts were reported under Section 54A (b) and (d) of the Poisons, Opium and Dangerous Drugs Ordinance as amended by the Act No.13 of 1984.Upon a Court order the Suspect was placed under a detention order to facilitate the Pallekelle Police to conduct further investigation with regard to the detection.

During the interrogation, upon a statement made by the Suspect the police had recovered another 50 grams of Substance suspected to be Heroin and 29.425 kilograms of Cannabis Saliva L from a garage situated in Kotikawatta.

Upon a Court order the total contraband had been sent to the Government Analyst Department and according the Government Analyst Report dated 28.03.2024, 20.64 grams of pure Heroin (Diacetylmorphine) had been detected in parcels sent for analysis.

The Petitioner alleges that the Suspect was taken into custody by the police on a mere conjecture without any reasonable suspicion. The Petitioner further alleges that no Heroin or any other contraband had been detected from the Suspect.

The Petitioner submit that the Suspect had been in remand for little over 16 months. Indictment has not been filed in the High Court.

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

1. Non-existence of a prima-facie case against the Suspect.
2. Improbability of the version of the prosecution.
3. The Suspect has been in remand custody for little over 16 months.

4. The is a father of two children and the sole breadwinner of the family. The younger son of the Suspect did not have both legs since his birth.

The State Counsel submits that the dossier of the investigation has been received by the Attorney General's Department but indictment has not gone out yet.

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 20.64 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 Suspect 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.

No previous or pending case reported against the Suspect.

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.

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]

The Petitioner vehemently denies the allegation and the facts reported by the police.

One of the grounds urged by the learned Counsel is that Heroin said to have recovered from the Suspect was an introduction. Further, the Suspect never possessed any illegal substance.

The son of the Suspect is a disabled person. He did not have his both legs since his birth. As such he is completely depend on his parents. At present he is 16 years of age of age and has been selected to represent Sri Lanka in the upcoming Asian Para Games (Rowing).

A letter has been issued by the Sri Lanka Para Rowing Association confirming his selection to represent in Rowing. As such he is asked to come for practices at Diyatha, Battaramulla Sri Lanka Army Rowing premises. As the Petitioner is the sole breadwinner of the family at present, she is unable to attend to her son's requirements as she has two girls to look after. As such, the Counsel for the Petitioner submits to this Court to consider this as an exceptional circumstance to grant bail to the Suspect.

The learned State Counsel submits that the investigation notes pertaining to this case has been received by the Attorney General but indictment has not gone out yet. Hence, I consider the delay little over 16 months in remand falls into the category of excessive and oppressive delay considering the circumstances of this case.

Offences under Section 54A(b) and 54A(d) 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 circumstances of arrest and the other circumstances of the case, I consider this is an appropriate case to grant bail to the Suspect. Hence, I order the Suspect 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.
The Petitioner should be the one of the sureties.

3. The Suspect and the sureties must reside in the address given until conclusion of his 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 Suspect.
6. To report to the Angoda Police Station on the second and 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 is allowed and the Learned Magistrate of Teldeniya is hereby directed to enlarge the Suspect on bail on the above bail conditions.

The Registrar of this Court is directed to send this Bail Order to the Magistrate Court of Teldeniya, Officer-in-Charge of the Police Station Pallekelle and Officer-in-Charge, Police Station, Angoda.

JUDGE OF THE COURT OF APPEAL

K.M.S.Dissanayake, J.

I agree.

JUDGE OF THE COURT OF APPEAL