

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

In the matter of an application for Bail made under and in terms of Section 83(2) of the Poisons, Opium and Dangerous Drugs (Amendment) Act No. 41 of 2022 dated 23.11.2022.

The Attorney General

Attorney General's Department

Colombo-12.

Court of Appeal No:

COMPLAINANT

CA Bail 0240/2024

Vs

HC Kandy

Mohamed Jawaheer Mohomed Afras

Case No. HC 137/2022

MC Gampola

ACCUSED

Case No. 182/2021

AND NOW BETWEEN

Mohamed Jawaheer Siththi Fasina
Umma

No.133/1/1, Gampolawala Ihalagama,

Gampola.

PETITIONER

Vs

1. The Officer-in Charge,
Anti-Corruption Division,
Gampola.

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

RESPONDENTS

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

COUNSEL : **Vindiya Ekanayake for the Petitioner.**
Jehan Gunasekara, SC for the Respondents.

ARGUED ON : **19/03/2025.**

DECIDED ON : **20/05/2025.**

ORDER

P.Kumararatnam,J.

The Petitioner is the mother of the Accused. The Accused has been named in M.C. Gampola Case No. B 182/2021. She had applied for bail for her son.

On 24.02.2021, the Accused was arrested by the Officers attached to the Gampola Police Station upon an allegation relating to possession of 50.765 grams of substance suspected to be Heroin. According to police the contraband was seized from his undergarment.

The Accused was produced and facts were reported to the Gampola Magistrate under Section 54A (d) and (b) 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 03/08/2021. After analysis, the Government Analyst had forwarded the report to Court on 15/11/2024. According to the Government Analyst, 21.24 grams of pure Heroin (Diacetylmorphine) had been detected from the substance sent for the analysis.

According the Petitioner, the Accused was arrested without any contraband in his possession. Having introduced Heroin to him, he had been produced before the Magistrate Court of Gampola on 24.02.2021.

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

1. No drugs were found in his possession of the Accused and the drugs is introduced by the police officers to him.
2. The Accused had been in remand well over 04 years.
3. The Accused is the sole breadwinner of the family.
4. The Accused has child aged two years.
5. No previous or pending case reported.
6. The Petitioner has a serious medical condition.

The Learned State Counsel opposing for bail, 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 indictment has already filed in the High Court of Kandy.

The Accused is in remand well over four years. According to the Government Analyst Report, the pure quantity of Heroin detected from the possession of Accused is 21.24 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.

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

The Counsel for the Petitioner submitted that the police have fabricated a case against the Accused.

I agree with the learned State Counsel that the factual and evidentiary matters pertain to the investigations can only be tested at the trial upon the witnesses being cross examined and shall not be tested at the time of hearing this bail application considering the nature of this case.

In this case the probability of the happening of the incident as described by the police need to be assessed thoroughly before the court

could come to a final decision. This could only be done at a trial. Until such time keeping the Accused in remand, I consider is not proper under the circumstances of this matter.

Hence, I consider the delay well over 04 years in remand falls into the category of excessive and oppressive delay considering the circumstances of this case.

Offences under Section 54A(d) and 54A(b) 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 an appropriate case to grant bail to the Accused. Hence, I order the Accused 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 Portioner should be one of the sureties.
3. The Accused 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 Accused.

6. To report to the Gampola Police Station (Anti-Corruption Division) 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 is allowed and the Learned High Court Judge is hereby directed to enlarge the Accused on bail on the above bail conditions.

The Registrar of this Court is directed to send this bail order to the High Court of Kandy and Officer-in-Charge of the Police Station, Gampola.

JUDGE OF THE COURT OF APPEAL

K.M.S.Dissanayake J.

I agree.

JUDGE OF THE COURT OF APPEAL