

**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 Narcotics Bureau,

CA Bail 0449/2024

Colombo-01.

COMPLAINANT

Vs.

Magistrate Court of

Seneviratne Dissanayakage Sajith

Hambantota

Thivanka

Case No: BR/4622/2022

(Presently in remand custody)

9th SUSPECT

AND NOW BETWEEN

Dona Francis Nadeeka Gunasekara

No. 21, Maha Ela Kandiya,

Meda Para, Koggala.

PETITIONER

Vs.

1. The Attorney General
Attorney General's Department,
Colombo-12.
2. Th Officer-in-Charge
Police Narcotics Bureau
Colombo-01.

RESPONDENTS

AND

Seneviratne Dissanayakage Sajith
Thivanka
(Presently in remand custody)

9th SUSPECT

<u>BEFORE</u>	:	P. Kumararatnam, J. K.M.S.Dissanayake, J.
<u>COUNSEL</u>	:	Shamindra Rodrigo with Eranda Sinharage for the Petitioner. Malik Azeez, SC for the Respondents.
<u>ARGUED ON</u>	:	17/03/2025.
<u>DECIDED ON</u>	:	30/04/2025.

ORDER

P.Kumararatnam, J.

The Petitioner is the wife of the 9th Suspect named in the Hambantota Magistrate Case No. BR/4622/22.

According to the B report submitted by the Police Narcotics Bureau, Cololmbo-1, the 9th Suspect was for the possession and trafficking of 25.910 Kilograms of substance like Heroin. The substance recovered was sent to the Government Analyst Department for analysis. According to the Government Analyst Report pure quantity of 14.2986 Kilograms of Heroin (Diacetylmorphine) had been detected in the substance.

The 9th Suspect was produced in the Magistrate Court of Colombo and facts were reported under Section 54A (c) of the Poisons, Opium and Dangerous Drugs Ordinance as amended by the Act No.13 of 1984.

Upon a Court order the 9th Suspect was placed under a detention order to facilitate the Police Narcotics Bureau to conduct further investigation with regard to the detection.

The Petitioner states that the said quantity of Heroin had been recovered from two bags of paddy from the possession of a different Suspect and the 9th Suspect did not have any connection for the quantity of Heroin that was recovered. The Petitioner further states that the 9th Suspect had been arrested purely on statements provided by other Suspects who had falsely implicated the 9th Suspect in the said offence.

The Petitioner submit that the 9th Suspect had been in remand for nearly 29 six months without filing any charge against them.

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

1. The 9th Suspect had been in remand for over 28 months.
2. The 9th Suspect had no knowledge regarding the presence of any suspected narcotics which was in possession of another suspect.
3. The 9th Suspect was not involved in possession and trafficking any form of narcotics.

The State opposing to bail submitted that the dossier of the investigations has been received by the Attorney General's Department and registered under CR3/474/2023. The matter is under consideration at present. Hence, Learned State Counsel submitted that the delay is not an exceptional circumstance to be considered to enlarge the 9th Suspect on bail. Further, the time spent for preparing the indictment does not constitute an exceptional circumstance.

The 9th Suspect is in remand nearly 29 months. According to Government Analyst Report, the pure quantity of Heroin detected from the possession of the 9th Suspect and others is 14.2986 Kilograms.

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 14.2986 Kilograms. 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 9th 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.

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 Suspect can be trusted to return for trial or if they pose a danger to public safety.

In this case the 9th Suspect 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. The offences are very serious offences and the seriousness of the offence should be considered when bail is considered.

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 **Carder (On behalf of Rashid Kahan) v Officer-in-Charge Narcotics Bureau** [2006] 3 SLR 74 the Court held that:

"Heroin has become a menace in our society. It is not easily detectable. Due to the fact alone, the tendency to commit this kind of crime repeatedly has become feasible. The repetitive factor prevalent in this sort of crime and the difficulty of detection are significantly strong reasons for refusing bail in this type of cases."

In this case the pure Heroin detected is 14.2986 Kilograms, 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.

Hence, I do not consider the delay nearly 29 months 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 seriousness of the charges could be framed against the 9th Suspect and the circumstances of the case, I consider this is not an appropriate case to sanction bail to the 9th Suspect at this stage. Hence, I refuse to release the 9th Suspect on bail.

Hence, this Bail Application is dismissed.

The Registrar of this Court is directed to this order to the Magistrate Court of Hambantota 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