

**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 0133/2024

Katana.

COMPLAINANT

Vs.

Magistrate Court Negombo Hapu Arachchige Rukshan Nilanga

Case No: M 68274

SUSPECT

AND NOW BETWEEN

Ambagahage Ranjani Fernando

Muruthana,

Kochchikade.

PETITIONER

Vs.

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

RESPONDENTS

BEFORE : **P. Kumararatnam, J.**
K.M.G.H Kulatunga, J.

COUNSEL : **Thanuka Nandasiri for the Petitioner.**
Wishwa Wijesuriya, SC for the Respondents.

ARGUED ON : **05/03/2025.**

DECIDED ON : **01/04/2025.**

ORDER

P.Kumararatnam,J.

The Petitioner is the mother of the Suspect named in the Negombo Magistrate Case No. M 68274.

According to the B report submitted by the Katana Police, the Suspect was arrested upon an investigation carried out consequent to a tip off received by the Anti-Corruption Unit of the Negombo Division. Acting on that information a car bearing No. WP CBG 7938 was intercepted at Thembiliwatta, Katana. The Suspect who was the driver of the vehicle was subjected to body search by the police. A parcel of substance was recovered underneath his underwear. As the substance recovered reacted for Heroin, the Suspect was arrested on 21.05.2023 and produced before the Magistrate of Negombo. The substance weighed about 70.920 grams. He is in remand to date.

Upon a Court order the substance had been sent to the Government Analyst Department and according the Government Analyst Report dated 07.11.2023, 26.91 grams of pure Heroin (Diacetylmorphine) had been detected in the parcel.

The Suspect was produced in the Magistrate Court of Negombo 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.

The Petitioner alleges that previously on 24.07.2020 the Suspect was arrested by the 1st Respondent for possession of 17.76 grams of Heroin. After his arrest, the Petitioner who was working in Japan received a call through IMO on 25.07.2020 and 15th of August 2020 demanding five million rupees to release the Suspect. She had refused to give money and attempted to complain to higher authority. But was prevented by the 1st Respondent Unit by threatening her to harm her son.

The Petitioner submit that the Suspect had been in remand for nearly 23 months without filing any charge against them.

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

1. The Suspect has been in remand custody for nearly 23 months.
2. The drugs were introduced to the Suspect by 1st Respondent.
3. The Suspect has 3 ½ year old child.
4. The Suspect is the sole breadwinner of the family.

The State opposing to bail submitted that the Suspect had re-offended while on bail granted by this Court in case No. CA/PHC/APN 24/2022. This position was admitted by the Petitioner in her Petition.

A history of re-offending while on bail can significantly influence future bail decisions. Courts generally consider several factors when determining whether to grant bail, including the likelihood of the defendant fleeing, committing further crimes, or interfering with witnesses.

The goal of the bail system is to balance the presumption of innocence with the need to protect public safety and ensure the individual returns to court. A history of re-offending while on bail undermines this balance and increases the perceived risk of releasing the individual, which can make future bail requests more challenging.

Carder (On behalf of Rashid Kahan) v Officer-in-Charge Narcotic Bureau (2006) 3 Sri L R. 74 per Eric Basnayake. J.

"These types of offences affect the society at large. The law should not be made impotent that it does not serve the Society and the anti-social element should not be given licence to create havoc in Society".

Learned State Counsel submitted that the delay is not an exceptional circumstance to be considered to enlarge the Suspect on bail. Further, in this case, the time spent for preparing the indictment does not constitute an exceptional circumstance as the Suspect had re-offended while on bail.

The Suspect is in remand nearly 23 months. According to Government Analyst Report, the pure quantity of Heroin detected from the possession of the Suspect is 26.91grams.

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 26.91grams. 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.

In this case the 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 this case the Suspect was re-offended while on bail sanctioned by the Court. He had already violated the bail conditions imposed by the Court.

In this case the pure Heroin detected is 26.91grams, 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 23 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, re-offended while on bail, the charges going to be framed against the Suspect and circumstances of the case, I consider this is not an appropriate case to sanction bail to the Suspect at this stage. Hence, I refuse to release the Suspect on bail.

Hence, this Bail Application is dismissed.

The Registrar of this Court is directed to this order to the Magistrate Court of Negombo and Officer-in-Charge of the Police Station, Katana.

JUDGE OF THE COURT OF APPEAL

K.M.G.H. Kulatunga, J.

I agree.

JUDGE OF THE COURT OF APPEAL