

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

In the matter of an Application for Bail under and in terms of Section 83(2) of the Poisons, Opium and Dangerous Drugs Ordinance No. 17 of 1929 as amended by Poisons, Opium and Dangerous Drugs (Amendment) Act No. 41 of 2022.

Officer in Charge,
Colombo Crimes Division,
Dematagoda.

Court of Appeal Case No.

CA/BAL/0372/2024

Complainant

High Court of Negombo

Vs.

Case No. B 4242/2023

Aruni Nadishika Palliyage.

1st Accused

AND NOW BETWEEN

Palliyage Piyadasa.

Petitioner

Vs.

1. Officer in Charge,
Colombo Crimes Division,
Dematagoda.

Complainant-Respondent

2. Hon. Attorney General,
Attorney General's Department,
Colombo 12.

Respondent

BEFORE : **P. KUMARARATNAM, J.**
K.M.G.H. KULATUNGA, J.

COUNSEL: Niranjan Jayasinghe for the Petitioner.
 Oswald Perera, SC for the Respondents.

INQUIRY ON: 12.03.2025

DECIDED ON: 04.04.2025

K.M.G.H. KULATUNGA, J.

ORDER

1. This application is preferred by the petitioner seeking bail for the 1st accused, Aruni Nadishika Palliyage under Section 83(2) of the Poisons, Opium and Dangerous Drugs Ordinance. The 1st accused is alleged to have been arrested on 19.07.2021 by a group of Police Officers attached to the Colombo Crimes Division, Dematagoda (CCD). According to the B Report dated 20.07.2021, the group of Police Officers acting on information has raided at a house at Rajamalwatta Terrace, Ja-Ela. In the said house the 1st accused along with another were found packeting heroin. The quantity of heroin found was 1.15kg and a sum of Rs. 868,900.00 was also recovered. Further, a digital weighing scale was also found at the place.
2. The 1st accused along with another now stands indicted in the High Court of Negombo under the case No. HC/80/23. The indictment has been dispatched on 25.07.2023. Upon the conclusion of the pre-trial on 30.10.2024 the trial has commenced on 20.01.2025 and also taken up on 24.02.2025. The evidence of Witness No.01 had been concluded and is now scheduled for further trial on 27.05.2025.
3. According to the learned Counsel for the petitioner, the main grounds urged are delay and ill-health. As for the delay, it was submitted that

pre-trial taking eleven months is excessive. The learned Counsel also urged that in view of the backlog of cases in the High Court of Negombo, there is no reasonable prospect of this trial concluding soon.

4. As for delay, in **Attorney General v. Ediriweera** (S.C. Appeal No. 100/2005), it was held that "*Delay is always a relative term and the question to be considered is not whether there was mere explicable delay, as when there is a backlog of cases, but whether there has been excessive or oppressive delay and this always depends on the facts and circumstances of the case...*".
5. Lapse of time or the time taken at various stages of the criminal process is thus a relative term depending on the circumstances of each case. It is common knowledge and a notorious fact that due to the backlog of cases, delays in the judicial process are prevalent. This may vary from court to court. This is a circumstance common to all cases pending in such respective court. Can such a circumstance common to all become or be considered as being exceptional in respect of a selected case?
6. The word "exceptional" is commonly used in legislation. One definition of it in the **New Shorter Oxford English Dictionary** is: "*Of the nature of or forming an exception, unusual, out of the ordinary, special*" (vol. 1 p.872). According to the **Webster's Dictionary** "exceptional" is: "*Relating to or forming an exception, out of the ordinary course, unusual, uncommon, extraordinary*". Thus, to my mind, delay common to all cases cannot become or be considered as being exceptional in respect of a selected case in such court.
7. The learned State Counsel opposing this application submitted that the indictment has been dispatched within a reasonable period of time and now the trial is in progress. Thus, there is no undue or excessive delay in instituting action and the trial is now proceeding.

8. Next ground urged is ill-health. As for ill-health, it was submitted that the 1st accused has contracted Tuberculosis (TB) whilst in remand. Apart from the assertion that she had contracted TB, nothing further was submitted in support or establish that it is either life-threatening or is not possible to be effectively treated whilst in remand, or that it is the current status of health. Thus, this ground is not substantiated.
9. It is common ground that the accused has five previous convictions. According to the State Counsel, the said previous convictions are;
 - i. a narcotics offence in the High Court of Galle, bearing case No. 3747/2013 – the accused had been found guilty and a fine of Rs.60,000.00 and one year jail term has been suspended for ten years;
 - ii. four cases in the Magistrate's Court for the possession of heroin for which fines have been imposed; and
 - iii. a pending case for possession of a firearm and ammunition.
10. The Legislature, by incorporating special bail provisions in Section 83, has established an effective bail system for specific narcotic offences for which the normal bail regime would not suffice. This was also to prevent reoffending or the continuity of such criminal behaviour and the risk of absconding. This is primarily in view of the unique nature and particular dynamics of narcotic offences. Unlike most other offences, narcotic offences are committed in a very different context. For instance, trafficking in narcotics occurs systematically in a highly sophisticated and organised manner. It also is extremely lucrative. This by itself is a compelling incentive for an offender to continue with the criminal behaviour even after arrest and release on bail. This propensity is evident in this instance by the previous convictions and pending matter. Similarly in view of the serious penal sanctions that may entail there is also the appreciable and real danger of such accused or suspects absconding.

11. Therefore, repeated offending in the form of previous convictions, the quantity being of a commercial nature and a pending case are relevant in considering bail under Section 83(2).
12. In the above circumstances, we see no lawful basis to allow this application and are left with no option but to reject and dismiss this application.

JUDGE OF THE COURT OF APPEAL

P. Kumararatnam, J.

I agree.

JUDGE OF THE COURT OF APPEAL