

**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

Democratic Socialist Republic of Sri

Application No.

Lanka

CA Bail 0427/2024

COMPLAINANT

Vs.

High Court of Homagama

1. Lanka Keerthi Bandaranayake

Case No: 82/2022

Abeynayake

2. Vidanage Don Isuru Prabath

Vidanarachchi

3. Samaratunga Arachchilage Don

Chaminda Samarasinghe

4. Don Thanuja Ranasinghe (Deceased)

ACCUSED

AND NOW BETWEEN

Hewa Fonsekalage Chathuri Dilshani

Fonseka

No.25/2, Galwala Road,

Wellawatta.

PETITIONER

Vs.

1. The Attorney General
Attorney General's Department,
Colombo-12.
2. The Officer-in-Charge
Police Narcotics Bureau,
Colombo-01.
3. The Officer-in-Charge
Headquarter of Special Task Force,
Gonahena, Kadawatha.

RESPONDENTS

Vidanage Don Isuru Prabath

Vidanarachchi

(Detained in Colombo Remand Prison)

2nd ACCUSED-RESPONDENT

BEFORE

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

COUNSEL : **Kasun Liyanage with Thilakkana
Indunil for the Petitioner.
Tharaka Kodagoda, SC for the
Respondents.**

ARGUED ON : **26/03/2025.**

DECIDED ON : **21/05/2025.**

ORDER

P.Kumararatnam,J.

The Petitioner is the wife of the 2nd Accused (Hereinafter referred to as the Accused) named in the High Court of Homagama bearing case No. HC 82/2022.

According to the B report submitted by the Police Narcotics Bureau, Cololmbo-1, the Accused and 03 others were arrested upon an investigation carried out consequent to a tip off received by the officers attached to the Special Task Force, Gonahena Camp. As per the information when the STF officers entered the suspected house, found the Accused with three other persons seated together and packing some substance. As the substance reacted for Heroin, all were arrested and handed over to the Police Narcotics Bureau, Colombo-01 for further

investigation. The gross quantity of the contraband weighed about 1.068 kilograms.

Upon a Court order the contraband had been sent to the Government Analyst Department and according the Government Analyst Report dated 29.10.2021, 572.16 grams of pure Heroin (Diacetylmorphine) had been detected in parcel sent for analysis.

The Accused was produced along with others in the Magistrate Court of Kesbewa 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.

Upon a Court order the Accused and three others were placed under a detention order to facilitate the Police Narcotics Bureau to conduct further investigation with regard to the detection.

The Petitioner alleges that her Accused-husband along with three others were taken into custody by the Special Task Force on a mere conjecture without any reasonable suspicion. The Petitioner further alleges that no Heroin or any other contraband had been detected from the Accused and the others. At present the 4th Accused named in the indictment had been passed way.

The Petitioner submit that the Accused and two others had been in remand little over 4 years. Indictment has already been sent to the High Court of Homagama but trial is not commenced yet.

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

1. Non-existence of a prima-facie case against the Accused.
2. Improbability of the version of the prosecution.
3. The Suspect has been in remand custody for little over 4 years.
4. Existence of material contradictions in the report filed by the investigation authority.

5. No previous case recorded against the 2nd Accused and has no pending cases.
6. The Accused is the sole breadwinner of the family.

The State opposing to bail submitted that the dossier of the investigations has been received by the Attorney General's Department and registered under CR3/77/2022. After the consideration of the same an indictment against the Accused along with 03 other had been filed in the High Court of Homagama under case No. HC 82/2022. Hence, Learned State Counsel 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 Accused is in remand little over 4 years. According to Government Analyst Report, the pure quantity of Heroin detected from the possession of the 2nd Suspect and others is 572.6 grams.

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 572.16 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 Accused 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.

Although 4 years passed after his arrest, the trial before the High Court of Homagama has not been commenced. Expeditious trial is an integral element of a fair trial.

Indictment was served on the Accused on 22.09.2022. Due to various reasons the trial was postponed. The Accused has no previous or pending case in any of the court in Sri Lanka.

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

In this case the Accused 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. Above cited offences are 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 Court. The discretion should be exercised with due care and caution taking into account the facts and circumstances of each case separately.

Considering all these factors into account, especially the period in remand, the uncertainty of commencement of trial in the High Court, the circumstances of his arrest and 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.200,000/=.
2. To provide 02 sureties. They must sign a bond of two million each.
3. The Petitioner 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 Accused.

6. To report to the Police Narcotics Bureau, Colombo-01 on the 2nd 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 High Court Judge of Homagama is hereby directed to enlarge the Accused on bail on the above bail conditions.

The Registrar of this Court is directed to this order to the High Court of Homagama, 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