

**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.

The Democratic Socialist Republic of Sri Lanka.

Complainant

Court of Appeal Case No.

CA/BAL/0305/2024

High Court of Homagama

Vs.

Case No. 14/2021

Galhena Hewage Prasanna
Priyanjith.

Accused

AND NOW BETWEEN

Galhena Hewage Prasanna
Priyanjith.

Accused-Petitioner

Vs.

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

Complainant-Respondent

Superintendent of Excise,
Excise Narcotics Bureau,
No. 15, Park Avenue,
Colombo 08.

Respondent

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

COUNSEL : Anura Meddegoda, PC., with Nihara Randeniya and
Nadeesha Kannangara for the Petitioner.
Tharaka Kodagoda, SC., for the Respondent.

INQUIRY ON: 21.02.2025

DECIDED ON: 19.03.2025

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

ORDER

1. This application is preferred under Section 83(2) of the Poisons, Opium and Dangerous Drugs Ordinance. The accused-petitioner, Galhena Hewage Prasanna Priyanjith is seeking bail for himself. The petitioner had been arrested on 05.02.2019 for the alleged possession of 79.01 kg of pure heroin. The petitioner now stands indicted in the High Court of Homagama with two counts for possession and trafficking of 79.015 kg of heroin.

2. The main ground of exceptionality urged is the delay of six years from the date of arrest. The indictment has been filed on 08.02.2021. However, the complaint is that the trial is still pending with no

certainty as to when it may conclude. Further trial is now scheduled for 28.03.2025. It is also submitted that there was a delay in the commencement of the trial as the main investigating officer has vacated post. The prosecution has now led the evidence of PW-4 and is yet to be cross-examined.

3. The learned Counsel relying on the presumption of innocence and the provisions of Articles 12 and 13 of the Constitution submitted that this delay is a blatant denial of a fair trial and is attributable to the absence of witness No.01, the main raiding officer. It was also contended that the accused is presumed innocent and the continuous denial of his freedom and liberty is a serious violation of his rights guaranteed under Article 13 of the Constitution and the accused is thus entitled to be enlarged on bail on that score alone.
4. The learned President's Counsel did concede of a previous conviction in 2015 for an offence under Section 298 of the Penal Code and that a sentence of two years imposed was suspended for five years. Therefore, the present arrest had been made during the operational period of the said suspended sentence. It was the learned President's Counsel's argument that the previous conviction was for a different offence and has nothing to do with narcotics. He also submitted that the prosecution will not be able to prove exclusive possession as his mother and father also lived in the house in which the recovery was alleged to have been made. Finally, it was submitted that this delay and the denial of his rights under the Constitution when considered in conjunction with the apparent weakness will constitute amount circumstances that is exceptional which entitles the accused to be granted bail under Section 83(2).

5. In opposition and by way of objection, the learned State Counsel submitted that the first raid was conducted along the Marine Drive, where ten packets containing 7.753 kg of heroin was detected from two others and on information provided by them the accused was arrested in his house at Homagama where a hundred parcels of heroin was found concealed under his bed.
6. The learned State Counsel's position was that though almost six years had elapsed the delay in the circumstances of this case is not undue, excessive or oppressive. The State Counsel traced the timeline and the events to explain and support her position. The detection had been on 05.02.2019. IB Extracts have been forwarded to the Attorney General on 10.02.2020. Then, under AG's reference CR3/73/2020 the indictment has been signed on 08.02.2021 which had been received in the High Court on 23.02.2021. PW-1 had been summoned on 14.12.2022. It is conceded that PW-1 was not available. The matter had been taken off the trial roll and called on 20.02.2023, 30.03.2023, 16.05.2023 and 20.06.2023 as the defence had requested for certain documents and copies of notes. Then, it had been fixed for trial 24.10.2023 but the trial has not commenced and then 26.02.2024 the matter had been postponed as the High Court Judge was on leave. However, the trial had finally commenced on 30.09.2024 with PW-4.
7. It was therefore argued that the prosecution has sent out the indictment without delay and postponements and dates have been granted *inter alia* on application made by the defence as well. In support of the objection, she referred to a previous decision of this Court in *CA/Bail/61/2023* and submitted that bail was refused to

a suspect who was in remand for eight years as the quantity of heroin was 31 kg.

8. On the face of it, this Accused has been in remand since his arrest, for almost six years. However, the provisions of Section 83 (2) as amended by Act, No. 41 of 2022, decrees that a person accused or suspected of being in possession of 10 grammes or more, is required to be kept in remand, unless such person satisfies this Court as to the existence of circumstances that are exceptional. Section 83 as amended by the Poisons, Opium and Dangerous Drugs (Amendment) Act, No. 41 of 2022 reads thus;

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 -

(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,[sic] shall not be released on bail except by the Court of Appeal in exceptional circumstances.

(3) For the purposes of this section “dangerous drug” means Morphine, Cocaine, Heroin and Methamphetamine.”

9. No doubt, under the normal law during pre-trial and pre-conviction stages granting of bail is the rule and the refusal is the exception. This is in accord with the presumption of innocence which prevails during the pendency of the trial. However, when exceptional

circumstances are by statute decreed as being a necessary prerequisite, then the legislature has intended that, persons accused of such offences be held in remand pending the determination of such trials.

10. Section 83 in the first instance requires that person suspected of offences involving over 10 grammes or more of pure narcotics is required to be denied bail. This is couched the mandatory form. However, the discretion is conferred to consider bail in exceptional circumstances. This provision does not create an entitlement as of right to obtain bail by establishing exceptional circumstances. In the Converse a discretion is conferred on the Court to consider bail. The end result is that making out exceptional circumstances *per se* will neither entitle a suspect as of a right to be enlarged on bail nor compel this Court to grant bail. It is a discretion that is conferred.
11. In the exercise of the said discretion when exceptional circumstances are made out, this Court (if brought to its notice) may consider other factors such as flight risk, propensity of reoffending or absconding and if there be such circumstances, bail may not be granted even if exceptional circumstances are made out. Presence of exceptional circumstances will not *ipso facto* mandate the granting of bail.
12. Section 83(2) applies to a very limited category of narcotic offences, where bail is denied unless the persons who are suspected or charged with these offences are able to demonstrate exceptional circumstances. As I see, the Legislature has by special bail provisions in Section 83(2) established an effective bail system for specific narcotic offences for which the normal bail regime would not suffice and allow the continuity of the criminal behaviour and the

risk of absconding. This is primarily in view of the unique nature and attributes of the narcotics offences. Unlike most other run of the mill type of offences, most narcotics offences are committed in a very different context. For instance, trafficking in narcotics occurs systematically, usually in a highly sophisticated and organised manner, that is extremely lucrative. This by itself is a huge incentive for an offender to continue with the criminal behaviour even after arrest and release on bail. Then in view of the serious penal sanctions that may entail there is also the appreciable and real danger of such accused or suspects absconding.

13. Now to consider if the accused in this matter is entitled to any benefit or if there be any ground that may be considered in his favour to grant bail. Being in remand for almost six years is by itself an appreciable and a considerable time period. In the normal course, one would reasonably expect a trial to have concluded during that period. However, it appears in view of the several events and eventualities, time taken is somewhat longer than usual.
14. The journal entries and proceedings of the High Court are made available with the petition (vide- P-5 and P-6). The accused had been indicted quite expeditiously. It is the trial that has taken time. The reasons are many. For instance, as evident by the journal entries and the proceedings, the matter had been postponed on 15.06.2022 due to a JSC circular in relation to Covid. Then, due to the absence of witness No. 01 and 04 (14.12.2022 and 20.02.2023). Similarly, when the matter was scheduled for the trial, requests for the documents have been made by the defence and once again adjourned on 20.02.2023. Then, the State Counsel who was specially assigned had been absent (20.02.2023). However, the trial had finally commenced on 30.09.2024 with PW-4. Therefore, the commencement of the trial

has been delayed due to the cumulative effect of all the aforesaid reasons. It cannot be solely or mainly be attributed to the prosecution alone.

15. The next relevant matter is that this offence is alleged to have been committed during the operational period of a suspended sentence. No doubt, the said previous conviction is said to be an offence under Section 298 may be connected to a road traffic accident. What is relevant is not the nature of the previous conviction but the fact that he was subject to an active suspended sentence. Whatever the previous offence may have been, a person who is subject to a suspended sentence is required to conduct himself in such a manner to avoid the commission any subsequent offence during that period. If so, he would be liable to suffer and serve the sentence so suspended.

16. The accused was subject to a suspended sentence. Now he is alleged to have been detected with a very large haul of narcotics this time round (79 kg of heroin). This shows a propensity to engage in acts of criminal nature and reoffend. When a person is alleged to have committed a subsequent offence during the operational period it also exhibits a tendency to reoffend, commit or get involved in criminal activities with impunity. This is indicative of a contemptuous disregard of the authority of such Court. The alleged subsequent offence, if true, in this instance is extremely serious. 79 kg of pure heroin is critical and is consistent with a large-scale trafficking of narcotics of a commercial nature.

17. In the above premises, even if the petitioner has established exceptional circumstances, as the other facts establish a propensity to reoffend the accused is not entitled for bail under Section 83(2).

Accordingly, this Court is left with no option but to refuse and reject this application. The application is accordingly dismissed.

18. Application is dismissed and the Registrar of this Court is directed to transmit a copy of this order to the Registrar of the High Court of Homagama and the Superintendent of Excise of the Excise Narcotics Bureau.

JUDGE OF THE COURT OF APPEAL

P. Kumararatnam, J.

I agree.

JUDGE OF THE COURT OF APPEAL