

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

In the matter of an application for Bail in terms  
of Section 83 (2) of the Poisons, Opium and  
Dangerous Drugs Ordinance No. 13 of 1984 as  
Amended Act No. 41 of 2002 of the Constitution  
of the Democratic Socialist Republic of Sri  
Lanka.

**Court of Appeal No:**  
**CA/BAL/0480/2023**  
MC Hambantota  
Case No: BR 4743/22

Hewapannilage Nihal,  
Athula Sevana, Konegaslanmda,  
Gatamanna - West

**Petitioner**

**Vs.**

- 1) Officer-in-Charge  
Police Narcotic Bureau,  
Colombo 01.
- 2) Hon. The Attorney General,  
Attorney General's Department,  
Colombo 12.

**Respondents**

**AND**

Hewapannilage Nilanga Chamara  
(currently in remand prison)

**1<sup>st</sup> Suspect**

Before : R. Gurusinghe J.  
&  
M.C.B.S. Morais J.

Counsel : Senaka Ullandupitiya with Poorni Rupasinghe

**for the Petitioner**

Malik Azeez, SC,

**for the Respondent**

Argued on : 28.11.2023

Decided on : 15.12.2023

### **ORDER**

R. Gurusinghe J

The petitioner is the father of the 1<sup>st</sup> suspect in the case bearing no. B.R. 4743/2022 in the Magistrate's Court of Hambantota. The petitioner was arrested on 13.11.2022 for allegedly being in possession of 1,626 grams of heroin. The Government Analyst report has not been filed of record. However, the respondents have submitted that, as per the Government Analyst report, the pure quantity of heroin was 840 grams.

The petitioner states that the suspect was arrested at his residence and he was subjected to physical assault and torture by the officers of the police Narcotic Bureau. The petitioner further states that the 1<sup>st</sup> suspect denied the allegation against the 1<sup>st</sup> suspect. He further pleads that no legal substance was recovered from the suspect's possession and he had never been involved in drug trafficking. The petitioner further states that the legal substance was introduced to the 1<sup>st</sup> suspect at a later time. The petitioner has filed a complaint with the Human Rights Commission of Sri Lanka. An Attorney-at-law who appeared on behalf of the 1<sup>st</sup> suspect in Hambantota informed the Court about the unlawful conduct of the officers of the Police Narcotic Bureau.

The respondents have filed objections to the petitioner's application. The respondents have denied the allegations made in the petition. Further, the respondent stated that when the 1<sup>st</sup> suspect was first produced before the Magistrate's Court, no complaint was made regarding the assault. The allegation of assault was made after a period of nearly three months.

The petitioner has failed to establish reasonable proof that the instant application was filed on the instruction of the 1<sup>st</sup> suspect on his behalf or at least with his concurrence. Therefore, the petitioner has no *locus standi* to institute and maintain the instant application. The application is not supported by an affidavit of the 1<sup>st</sup> suspect supporting the factual matters pleaded in the petition.

The suspect was arrested on 12-11-2022 for an offence of trafficking heroin with a total gross quantity of 1 kg and 636 grams, and the total net quantity, as per the Government Analyst report, is 840 grams. The petitioner has failed to adduce exceptional circumstances before this court warranting the granting of bail to the 1<sup>st</sup> suspect. The respondents pleaded for the dismissal of the petition.

The provisions of section 83 of the Poisons, Opium, and Dangerous Drugs Ordinance, as amended by Act No. 41 of 2022, state;

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 in 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.*

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

What constitutes exceptional circumstances is not defined in the statute. Our Superior Courts have considered various situations as exceptional circumstances in granting bail for suspects in terms of the Ordinance.

Under the provisions of section 83 (2), a person suspected or accused of an offence under section 54A and section 54B of the Poisons, Opium and Dangerous Drugs Ordinance as amended by Act No. 41 of 2022, the pure

quantity of drugs trafficked, imported or exported or possessed is 10 grams or above in terms of the report issued by the Government Analyst under Section 77a and which is punishable with death or life imprisonment, shall not be released on bail except by the Court of Appeal in exceptional circumstances. The pure quantity of heroin allegedly found in the direction of the 1<sup>st</sup> suspect is 840 grams, which is not a user quantity and is clearly a commercial quantity.

In the case of Ranil Charuka Kulatunga vs. Attorney General CA(PHC) APN134/2015, the Court held that *“the quantity of cocaine involved in this case is 62.847 grammes, 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.”*

No affidavit by the 1<sup>st</sup> suspect has been produced by the petitioner to support the factual matters stated in the petition. As a huge quantity of heroin is involved in this case, it is natural to take time to complete the investigations. When considering the facts and circumstances of this case, we see no inordinate delay on the part of the respondents. The petitioner has failed to establish exceptional circumstances which warrant granting of bail to the 1<sup>st</sup> suspect. The petitioner’s bail application is dismissed.

Judge of the Court of Appeal

M.C.B.S. Morais J.

I agree.

Judge of the Court of Appeal.