

**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/0413/2023
High Court Negombo
Case No: HC 198/22

Democratic Socialist Republic of Sri Lanka

Prosecutor

Vs

Prasangili Durayalage Kanchana Lakmali
Near the Community Hall,
Ibbanwewa, Allagama,
Diyathalawa
(Presently at Negombo Prison)

Accused

And Now

Prasangili Durayalage Kanchana Lakmali
Near the Community Hall,
Ibbanwewa, Allagama,
Diyathalawa
(Presently at Negombo Prison)

Accused- Petitioner

Vs.

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

Prosecutor-Respondent

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

Counsel : Chathura Amarathunga **for the Accused-Petitioner**
Jayalakshi De Silva, S.S.C. **for the Respondents**

Argued on : 30/11/2023

Decided on : 15/12/2023

ORDER

R. Gurusinghe J

The petitioner-accused was arrested by the officers of the Police Station of Negombo on 02-06-2020 for being in possession and trafficking of 89.03 grams of heroin, which is an offence punishable in terms of section 54A (d) and 54A (b) of the Poisons, Opium, and Dangerous drugs Ordinance as Amended (The Ordinance).

The petitioner is now indicted in the High Court of Negombo with the charges of the above-mentioned offences. The petitioner filed this application before this court seeking to be enlarged on bail. The petitioner has submitted the following as exceptional circumstances which warrant granting of bail to the petitioner.

- a. The petitioner has been incarcerated for over three years.
- b. PW1 fabricated this whole case in order to put the petitioner into trouble.
- c. There would be a substantial miscarriage of justice if the petitioner is not enlarged on bail.
- d. Petitioner has not engaged to possess or traffic narcotic substance.
- e. Petitioner has a daughter and the child would be destitute if the petitioner is incarcerated.
- f. Petitioner has no previous convictions or ongoing cases.

- g. Petitioner is diagnosed with “Diabetic Mellitus”, which needed the proper specialist's medical care.

The respondents have filed objections and stated that the petitioner had failed to show exceptional circumstances in order to consider bail.

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 to grant bail to suspects in terms of the ordinance.

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 petitioner has been in custody since 02-06-2020. Now, it is more than three and a half years. It was submitted that when the accused was arrested, her daughter was just one and a half years and now, she is five years old. The daughter of the accused needs the mother’s attention at this

tender age. She has already been deprived of her mother's love and care since the mother's arrest. It has been revealed at the inquiry that the husband of the accused is also in custody even before the arrest of the accused and has not been released.

The accused has been indicted in the High Court. However, the trial has not been commenced up to date. The Court cannot forget the fact that the presumption of innocence ends only upon conviction. The court holds the discretion to grant bail, which should be exercised with due care, taking into account the facts and the circumstances of each case.

In the Bail Application of CA Bail/0109/22, P. Kumararatnam, J., quoting from the judgment of the Supreme Court of Victoria, stated as follows:

In Nasher v. Director of Public Prosecution [2020] VSCA 144, the court held that: "a combination of delay, onerous custodial conditions, and the relative weakness of the prosecution case may, when considered with all relevant circumstances, compel the conclusion that exceptional circumstances have been established."

The daughter of the accused has been deprived of both the mother and father's care since her age is one and a half years. She should be given at least the mother's care and protection considering her tender age. Taking into consideration the above-mentioned facts, the period of incarceration, and the fact that the trial has not been commenced, this is an appropriate case to grant bail under strict conditions to the accused. Hence, I order the accused petitioner to be released on the following conditions.

1. Cash bail of Rs. 100,000/-.
2. To provide two sureties. They must sign a bond of Rs. 1,000,000/- each.
3. To surrender her passport, if any, to the court. An overseas travel ban is imposed on the accused until the conclusion of the case.
4. To report to the police station in Negombo on 2nd Sunday of every month between 9.00 a.m. and 1.00 p.m.
5. Permanent residing address of the accused should be provided to the High Court and such residence should not be changed without leave of the High Court until the conclusion of the case.

The Registrar of this Court is directed to send copies of this Order to the High Court of Negombo and the Headquarters Inspector of the Police Station in Negombo.

Judge of the Court of Appeal

M.C.B.S. Morais J.
I agree.

Judge of the Court of Appeal.