

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

In the matter of an application for Bail
made under and in terms of Section
83(2) of the Poisons, Opium and
Dangerous Drugs (Amendment) Act No.
41 of 2022 dated 23.11.2022.

The Officer-in-Charge

Police Narcotics Bureau

Colombo-12

Court of Appeal No:

COMPLAINANT

CA Bail 0187/2025

Vs.

Magistrate Court Matara

Kalana Thilanga Atapattu

Case No. 1669/2021

1ST SUSPECT

AND NOW BETWEEN

Diyagu Hennadi Jayaweera Patabendige

Laksmi

Polwathumodara,

Mirissa.

PETITIONER

Vs.

1. The Officer-in Charge,
Police narcotics Bureau
Colombo-12.
2. The Attorney General
Attorney General's Department,
Colombo-12.

RESPONDENTS

BEFORE : **P.Kumararatnam, J.**
Pradeep Hettiarachci, J.

COUNSEL : **Hafeel Farisz with Shannon**
Thilakaratne for the Petitioner.
Tharaka Kodagoda, SC for the
Respondents.

ARGUED ON : **16/09/2025.**

DECIDED ON : **02/10/2025.**

ORDER**P.Kumararatnam,J.**

The Petitioner is the wife of the 1st Suspect. (hereinafter referred to as the Suspect). The Suspect has been named in M.C. Matara Case No. BR 1669/2021. She had applied for bail for her husband.

On 13.06.2021, the Suspect was arrested by the Officers attached to the Police Narcotics Bureau upon an allegation relating to importation, possession, and trafficking of 219.800 kilograms grams of substance suspected to be Heroin. According to police, the contraband was seized from a fishing trawler named “Saki Duwa” and the trawler named OFRP-A-0117 MTR with 6 suspects upon an information provided by the Suspect along with 2nd and 3rd Suspects named in the B Report.

The Suspect along with others were produced and facts were reported to the Matara Magistrate under Section 54A (d) (c) and (b) of the Poisons, Opium and Dangerous Drugs Ordinance as amended by the Act No.13 of 1984.

The production had been sent to the Government Analyst Department on 03/08/2021. After analysis, the Government Analyst had forwarded the report to Court on 22/06/2021. According to the Government Analyst, 160.7414 kilograms of pure Heroin (Diacetylmorphine) had been detected from the substance sent for the analysis.

According the Petitioner, the Suspect was arrested without any contraband in his possession.

The learned Counsel for the Suspect submitted to Court that the 3rd Suspect who was also arrested on the same charge was granted bail by this Court on 06.12.2024 under case No. CA/Bail 522/23.

The learned State Counsel, reiterating the submissions made in CA/Bail No. 522/23, submits that the matter is still under consideration and she is unable to say whether any incriminating evidence available against the Suspect named in this application.

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

1. No drugs were found in his possession of the Suspect at the time of his arrest.
2. The Suspect has been in remand well over 04 years.

The Suspect is in remand well over four years. According to the Government Analyst Report, 160.7414 kilograms was detected in the production sent for analysis. Although the Government Analyst Report is available, no indictment finalized against him up to now.

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 160.7414 kilograms. Hence, this court has jurisdiction to consider granting of bail as per the new amendment.

The Counsel for the Petitioner submitted that the police have fabricated a case against the Suspect.

I agree with the learned State Counsel that the factual and evidentiary matters pertain to the investigations can only be tested at the trial upon the witnesses being cross examined and shall not be tested at the time of hearing this bail application considering the nature of this case.

In this case the probability of the happening of the incident as described by the police need to be assessed thoroughly before the court could come to a final decision. This could only be done at a trial. Until such time keeping the Suspect in remand, I consider is not proper under the circumstances of this matter.

Hence, I consider the delay well over 04 years in remand falls into the category of excessive and oppressive delay considering the circumstances of this case.

Offences under Section 54A(d) (c) and 54A(b) of the Poisons Opium and Dangerous Drugs Ordinance as amended by the Act No.13 of 1984 is 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 Courts. The discretion should be exercised with due care and caution taking into account the facts and circumstances of each case.

Considering all these factors into account, especially the period in remand, the granting bail to the 3rd Suspect who was also arrested on the similar offence and the other circumstances of the case, I consider this an appropriate case to grant bail to the Suspect. Hence, I order the Suspect be granted bail with following strict conditions.

1. Cash bail of Rs.500,000/=.
2. To provide 02 sureties. They must sign a bond of two million each. The Petitioner should be one of the sureties.
3. The Suspect 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 on the 2nd and the 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 Magistrate Matara is hereby directed to enlarge the Suspect on bail on the above bail conditions.

The Registrar of this Court is directed to send this bail order to the Magistrate Court of Matara and Officer-in-Charge of the Police Narcotics Bureau, Colombo-1.

JUDGE OF THE COURT OF APPEAL

Pradeep Hettiarachchi, J.

I agree.

JUDGE OF THE COURT OF APPEAL