

**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 (Amendment)Act No 41 of
2022.

Court of Appeal No: The Officer-in-Charge
CA Bail / 0481/24 Police Narcotics Bureau
Colombo-01.

COMPLAINANT

Vs

MC Negombo

Case No. M 49829/22 1. Jesmin B.Fareed
2. Arumugam Yohan Samuel

SUSPECTS

AND NOW BETWEEN

Pamban Arumugam
No.542/2B/2/1,
Aluthmawatha Road,
Colombo-15.

PETITIONER

Vs.

1. The Officer-in-Charge
Police Narcotics Bureau
Colombo-12.

2. The Attorney General
Attorney General's Department
Colombo-12.

RESPONDENTS

On behalf of 2nd Suspect
Arumugam Yohan Samuel
(Presently in Negombo Prison)

SUSPECT

BEFORE : **P. Kumararatnam, J.**
R.P.Hettiarachchi, J.

COUNSEL : **Shamindra Rodrigo with Eranda Sinharage for the Petitioner.**
Wishwa Wijesooriya, SC for the Respondents.

ARGUED ON : **26/05/2025.**

DECIDED ON : **04/07/2025.**

ORDER

P.Kumararatnam,J.

The Petitioner is the father of the 2nd Suspect (hereinafter referred to as the Suspect) in the Magistrate Court Negombo Court Case No.M/49829/2022.

Upon an information received by the officers of Police Narcotics Bureau of Katunayake Airport Branch they had arrested the 1st Suspect named in the Petition, who had returned from Dubai in UL 226 aircraft on 04.05. 2022.Upon search of her luggage, a false bottom was discovered. In that false bottom, a small bag was discovered. In which the officers had detected 2 kilograms and 210 grams of substances believed to be Heroin (Diacetylmorphine). The 1st Suspect was arrested and produced before the Learned Magistrate of Negombo and continued investigation after obtaining a detention order issued by the Learned Magistrate.

During the investigation it was revealed that the Suspect named in the Petitioner had gone to Dubai with the 1st Suspect and had given the particular bag to the 1st Suspect to pack her thing. The investigation had further revealed that the Suspect also returned in the same flight and the bag in which the substances was found contained a baggage tag in the name of the Suspect. As such the police had conducted investigation about the Suspect and they could only arrest him at a night club on 26.05.2022. He too had been remanded in the same Negombo Magistrate Court case No. M 49829/2022 upon the charges of aiding and abetting the 1st Suspect to commit an offence under the Poisons, Opium and Dangerous Drugs Act No.13 of 1984.

The suspects were produced and facts were reported to the Negombo Magistrate under Section 54A (d) (b) and (c) 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 and after analysis, the Government Analyst had forwarded the report to the Police Narcotics Bureau. According to the Government Analyst, 1.3239 Kilograms of pure Heroin (Diacetylmorphine) had been detected from the substance sent for the analysis.

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

1. The Suspect was taken into custody 23 days after the arrest of 1st Suspect with the Heroin which he has no connection whatsoever.
2. The Suspect was in remand for more than 03 years without a valid indictment since he was produced before court.
3. The case against the Suspect is very weak as nothing was recovered from him at the time of his arrest.

The State opposing to bail submitted that the investigation notes had been received by the Attorney General Department and matter is being considered under AG Reference No. CR3/24/23. Hence, Learned State Counsel submitted that the delay is not an exceptional circumstance to be considered to enlarge the suspect on bail. Further, the time spent for preparing the indictment does not constitute an exceptional circumstance.

The suspect is in remand little more than three years as at today. According to Government Analyst Report, the pure quantity of Heroin detected from the possession of 1st Suspect is 1.3239 Kilograms.

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 1.3239 Kilograms. Hence, this court has jurisdiction to consider granting of bail as per the new amendment.

In this case the Government Analyst Report is dated 14.09.2022. Even though the investigation dossier has been received by the Attorney General's Department, in the year 2023, up to now the indictment has

not been preferred against any of the Suspects. When this was questioned, the learned State Counsel unable to give a plausible reason for the delay.

Hence, I consider the delay little more than three years in remand custody falls into the category of excessive and oppressive delay considering the circumstances of this case.

In this case the Accused alleged to have committed Offences under Section 54A(d), (b) and (c) 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 as well.

Further, bail should never be withheld as a punishment. Granting of bail is primarily at the discretion of the Court. The discretion should be exercised with due care and caution considering the facts and circumstances of each case separately.

Considering all these factors into account, especially the period in remand, the uncertainty of filing charges, the circumstances of his arrest and other circumstances of the case, I consider this is 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.50,000/=.
2. To provide 02 sureties. They must sign a bond of two million each. The Petitioner should be one of the sureties.
3. The 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 Suspect.
6. To report to the Police Narcotics Bureau, Colombo-01 on 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 of Negombo 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 Negombo and Officer-in-Charge of the Police Narcotics Bureau, Colombo-01.

JUDGE OF THE COURT OF APPEAL

R.P.Hettiarachchi, J.

I agree.

JUDGE OF THE COURT OF APPEAL