

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 Poison, Opium and Dangerous Drugs Ordinance as amended by the Poison, Opium and Dangerous Drugs (Amendment) Act No.41 of 2022.

The Democratic Socialist Republic of Sri Lanka

Complainant

Court of Appeal Case Number:
CA BAL 0599/2023

Vs

Magistrate Court of Maligakanda
Case Number: **2807/23**

Hewa Rathnapullige Dikshan
(Currently held in Remand custody)

Suspect

AND NOW BETWEEN

Hitinwala Arachchilage Nadeeka
Kumari,

Thewanuwara, Thabbowa, Puttalam

Petitioner

Vs

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

Respondents

Before : **P Kumararatnam, J.**
Pradeep Hettiarachchi, J.

Counsel : Hafeel Farisz with Shannon Tillkeratne for the Petitioner
Oswald Perera, SC for the Respondents

Inquiry on : 25-07-2025

Decided on : 12-09-2025

Pradeep Hettiarachchi, J

Order

1. This is an Application for bail filed by the Petitioner named Hitinawala Arachchilage Nadeeka Kumari (hereinafter referred to as “the Petitioner”) on behalf of her husband named Hewa Rathnapullige Dikshan (hereinafter referred to as “the Accused”) under section 83(2) of the Poisons, Opium and Dangerous Drugs Ordinance (hereinafter sometimes referred to as “the Ordinance”).
2. According to the B-Report dated 21-01-2023, annexed to the Petition, the Accused has been arrested on 20-01-2023, at 3.15 pm near the Peoples Bank ATM machine at Rajagiriya McDonald’s by the IP S.P Gunatilleke attached to the Gonahena Camp of the Police Special Task Force for trafficking and keeping in his possession 1.254 Kg of Heroin (Gross weight was indicated in the Government Analyst Report as 1.203 Kg), an offence punishable under section 54A1 (b) and 54A1(d) of the Ordinance. Thereafter, the Accused was produced before the Magistrate Court of Maligakanda on 21-01-2023 and he has been in remand custody since the date of arrest.
3. As per the Government Analyst Report dated 28-04-2023, the net quantity of Diacetyl Morphine recovered from the Suspect was 271.7 grams.
4. The Respondents have filed their Objections dated 28-02-2024. In the Objections it is stated that the Petitioner has failed to establish exceptional circumstances; releasing the

Accused on bail would disturb the on-going investigations pertaining to exposing a drug cartel; the amount of Heroin recovered from the Accused is not a user quantity, but a commercial quantity which indicates that the Accused is a drug dealer of large scale and any discrepancies in the gross quantity of the productions weighed by the Police and the net quantity mentioned in the Government Analyst Report can be explained at the trial stage.

5. Under section 83(2), this Court can consider bail only if exceptional circumstances are made out. Section 83 as amended by the Poisons, Opium and Dangerous Drugs (Amendment) Act, No. 41 of 2022 reads:

Section 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.

6. The provisions of section 83 (2) as amended by Act, No. 41 of 2022, manifest the intention of the legislature, i.e., a person accused or suspected of being in possession of 10 grams or more of the dangerous drugs is required to be kept in remand, unless such person satisfies this Court as to the existence of circumstances that are exceptional. Therefore, the burden is on the Accused to establish the existence of exceptional circumstances.

7. However, the exceptional circumstances are not defined in the Ordinance. Therefore, whether the grounds advanced by the Petitioner constitute exceptional circumstances must be determined based on the specific facts and circumstances of each case.
8. As stated in ***Ramu Thamodarampillai v The Attorney General*** [2004] 3 Sri. LR 180, “the decision must in each case depend on its own particular facts and circumstances.
9. The following grounds have been urged by the Petitioner as exceptional circumstances warranting consideration for bail:
 - (a) The Accused was not in fact arrested in the manner stated in the B-Report and accordingly there lies no *prima facie* case against the Accused.
 - (b) There were no previous convictions or pending cases against the Accused.
 - (c) The Accused’s period of detention in the remand custody (almost 8 months) has had an adverse impact on the Petitioner and the family as the Accused is the sole bread winner of the family.
 - (d) There is a difference as to the weight of the brown colored powder where in the B-Report it was mentioned as 1254 grams and Government Analysis Report mentioned as 1203.5 grams.
10. In the present Application, the Petitioner mainly disputes the manner in which the arrest was made. The Petitioner totally denies that her husband was arrested whilst having in his possession any dangerous drug as stated in the B-Report. According to the Petitioner, the Accused was arrested when he was in his own vehicle on 20-01-2023 and the said amount of Heroin was introduced to him by the officers of the Police Narcotic Bureau after he was taken there. The Petitioner suggests that this occasion of arrest is recorded in the CCTV camera of the McDonald’s Rajagiriya. Furthermore, she states that the Accused’s signature was forcibly taken to some empty papers and to papers that contain some declaration by the officers of the Police Narcotic Bureau, the contents of these papers have not been read over to the Petitioner, nor the Petitioner has acknowledged the contents therein.
11. In order to substantiate the above position, an application was made to obtain the CCTV footages between 3.00 pm to 4.00 pm on the day of his arrest, i.e 20-01-2023 McDonald’s Rajagiriya. As per the proceedings before the Magistrate Court of

Maligakanda, the learned Magistrate, after taking into consideration the submissions made by the learned Counsel for the Accused regarding the illegal arrest, has made an order to obtain the relevant CCTV footages from the Manager of the McDonald's outlet in Rajagiriya on 26-01-2023. Thereafter, on 27-11-2024, when this matter was called before the High Court, the learned Counsel for the Accused has drawn the attention of the learned High Court Judge regarding these CCTV footages and the Learned High Court Judge has asked the State Counsel to take necessary steps regarding the same as it is going to be a vital piece of evidence in the case. However, the Prosecution does not seem to have taken any meaningful steps to obtain the same. This further supports the Accused's contention regarding the arrest and the raises serious doubts on the Prosecution's version of events which cannot be simply overlooked by this Court.

12. Another exceptional circumstance advanced by the Petitioner is that the Accused had been in remand custody for almost eight months since the date of his arrest until such time this bail application was preferred to this Court and the Accused's prolonged stay in the remand custody has an adverse impact on his family as he is the sole bread winner of the family.
13. Whilst it is a normal phenomenon that a family will have to suffer when its sole bread winner is incarcerated for a long period of time due to the delay in prosecuting the Accused, that ground alone, will not suffice to consider granting bail to an Accused unless such delay amounts to an oppressive and inordinate delay. As held in **Attorney General v. Ediriweera** (S.C. Appeal No. 100/2005), "Delay is always a relative term and the question to be considered is not whether there was mere explicable delay, as when there is a backlog of cases, but whether there has been excessive or oppressive delay and this always depends on the facts and circumstances of the case...".
14. Furthermore, considering the legislative intent behind section 83(1) (Prior to the Amendment) of the Ordinance, it was stated in **Labukola Ange Wisin Gedera Ashani Dhanushshika v. OIC Divisional Crimes Investigation Unit Panadura** [CA/PHC/APN/04/2016- CAM 06.10.2016] as follows;

"The Petitioner's first point is that the suspect is in remand nearly for two years. The intention of the Legislature is to keep in remand any person who is suspected of or accused of possessing or trafficking heroine until the conclusion of the case. The

Section 83(1) of the Poisons, Opium and Dangerous Drugs Ordinance express the intention of the Legislature. It is enacted by the Parliament that “No person suspected or accused of an offence under section 54A or section 54B of this Ordinance shall be released on bail, except by the High Court in exceptional circumstances.”

15. But at the same time, this Court is also mindful of the fact that the stringent provisions of a statute should not be used as a tool to deprive a person’s liberty, thereby forcing them to live in trepidation without any knowledge of the progress of the investigation or the possible outcome.
16. Our Courts have recognized the prejudice caused to an Accused by lengthy and inordinate delays in prosecuting him. To elaborate further, the right to a speedy trial is not only aimed at expediting the administration of justice but also at preventing the oppression of a citizen by keeping a criminal prosecution hanging over them for an indefinite period.
17. Therefore, it is incumbent upon the relevant authorities to act with due diligence to avoid inordinate delays in prosecuting offenders. If the prosecution fails to act with due diligence and cannot explain the delay on their part, it would, in my opinion, constitute an exceptional circumstance as required by section 83 of the Poisons, Opium and Dangerous Drugs Ordinance.
18. In the present Application, the Accused has been in remand since 20-01-2023 and the Indictment against the Accused had been filed on 24-11-2023 which has been served on him thereafter. However, according to the journal entries, the pre-trial conference has not yet commenced. Therefore, it is uncertain as to when the trial against the Accused will be concluded. Furthermore, the learned State Counsel has failed to give a justifiable reason for the delay in prosecuting the Accused, nor has he indicated a possible date on which the pre-trial conference would commence.
19. It is also pertinent to note that the Accused has no previous convictions or pending cases related to offences of similar nature.
20. In the aforesaid circumstances, the delay of two years and six months, when considered in conjunction with the failure to provide an explanation for the delay in prosecuting the

Accused and may be regarded as exceptional. It is important to emphasize that when a person is deprived of their liberty and held in detention; those responsible for such deprivation must consciously and diligently take the necessary steps to conclude legal action. If no reasonable explanation is provided for any delay, such delay will be deemed excessive or oppressive.

21. Based on the above analysis, I am inclined to grant bail to the Accused subject to the following conditions;

- a) Rs 200, 000/- cash bail;
- b) to provide two sureties who should execute bonds to the value of Rs. 500,000.00 each;
- c) the sureties should provide certificates from the Grama Sevaka and police reports from respective residential areas of such sureties;
- d) the Suspect shall surrender the passport or any travel document of the Suspect, if he has any, to the Registrar of the High Court of Colombo.
- e) The Suspect is ordered to report to the Officer-in-Charge of the Police Narcotic Bureau on every last Sunday of the month before 12 noon.

22. This Application is accordingly allowed, and the Registrar of this Court is directed to transmit a copy of this Order to the Registrar of the High Court of Colombo, Magistrate Court of Maligakanda and to the Officer-in-Charge of the Police Narcotic Bureau forthwith.

Judge of the Court of Appeal

Hon. P. Kumararatnam,J

I agree,

Judge of the Court of Appeal

