

**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.

Court of Appeal Jayaratna Gamage Buddhika Chanaka

Bail Application No: Kumara

CA Bail 0478/2023 No. 20/5, Thawaluwila, Ambalantota.

MC Embilipitiya Case No. **PETITIONER**

BR/135/23 1. Headquarters Chief Inspector
Headquarter of Police,
Embilipitiya.
2. The Attorney General
Attorney General's Department
Colombo-12.

RESPONDENTS

Jayaratna Gamage Amila Ruwan Prasad
Kumara

SUSPECT

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

COUNSEL : **Sandeepani Wijesooriya for the Petitioner.**

Tharaka Kodagoda, SC for the Respondents.

ARGUED ON : **06/06/2025.**

DECIDED ON : **14/07/2025.**

ORDER

P.Kumararatnam,J.

The Petitioner is the elder brother of the Suspect. He had applied for bail to the Suspect who has been produced in the Magistrate Court of Embilipitiya under Case No. BR 135/2023.

According to the B report filed in the Magistrate Court on 20.01.2023 the Suspect was arrested on an information received by the officers attached to the Divisional Crime Investigation Unit of Embilipitiya. As per the information, the police entered the Guest House looking for two persons. Thereafter, the police found the due were staying in Room No.14 of the said Guest House. A parcel containing narcotics were first recovered from the possession of the other person. When the Suspect was checked a small parcel was recovered underneath of his underwear. Another parcel was also recovered from a laptop bag. As the

parcel recovered from the Suspect's underwear reacted for Heroin, he, and the other person was brought to the police for further investigation. When the substance was weighed it showed the gross weight of 810 grams in total. The other parcel recovered from the laptop contained 16.750 grams of Cannabis Sativa L.

The suspect was produced and facts were reported to the Embilipitiya Magistrate under Section 54A (b) and (d) 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 10/03/2023. After analysis, the Government Analyst had forwarded the report dated 28/07/2023. According to the Government Analyst, 10.64 grams of pure Heroin (Diacetylmorphine) had been detected from the substance sent for the analysis.

According the Petitioner, the Suspect was arrested with another person and denied any contraband in his possession at the time of his arrest.

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

1. No drugs were found in the possession of the Suspect by the police officers.
2. The Suspect had been in remand over two years.

The Learned State Counsel opposing for bail, submitted that the delay is not an exceptional circumstance to be considered to enlarge the suspect on bail. At present the indictment had gone to the High Court.

The suspect is in remand for over two years. According to the Government Analyst Report, the pure quantity of Heroin detected from the possession of the Suspect is 10.64 grams.

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 grams 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 10.64 grams. Hence, this court has jurisdiction to consider granting of bail as per the new amendment.

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.

Further, I do not consider the delay more than two years in remand falls into the category of excessive and oppressive delay considering the circumstances of this case.

The Offence under Section 54A (b) and (d) of the Poisons Opium and Dangerous Drugs Ordinance as amended by the Act No.13 of 1984 is a serious offence and the seriousness of the offence should be considered when bail is considered.

The State submitted that the Suspect has two previous conviction and two pending cases, all are drugs related offences. In one of the pending cases the Suspect was arrested for possession 506 grams of Heroin (Diacetylmorphine). For that he has been issued with a warrant by the Court. This clearly shows his propensity towards committing drug related offences.

In this case the pure Heroin detected is 10.64 grams, which certainly a higher quantity. Considering the seriousness of the sentence prescribed under the Poisons, Opium and Dangerous Drugs Ordinance, there is a high risk of absconding. Hence, it is prudent to indict and conclude the High Court case expeditiously keeping the Suspect in remand.

Considering all these factors into account, especially the pure quantity of Heroin detected, the previous conviction and pending cases related to drug offences and other circumstances of the case, I consider this is not an appropriate case to grant bail to the Suspect at this stage.

Hence, the bail application is hereby dismissed.

The Registrar of this Court is directed to send this Bail Order to the Magistrate Court of Embilipitiya and The Headquarters Chief Inspector, Headquarters of Police, Embilipitiya.

JUDGE OF THE COURT OF APPEAL

R.P.Hettiarachchi, J.

I agree.

JUDGE OF THE COURT OF APPEAL