

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.

Democratic Socialist Republic of Sri Lanka

Prosecutor

Court of Appeal No:
CA/BAL/0585/2023

HC Negombo
Case No. HC 85/2020

Vs.

Amarasingha Vithanage Thanuja
Sanjeeva Perera
No. 58 Mathammana,
Minuwangoda
(Presently at Negombo Prison)

Accused

And Now Between

Amarasingha Vithanage Thanuja
Sanjeeva Perera
No. 58 Mathammana,
Minuwangoda
(Presently at Negombo Prison)

Accused -Petitioner

Vs.

The 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

Lishan Ratnayake, S.C.,
for the Respondents

Argued on : 14-03-2023

Decided on : 09-05-2023

ORDER

R. Gurusinghe J

The accused-petitioner filed this application seeking his release on bail. The accused-petitioner was indicted in the High Court of Negombo under Case No. HC 85/2020, for being in possession and trafficking of 42.05 grams of heroin, which are offences punishable under section 54A (d), 54A (b) of the Poisons, Opium and Dangerous Drugs Ordinance (hereinafter referred to as the Ordinance), as Amended by Act No. 13 of 1984.

The petitioner was arrested on 30-08-2018 by PW1, an officer attached to the Police Narcotics Bureau (PNB). The petitioner was produced before the Magistrate's Court of Minuwangoda, under B-1792/2018 on 31-08-2018 and remanded. He has been in remand since then.

The accused petitioner has filed this application before this court seeking him to be released on bail under the provisions of section 83 of the Ordinance as amended by Act No. 41 of 2022.

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.”

The petitioner has pleaded the following as exceptional circumstances which warrant granting bail to him.

- a. The petitioner has been incarcerated for over five 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. The petitioner has not engaged in possessing or trafficking the narcotic substance.
- e. The petitioner has no previous convictions or ongoing cases.

The respondents have filed objections to the petitioner’s application and stated that the facts pleaded by the petitioner do not constitute exceptional circumstances which warrant granting of bail.

The statute does not define exceptional circumstances. Therefore, what amounts to exceptional circumstances must be considered on a case-by-case basis based on the facts and circumstances.

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 accused in this case has been in remand custody for over five years, which is a longer period than what could be considered reasonable in the circumstances of this case. The evidence of PW1 has been partly led. However, before the evidence of PW1 was concluded, PW1 had passed away. As a result, the evidence of PW 1 became abortive. No other evidence has been led. The prosecution still has to start the trial with a new witness.

As the High Court of Negombo has a heavy case load, it might take long intervals between two trial dates, as indicated by the case record. Therefore, there is no likelihood that the case against the petitioner in the High Court will be concluded within a few months’ time. However, the reasons for the delay are not attributable to the petitioner.

Deprivation of personal liberty without ensuring speedy trial is not consistent with Article 13 (2) of the Constitution. While deprivation for some periods may not be avoidable, the period of deprivation pending trial cannot be unduly long.

In the case of the Attorney-General v Segulebbe Latheef and Another [2008] 1 SriL.R 225, the Supreme Court held that a fair trial includes *“the right of an accused to be tried without much delay.”*

Taking into consideration of the facts and circumstances of the case as of now, I consider this is an appropriate case to grant bail to the accused. Hence, I order the accused to be released on bail on the following conditions:

1. Cash bail of Rs. 100,000/- (One Hundred Thousand).
2. Provide two sureties. Each such surety must enter into a bond of Rs. 1,000,000/- (One Million).
3. To surrender his passport, if any, to the Court. An overseas travel ban is imposed on the accused until the conclusion of the case.
4. The permanent 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.

5. To report to the OIC of the PNB Colombo, on the first Sunday of every month between 9.00 a.m. and 1.00 p.m.

The Registrar is directed to forward copies of this order to the High Court of Negombo and the OIC, PNB Colombo.

Judge of the Court of Appeal

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

Judge of the Court of Appeal.