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 Section 83 (2) of the Poisons, Opium and Dangerous Drugs Act as amended by Act No. 41 of 2022.

CA. Case No: BAL/198/2023
HC- Kuliyapitiya
Case No: HC 99/2021
MC- Kuliyapitiya
Case No: B 60869/2019

Officer-in-Charge,
Police Narcotic Bureau,
Colombo 01.

Complainant

Vs.

Rapaideen Irshad,
No. 18, Pallapitiya, Kuliyapitiya,
Subharathipura, Muththettuwatta,
Kuliyapitiya.

Suspect

AND NOW BETWEEN

Rapaideen Irshad,
No. 18, Pallapitiya, Kuliyapitiya,
Subharathipura, Muththettuwatta,
Kuliyapitiya.

Suspect-Petitioner

Vs.

1. Officer-in-Charge,
   Police Narcotic Bureau,
   Colombo 01.
   Complainant-Respondent

2. Hon. Attorney General,
   Attorney General's Department,
   Colombo 12.

Respondent

Before:	**R. Gurusinghe J.**
	&
	M.C.B.S. Morais J.
Counsel:	Dumindu Hennayake with Susil Wanigapura for the Petitioner.
	Jehan Gunasekara, SC for the Respondent.
Inquiry on:	10.11.2023.
Decided On:	**08.12.2023.**

M.C.B.S. Morais J

The Petitioner is the Accused, named in the case No. B 60869/2019 in the Magistrate Court of Kuliyapitiya. The Accused was arrested On the 06th April 2019 for the possession of 251 grams and 400 milligrams of Dysatile Morphine(commonly named as Heroine), and subsequent to the report of Government analysts the pure quantity of said Heroine is said to be 117.450 grams.

It is apparent he has been produced before the learned Magistrate of Kuliyapitiya and is held in remand custody up to this date. He has applied for Bail from the High Court of Kuliyapitiya in case number HC99/21 and Learned High Court Judge delivering his order on 04th March 2022 has refused to grant Bail considering that no exceptional circumstances were presented. The Petitioner had made this Application before us under Section 83 of the Poisons, Opium, and Dangerous Drugs (Amendment) Act, No. 41 of 2022. As per the Provisions of Section 83 (2),

> *"83(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 section77A ;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."*

Accordingly, it is clear that a person Suspected of having possessed more than 10 grams of proscribed drugs should not be released on Bail other than on exceptional circumstances. In this application, the Petitioner has stated that there are several exceptional circumstances established which permit the Accused to be released on Bail such as,

> *"a. that he has been remanded from 6th April 2019 up to now and to date the accused has been in remand custody approximately for 4 years where the provisions provide of the recently enacted amending Act No 41 of 2022 a person suspected or accused shall not be detained in custody for a period exceeding twelve months from the date of his arrest which the maximum of detention period can be up to twenty months upon application made by the Attorney General;*
>
> *b. Heroin was not found in the accused however the same has been introduced by the 1st Respondent and his officers;*
>
> *c. the Petitioner is the sole breadwinner of his family who has a daughter of 8 years old;*
>
> *d. due to the arrest and prolonged detention of the Petitioner, the Petitioner's family members sustained several hardships mentally and physically;*
>
> *e. the Petitioner is 39 years of age and the most valuable part of his life has to spend in prison;*
>
> *f. the daughter of the Petitioner is suffering from Bronchitis and the money was provided by the father for the treatment of the daughter due to the Petitioner's incarceration for several years, the daughter could not be treated properly;"*

However, in this Petition the Petitioner has refrained from mentioning anything on the character of the Suspect especially whether the suspect has been convicted before, or whether he has any pending cases. When it comes to the issue of Bail, the character of the Suspect is of much relevance, though irrelevant in deciding the guilt of the person.

A serious question arises as to the reason for nondisclosure especially in the light of proceedings before us indicate of the Suspect's bad character. It is apparent that the Suspect was arrested on the 7th of August 2017 for possession of Heroin and was convicted

on the 12th of February 2018 in the Magistrates Court of Kuliyapitiya, on his admission of such guilt.

As the Suspect is also the Petitioner in this case there is no possibility of him being unaware of the said previous conviction.

As the Petitioner has breached his paramount duty of disclosing the relevant, I am of the view that the Petitioner does not deserve the reliefs prayed for, hence without proceeding to consider the merits on exceptional circumstances, this application for Bail is refused *in limine*.

Judge of the Court of Appeal

R. Gurusinghe J.

I agree

Judge of the Court of Appeal.