IN THE COURT OF APPEAL OF THE DEMOCRATIC SOCIALIST REPUBLIC OF SRI LANKA

In the matter of an application for Bail under Section 83 (2) of the Poisons, Opium and Dangerous Drugs ordinance as amended by Act No. 41 of 2022.

CA. Case No: BAL/169/2023
Chilaw High Court Case No.HC/151/21
MC- Marawila
Case No: B/1182/2020

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

Complainant

Vs.

Jayasuriya Kuranage Malith Roshen Perera,
No. 123/F, Suduwella Road,
Collin Jadiya (East),
Wennappuwa.

Accused

AND NOW BETWEEN

Perumbadage Irin Kristable Theresa,
No. 123/F, Suduwella Road,
Collin Jadiya (East),
Wennappuwa.

Petitioner

Vs.

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

Complainant-Respondent

Jayasuriya Kuranage Malith Roshen Perera,
No. 123/F, Suduwella Road,
Collin Jadiya (East),
Wennappuwa.

Accused-Respondent

Before: **R. Gurusinghe J.**

&

M.C.B.S. Morais J.

Counsel: Darshana Kuruppu with Sudarsha P. De Silva and Dineru Bandara for the Petitioner.

Malik Azeez, SC for the Respondents.

Inquiry on: 09.11.2023.

Decided On: **01.12.2023.**

M.C.B.S. Morais J

The Petitioner is the mother of the Accused named in the Magistrate Court of Marawila Case Bearing No. B/1182/2020. The Accused was arrested on 23.06.2020 for being in possession of 119.50 grams of Dysatile Morphine (commonly named as Heroin) by the Police Officers attached to Wennappuwa Police Station.

He has been produced before the learned Magistrate of Marawila and is held in remand custody up to this date. He applied for Bail from the High Court of Chilaw in case no. HCBA 91/2020 and his application has been rejected on 27th January 2023.

The Petitioner had made this Application before us under the Sections 83 (2) of 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 grammes 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. This was well explained in the case of Mohammad Shiyam vs. Officer-in-Charge, Police Narcotics Bureau & another (2006)2 SLR 156**.**

In this application, the Petitioner has stated that there are several exceptional circumstances, which permit the Accused to be released on Bail. Such being,

a. *The Accused has been in remand custody for more than two years and six months;(almost 3 ½ years, presently)*

b. *The Accused is the sole breadwinner in his family, comprising Petitioner and the father of the Accused;*

c. *The Accused had nothing to do with the Heroin recovered from one Maddumaralalage Kavindu Madushan and did not understand as to why he was arrested in his matter. The Police did not recover any illegal substance from the custody of the Accused;*

d. *The Petitioner is of 66 years old and her husband is also 66 years old who is being treated for various illnesses;*

e. *That there is no likelihood that the Accused would attempt to evade his trial;*

f. *That there is no likelihood that the Accused would commit an offence when he is on bail;*

g. *That there is no likelihood that the Accused would influence or intimidate witnesses as all the witnesses are official witnesses;*

h. *That there is no likelihood that the Accused would disturb public order and undermine the criminal justice system;*

i. *That the father of the Accused has had a surgery on his eye and that he is suffering from a nervous disease and that the Accused's incarceration has caused an irreparable loss to both of them;*

j. *The Petitioner states that the Accused has no previous convictions or pending cases;*

k. *The Accused is more vulnerable to the corona virus disease (COVID 19) as there are many inmates who has tested positive for the virus;*

l. *The Petitioner has made complaints to the human rights commission and the Inspector General of Police for the illegal arrest and the fabrication of a case against the Accused by the police officers attached to the Wennappuwa Police Station."*

However, the grounds 'd' to 'l' stated above have no direct bearing on exceptional circumstances. Furthermore, as for ground 'e', though the Petitioner states that there is no likelihood of the Accused evading his trial, it is somewhat contrary to the material that he has revealed before to the effect that he intends to leave the country.

When considering the ground 'b' above though the Petitioner says that, the Accused is the sole breadwinner of his family, it is apparent that the Accused was unemployed. Furthermore, there is nothing to indicate that the Accused had an income legally earned to maintain the family. Ground 'c' refers to the strength of the prosecution case and it is to be decided at the trial proper.

In the light of such, as for the urged grounds, there remains the sole ground of 'a' which is in regards to the period of remand.

As per the case of, 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"*

Therefore, I would evaluate the merits of this case as per the circumstances of this case.

This Court, P. Kumararatnam, J. in CA Bail/0109/22, quoting from a Judgment of the Supreme Court of Victoria stated that;

"In Nasher v. Director of Public Prosecution [2020] VSCA 144, the Court held that: "a combination of delay, onerous custodial conditions, and the relative weakness of the prosecution case may, when considered with all relevant circumstances, compel the conclusion that exceptional circumstances have been established."

Though this is a foreign judgment, this dictum is quite appropriate and applicable to our law. I further observe that in the case of Bail 201/2023, this Court has granted Bail to a person who was suspected of trafficking and being in possession of 119.2 grams of heroin who has been in remand for four years.

In the present case, the accused has been in remand for nearly 3 ½ years and the recovered quantity of heroin(pure) was 25.42 grams. Furthermore, circumstances such as having no previous convictions and such matters should also be appropriately considered.

In light of all this, together with the other considerable factors, I am of the view that Bail should be granted. Since this matter is to be tried before the High Court, the Learned High Court Judge would be in a better position to consider the appropriate terms of Bail as they may differ due to various circumstances.

Accordingly, the Learned High Court Judge is directed to release the accused on suitable Bail conditions. However, this Bail should be cancelled by the High Court, if the suspect is arrested subsequently for any other offence alleged to have committed, while on Bail. Subject to said condition and the appropriate Bail conditions to be set out by the Learned High Court Judge, Bail is granted.

Judge of the Court of Appeal

R. Gurusinghe J.

I agree

Judge of the Court of Appeal.