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.

Court of Appeal No:
CA/BAL/0610/2023

MC Welisara
Case No: B/280/23

Chief Inspector of Police
Wattala Police Station
Wattala

Complainant

Vs

Pannilage Dinusha Chamara
No. 68, Wall's Lane
Colombo 15
(Presently at Mahara Remand Prison, Mahara)

Suspect

And Now Between

Pannilage Dinusha Chamara
No. 68, Wall's Lane
Colombo 15
(Presently at Mahara Remand Prison, Mahara)

Suspect - Petitioner

Vs

Chief Inspector of Police
Wattala Police Station
Wattala

Complainant-Respondent

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

Respondent

Before : R. Gurusinghe J
&
M.C.B.S. Morais J

Counsel : Sandamal Rajapakshe
for the Petitioner

Nishanth Nagaratnam S.C.
for the Respondents

Argued on : 17/05/2024

Decided on : 27/06/2024

ORDER

R. Gurusinghe J

The petitioner is the suspect in the Magistrate's Court of Welisara, Case bearing No. B 280/23. The petitioner filed this bail application in terms of Section 83 (2) of the Poisons, Opium and Dangerous Drugs Ordinance (hereinafter referred to as the Ordinance) as amended by Act No. 41 of 2022. The petitioner was arrested on 21-01-2023, by the police officers of the Special Task Force, Gonahena Camp, for allegedly being in possession of 51.24 grams of methamphetamine, which is an offence under Section 54A (b) and (d) of the Ordinance.

According to the Government Analyst report dated 30-10-2023, the white crystalline substance allegedly found in possession of the petitioner contained 17.64 grams of methamphetamine.

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."

According to the above provisions, the petitioner has to establish that there are exceptional circumstances that warrant granting bail to the petitioner.

The petitioner has pleaded the following facts as exceptional circumstances.

a. The petitioner above named is the sole breadwinner of the family, who maintained the family;

b. The petitioner's father, who is looked after by the petitioner namely, Pannilage Wijedasa Fernando, is suffering from a severe heart condition which requires adequate timely medical attention and medications;

c. The Petitioner's wife and child are now facing severe hardships in maintaining the household as the sole breadwinner of the family is in incarceration;

The respondents have filed objections and stated that the petitioner had failed to demonstrate exceptional circumstances to consider bail. Further, they have submitted that the quantity of methamphetamine found in the petitioner's possession is a commercial quantity and not a user quantity. If the accused is convicted, the punishment is death or life imprisonment. Under these circumstances, there is a high risk of absconding.

The grounds pleaded by the petitioner cannot be considered as exceptional circumstances. The Government Analyst report was issued on 30-10-2023. There is no excessive or oppressive delay in the circumstances of this case.

In the case of *The Queen v N.L. Cornelis Silva 74 NLR 113* , Weeramantry,J. sates as follows;

> *"The grounds urged in support of his application are firstly that the sentence came as a surprise to him and that he therefore could not make provision for the education of his children and the other affairs of the family and secondly that he needs an opportunity to collect the necessary finances to conduct his appeal and the appeal of his eldest son who has also been convicted along with him. The first of these reasons scarcely bears examination while the difficulty envisaged in the second ground is by no means extraordinary as it is one which would be common to very many accused persons."*

The petitioner has failed to establish exceptional circumstances that warrant his release on bail. Therefore, his application for bail is dismissed.

The Registrar is directed to send a copy of this order to the Magistrate's Court of Welisara.

Judge of the Court of Appeal.

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

Judge of the Court of Appeal.