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 of section 83(2) of the Poison, Opium and Dangerous Drugs Ordinance as amended by the Poison, Opium and Dangerous Drugs(Amendment) Act No. 41 of 2022.

CA Appeal Case No:

CA BAL/652/23

High Court of Homagama Case Number HC 41/2021

The Democratic Socialist Republic of Sri Lanka.

Complainant

Vs.

Chaminda Sembapperuma Arachchi nor Sembapperuma Arachchilage Chaminda

(Currently held in Remand custody)

Suspect

AND NOW BETWEEN

Udawattage Dona Dhammika,

No. 80/F/1,

Pahala Watta,

Hadigama,

Piliyandala.

Petitioner

Vs.

1. Officer-in-charge

   Police Narcotics Bureau,

   Colombo 01.

2. Hon. Attorney General,

   Attorney General's Department,

Colombo 12.

Respondents

Before : Menaka Wijesundera J.
Wickum A. Kaluarachchi J.

Counsel : Hafeel Farisz with Shannon Tillekeratne and Shermina Bangsajayah for the Petitioner.
Jehan Gunasekara, SC for the Respondents.

Argued on : 10.06.2024

Decided on : 25.06.2024

MENAKA WIJESUNDERA J.

The instant bail application has been filed to obtain bail to the suspect namely **Chaminda SembapperumaArachchi nor SembapperumaArachchilage Chaminda.**

The accused in this matter has been taken into custody on the 26th of September 2019 for the possession and trafficking of 1176.135 grammes and 149.734 grammes of heroin under the provisions of the **Poisons, Opium and Dangerous Drugs Ordinance**.

The version of the respondents is that the accused was arrested on the above mentioned date at Nipuna Super market at Watte junction, Horana road, Piliyandala.

The accused has been indicted on the 23rd of March, 2023.

The main ground urged in favour of the accused was that although he had been arrested in 2019 and indicted in 2023, that the accused has been languishing in jail ever since the date of arrest, without a conclusion to the legal proceedings against him.

The accused has been arrested and indicted under the provisions of the **Poisons, Opium and Dangerous Drugs Ordinance**, and according to the latest amendment to the ordinance which is act no 41 of 2022, a person who is suspected or accused of an offence under sections 54a and 54b can be released

on bail only on exceptional circumstances by the High Court and the Court of Appeal, depending on the quantity involved. If the quantity is above 10 grammes, only the Court of Appeal can consider bail on exceptional circumstances.

In the instant matter, we observe that the accused has been in remand for more than 4 years without reaching a finality to the legal proceedings against the accused. The counsel for the accused tendered to court that Act No.41 of 2022 has been mindful of the time period of an accused persons in remand.

The learned counsel for the accused was referring to Section 85 of the amended Act which says that "A suspect or an accused who has not been tried and has not been convicted and sentenced by a court under the provisions of sub section (1)of section 54a and 54b cannot be detained for more than 12 months.

While agreeing with the counsel on the above submission, I note that section 85 of the amended Act has been superseded by section 83(2) of the Act. Therefore, although the legislature had been mindful of the time factor, it has been subjected to the bar of establishing exceptional circumstances in order to obtain bail under section 83(1) of the act.

The learned counsel for the accused submitted that the second accused has been enlarged on bail in the instant matter but the learned state counsel for the respondent submitted, that the second accused was enlarged on bail because of his minimal culpability in the offence. The counsel for the accused-appellant further submitted that the prosecution witness number one (PW-01) is still giving evidence and seven more witnesses are to be testified, hence the delay with regard to the period of remand of the accused is an exceptionality to be considered.

The learned state counsel for the respondent further submitted that the accused has previous convictions for the offence of robbery.

Considering the submissions of both parties, it is worthy to be noted that the term exceptional has not defined in the relevant Act but it is to be decided on the facts and circumstances of each case.

In the instant matter, considering the alleged quantity of heroin involved and the previous convictions of the accused, this court is of the opinion that the instant case is not a suitable case to enlarge the accused on bail as the grounds submitted by the Counsel cannot be considered as exceptional. This is the very reason why it has been decided that exceptionality differs from case to case.

Therefore, as the matter is being tried by the High Court right now, we do not think that bail should be granted in the instant matter, as such the instant application for bail is refused and the application is dismissed.

Judge of the Court of Appeal

Hon. Justice Wickum A. Kaluarachchi

I agree.

Judge of the Court of Appeal