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

In the matter of an Application for Bail under section 83 of the Poisons, Opium and Dangerous Drugs (Amendment) Act No. 41 of 2022.

Thenabadhu Kavishka Subash Mutusra alias Sudda

**CA Case No: BAL/337/2023**
**MC- Tangalle**
**Case No: 49245/22**

**Suspect**

Singh Arachige Pushpa Sudarshini,
No.441, Hinguruwel Pokuna Watta,
Galagama North,
Nakulugamuwa.

**Petitioner**

**Vs**.

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

2. The Officer-in-Charge,
   Police Station,
   Beliaththa.

**Respondents**

**Before:** **R. Gurusinghe J.**

**&**

**M.C.B.S. Morais J.**

**Counsel:** Lelani Sirisena for the Petitioner.

Jehan Gunasekara, SC for the Respondents.

**Inquiry on**: 04.04.2024

**Decided On:** **19.06.2024**

**M.C.B.S. Morais J.**

The petitioner is the mother of the suspect in the case bearing number 49245/22 in the Magistrate's Court of Tangalle. The suspect was arrested by Beliaththa Police on the 22nd of July 2022 for having in possession and trafficking a gross quantity of 120 grams of 'Diacetylmorphine' alias 'Heroin'. Subsequent to the Report of the Government Analysts the pure quantity of said heroin is said to be 17.89 grams. It is apparent that the suspect has been produced before the Magistrate's Court of Galle on the 23rd of July 2022 and held in remand custody up to this date.

The petitioner has made this application before us under section 83 of the Poisons, Opium and Dangerous Drugs (Amendment) Act, No.41 of 2022. As for 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 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."*

The statute does not clarify what exceptional circumstances are. When granting bail to suspects under the Ordinance, our Superior Courts have taken into account a number of circumstances that qualify as exceptional.

In ***Ramu Thamotharampillai V. The Attorney General*** **[2004] 3 SLR 180**, it was held that;

> *"the decision must in each case depend on its own peculiar facts and circumstances."*

In, ***Labynidarage Nishanthi V. Attorney General*** **CA (PHC) APN 48/2014)**, said that;

*"…the term 'exceptional circumstances' has not been explained or defined in any of the statutes. Judges are given a wide discretion in deciding in what creates a circumstance which exceptional in nature."*

In ***Welathanthrage Amila Sampath Botheju V. Attorney General*** **CA/BAL/0239/23**, it was held that;

*"…a certain situation amounts to exceptional circumstances or not, has to be considered on a case-by-case basis, unique to each application before the court."*

When applied in relation to the material before us, in paragraph 10 of the petition, the petitioner pleads certain grounds which are alleged as exceptional grounds, and they are as follows:

a) The suspect is 21 years old aged young person.
b) Nearly 10 months have lapsed since the arrest, and nearly three months have elapsed since the government analyst report was received, and no indictment has been forthcoming from the Honorable Attorney General so far.

Counsel for the petitioner and the respondent admitted at the inquiry that the suspect has no previous convictions or pending cases other than the present case. The Learned State Counsel stated that the Attorney General's Department still had not received the IB extracts for them to decide whether to prefer an indictment against the suspect. The suspect has been in remand for one year and 10 months since the date of arrest. The Court is mindful that the suspect is just 21 years old and has no criminal history. Although the Government Analyst report was received on 27/02/2023, the suspect has not been indicted yet and it is highly unlikely he will be indicted soon as the Honorable Attorney General is yet to receive the IB extracts.

In *CA(PHC)APN 107/2018, decided on 19.03.2019,* the court held that remanding for one year and five months without being served with the indictment was considered, inter alia, in releasing the suspect on bail.

*In CA (PHC) APN No. 16-12 decided on 14-06-2012,* the Court of Appeal considered failing to file an indictment even one year after the receipt of the Government Analyst report as relevant in granting bail for a suspect.

In the case of *Attorney-General V Sugulebbe Latheef and Another* [2008] 1 Sri LR Page 225, the Supreme Court stated *inter-alia*, "*the right to a fair trial amongst other things include the following: -*

*..... 7. The right of an accused to be tried without much delay."*

The delay in serving the indictment and the time it may take to conclude the case are also material factors that need to be taken into consideration in this bail application.

Therefore, taken together, I am of the view that this is a fit and proper case for granting bail.

Accordingly, bail is granted on the following conditions.

1. The suspect should provide a cash bail of Rs.200,000.
2. To provide two acceptable sureties. They must sign a bond of Rs.2,000,000/= each.
3. The suspect should report to the Officer in Charge of the police station Beliaththa on the first Sunday of every month until the matter is concluded.
4. Bail should be cancelled and/or confiscated upon this suspect's arrest again in connection with another offence alleged to have been committed while on bail or in violation of any of the bail conditions.
5. To surrender the passport of the suspect, if any, to the court. A travel ban is imposed on the suspect. The controller of Immigration and Emigration is to be informed of the travel ban of the suspect.
6. The permanent residing address of the suspect should be provided to the court, and such residence should not be changed without leave of the court until the conclusion of the case.

Subject to the conditions set out above, bail is granted. The registrar of this court is directed to send copies of this bail order to the Magistrate Court of Tangalle and the Officer in Charge of the Police Station, Beliaththa to inform due compliance of the suspect to the relevant court.

**Judge of the Court of Appeal**

**R. Gurusinghe J.**

**I agree**

**Judge of the Court of Appeal**