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 (Amendment) Act No. 41 of 2022.

CA Case No: BAL/53/2023
HC- Homagama
Case No: HC 27/2021

Haupe Liyanage Padmini Chandra,
No. 30, Abiyan Lane,
Dematagoda,
Colombo 09.

Petitioner

Vs.

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

2. Officer-in-Charge,
   Colombo Crime Division,
   No. 214, Kolonnawa Road,
   Dematagoda.

Respondents

And

Sameera Rasanga Gunasekara alias Sudu alias Dineth Vihanga alias Hybrid Sudda,

Accused- Respondent

Before: **R. Gurusinghe J.**

&

M.C.B.S. Morais J.

Counsel:	Nalin Weerakoon with Kanishka Lasith Gunathilaka for the Petitioner. Sudarshana De Silva, SDSG with Lishan Rathnayake, SC for the Respondents.
Inquiry on:	15.02.2024
Decided On:	**13.03.2024**

M.C.B.S. Morais J.

The petitioner is the mother of the Accused, named in the case bearing No. HC/27/2021 in the High Court of Homagama. It is apparent that the accused was arrested on or about 18.10.2018. The accused was indicted in the High Court of Homagama for having in possession and trafficking of 1 kilogram 168 grams and 710 milligrams of heroin gross quantity and subsequent to the report of Government Analysts the pure quantity of said heroin is said to be 774.7 grams.

The petitioner has made this application before us under sections 83(2) of the 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."*

What constitutes exceptional circumstances is not defined in the statute. Our Superior Courts have considered various situations as exceptional circumstances in granting bail for suspects in terms of the Ordinance.

In, ***Ramu Thamodarampillai 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."

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

a) The Accused is in remand custody for more than 4 years and 3 months.
b) The Learned High Court Judge informed that this is a fit and proper case to make a representation to the Hon. Attorney General.
c) The facts in the B report filed to the Magistrate Court, Homagama and the letter sent for seeking Hon. Attorney General's advises by the Crime Division, Colombo are in contradiction with the investigation notes of the raid officers and other officers attended for the raid.
d) 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.

As of today, this suspect has been in remand custody for more than five years.

Prior to considering the merits on the exceptional circumstances, we have to consider whether there is a *prima facie* acceptable case present by the petitioner. In paragraph '9' of the petition supported by paragraph '10' of the affidavit, the petitioner states that the petitioner has no previous convictions and pending cases.

However, on careful perusal of the materials submitted by the petitioner, it is apparent that the suspect has two pending cases numbered B 83719/2/17 and B 41957/08/15 at the Chief Magistrate Court, Colombo as well as the suspect has been under an open warrant. The petitioner has failed to deny such.

Therefore, I am of the view that though there may have been material to grant bail to this suspect, as this petitioner cannot be relied on and as she has failed to come before this court

with a full and a fair disclosure. The petitioner has sworn to the fact that the accused has no pending cases, which seems to be quite untrue and misleading.

S.P.Chengalvaraya Naidu (Dead) By Lrs. V Jaganath (Dead) By Lrs. And Others (1994) 1 SCC 1 held that;

"We have no hesitation to say that a person, who's case is based on falsehood, has no right to approach the court. He can be summarily thrown out at any stage of the litigation."

The importance of this was emphasized by Justice Pathirana in ***W. S. Alphonso Appuhamy v. L. Hettiarachchi*** 77 NLR 131 too.

Namunukula Plantations Limited V Minister of lands and Others SC Appeal No. 46/2008, Saleem Marsoof J. stated that;

"In other words, he owes a duty of utmost good faith (uberrima fides) to the court to make a full and complete disclosure of all material facts and refrain from concealing or suppressing any material fact within his knowledge or which he could have known by exercising diligence expected of a person of ordinary prudence."

It is highly improbable and unlikely that petitioner being the mother of the accused has been unaware of his pending cases and of him being on an open warrant. As for the dictum, *'falsus in uno, falsus in omnibus'*, the contentions of the petitioner cannot be relied upon.

Therefore, this bail application need not be considered any further and is refused and dismissed.

Judge of the Court of Appeal

R. Gurusinghe J.

I agree

Judge of the Court of Appeal