

**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
(Amendment) Act No. 41 of 2022.

Court of Appeal

The Officer-in-Charge

Application No:

Police Station

CA/Bail 0309/24

Kegalle.

Complainant

MC Kegalle case No.

B/6813/2023

Vs.

D.M.Amitha Bandara Chandrasekera

Suspect

AND NOW BETWEEN

Hettiarachchilage Ruwanthi Kaushalya
Ranaweera
Udawatta, Mawathagama,
Pothuhera.

ON BEHALF OF

D.M..Amitha Babdara Chandrasekera
(Currently in remand prison)

Petitioner

Vs.

1. Hon. Attorney General
Attorney General's Department
Colombo-12.
2. The Officer-in-Charge
Police Station
Kegalle.

Respondents

BEFORE : **P. Kumararatnam, J.**
K.M.S.Dissanayake, J.

COUNSEL **Teny Fernando for the Petitioner.**
Oswald Perera SC for the Respondents.

ARGUED ON : **17/03/2025.**

DECIDED ON : **29/04/2023.**

ORDER

P.Kumararatnam,J.

The Petitioner who is the wife of the Suspect filing this Application has invoked the jurisdiction of this Court to grant bail to the Suspect upon suitable condition as this Court considers appropriate.

The Suspect was arrested on 19/12/2023 for possession of 778.260 grams of substances suspected to be Heroin at Walgama Junction in the Mahawa area by officers from the Special Crime Investigation Bureau of Kegalle Police Station and produced under case bearing No. B 6813/23 to the Magistrate Court of Kegalle. Upon information received from the suspects arrested in relation to drug offences, the police officers arrested the Suspect who was going in a Prado Jeep bearing No. WP-KA-5450 and recovered the contraband hidden in the left side cabby hole of the vehicle. After the arrest police officers had proceeded to search the Suspect's house in Udawatta, Mawathagama, Pothuhera. In that house an electronic scale, grocery bags and a teaspoon which suspected to have been used for drug trafficking were recovered by the police. Further the police had apprehended a car bearing No. CAX 0817 which was parked at the Suspect's resident. Investigation revealed it belong to a lady who involve in narcotics trade in the area. After his arrest he was placed under a detention order issued by the Learned Magistrate of Kegalle.

According to the B report filed, the Accused was produced under Section 54(d) and (b) of the Poisons, Opium and Dangerous Drugs Act No. 13 of 1984 as amended.

The vehicle bearing number WP-KA-5450 in which the Suspect came was also taken in to police custody.

The production had been sent to the Government Analyst Department and after analysis, the Government Analyst had forwarded the report to Court. According to the Government Analyst, 199.8 grams of pure Heroin (Diacetylmorphine) had been detected from the substance sent for the analysis.

The contention of the Petitioner is that the Suspect was not arrested as stated by the police. The arrest of the Suspect was a politically motivated one. The Suspect is the chief organizer of the youth movement in the Kurunegala District for a prominent political party in

Sri Lanka. No illegal substances found in the possession of the Suspect when he was arrested by the police. According to the Petitioner she is a medical doctor by profession and the vehicle which had been taken into custody was registered under her name and is under a leasing facility of 11 million.

According to the Petitioner, two individuals approached the Suspect's vehicle and threw a bag inside. Thereafter the police had apprehended the Suspect and taken to Kegalle Police station.

The Petitioner has pleaded following exceptional circumstances in support of the Suspect's Bail Application.

1. Violation of standard procedures.
2. Presumption of innocence.
3. Risk of wrongful incarceration.
4. Breaking of chain of custody of the alleged productions.
5. The wellbeing of the child is interrupted by the irrational and illegal assertion of the police.
6. The Petitioner who serves as a government doctor faces considerable challenges in balancing her professional responsibilities with role as a caregiver.
7. Failure of the investigators to produce any evidence to show irregularity or illegality of the income of the Suspect.

The Counsel for the Petitioner submits that the Suspect is in remand for more than 27 months. Considering the facts and the circumstances of this case, that the prosecution will not be able to establish a prima facie case against the Suspect.

The State Counsel submits that the Attorney General's Department awaits the investigation notes from the Police Narcotics Bureau. Hence, the State Counsel submits that the delay cannot not be considered as an exceptional circumstance to be considered to enlarge the Accused on bail in this case.

The Section 83 of the Poisons, Opium and Dangerous Drugs Act which was amended by Act No. 41 of 2022 states:

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 is 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 purpose of this section “dangerous drug” means Morphine, Cocaine, Heroin and Methamphetamine.

In this case, the pure quantity of Heroin detected in the production by the Government Analyst is 199.8grams. Hence, this court has jurisdiction to consider granting of bail as per the new amendment.

Exceptional circumstances are not defined in the statute. Hence, what is exceptional circumstances must be considered on its own facts and circumstances on a case by case.

In **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”.

In **Labyndarage Nishanthi v. Attorney General CA (PHC) APN 48/2014** the court held that:

“It is trite law that any accused or suspect having charged under the above act will be admitted to bail only in terms of section 83(1) of the said Act and it is only on exceptional circumstances. Nevertheless, it is intensely relevant to note, 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 is exceptional in nature.

There is plethora of cases in the legal parlor which had identified what creates an ‘exceptional circumstances’ in relation to granting bail...”

The Learned Counsel for the Petitioner contended that the Accused has been detained illegally from 19/12/2023 to date is clearly a violation of established legal principles and violation of fundamental rights which enshrined in the Constitution.

Period in remand custody cannot be considered as an exceptional circumstance in all case. It has to be decided on a case-by-case basis to consider whether the remand period already spent could be considered as an exceptional circumstance.

In **Ashani Dhanushshika v. Attorney General [CA (PHC) APN 04/2016]** the court held that:

“ In the present case the petitioner failed to establish any exceptional circumstances warranting this court to exercise the revisionary jurisdiction. The petitioner’s first point is that the suspect is in remand nearly for two years. The intention of the legislature is to keep in remand any person who is

suspected or accused of possessing or trafficking heroin until the conclusion of the case. The Section 83(1) of the Act expresses the intention of the legislature...”

In **Carder v. Officer-in-Charge, Narcotics Bureau (2006) 3 SLR 74** the court held that:

“ ...Provision has been made in the Bail Act to release persons on bail if the period of remand extends more than 12 months. No such provision is found in the case of Poison, Opium and Dangerous Drugs Ordinance. Although bail was granted in some of the cases mentioned above, none of these cases refer to the time period in remand as constituting an exceptional circumstance. Hence bail cannot be considered on that ground alone.

According to the decisions cited above, the period spent in the remand custody cannot be considered as an exceptional circumstance in this case.

Further, the Counsel for the Petitioner contended that as the prosecution will not succeed in securing a conviction against the Suspect due to the presentation of inadmissible evidence against the Suspect. Hence, he strenuously argued that the Suspect should be released on bail.

I am not inclined to accept this argument as an Suspect can only be released on bail under the Poisons, Opium and Dangerous Drugs Act as amended upon successful demonstration of that he has exceptional circumstances to be released on bail.

Further, facts of a case do not constitute exceptional circumstances. Issues pertaining to the case should only be considered at the trial stage.

In the case of **A.K.Nandasena v. The Attorney General [CA(PHC) APN 147/2017]** the court held that:

“...that facts of a case do not constitute exceptional circumstances and such issues need to be addressed at the trial stage.”

In **The Attorney General v. Madapathage Dona Thilaka alias Shyamali [SC Appeal 53/2021]** decided on 30/11/2022, His Lordship Thuraiaraja, PC, J. held that:

“Therefore, under these circumstances, no material is before the Court of Appeal to come to a decision regarding if the witness is creditworthy, nor is it relevant to the granting of bail in this application in the first place. Hence, it cannot be considered as an “exceptional ground” in considering an application for revision”.

Hence, the facts of the case will not be addressed in considering this bail application.

In this case the pure quantity of the Heroin detected in the production by the Government Analyst is 199.8 grams.

Considering the pure quantity of the Heroin detected in this case, if convicted, the Accused will either be sentenced to death or life imprisonment. Considering the gravity of the offences committed, there is a high risk of absconding.

Further, the delay nearly 27 months in remand does not fall into the category of excessive and oppressive delay considering the circumstances of this case as the offences committed under Section 54A(d) and 54A(b) of the Poisons Opium and Dangerous Drugs Ordinance as amended by the Act No.13 of 1984.

Considering all the materials placed before this court, the Petitioner has failed to adduce that the Suspect has exceptional ground/s to free him on bail. Hence, this bail application is refused.

The Registrar of this Court is directed to send this order to the Magistrate Court of Kegalle and Officer-in-Charge of the Police Station, Kegalle.

JUDGE OF THE COURT OF APPEAL

K.M.S,Dissanayake J.

I agree.

JUDGE OF THE COURT OF APPEAL