

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

In the matter of an application for
Bail as under and in terms of
Section 83(2) of the Poisons, Opium
and Dangerous Drugs Ordinance of
17 of 1929 as amended by section
04 of the Act No.41 of 2022.

Court of Appeal Bail Application: The Attorney General

CA Bail/0523/23

HC Puttalam

Case No. HC 33/2024

MC Puttalam

No. B 65868/2020

No. B 65869/2020

Attorney General's Department
Colombo-12.

Complainant

Vs.

Mohamed Naleen Mohamed Reezan
alias Mohamed Kalim Mohamed
Reezen

Accused

NOW BETWEEN

Mohamed Raseen Fathima Nusura
No.30/9, Vaan Road,
1st Lane,
Puttalam.

Petitioner

Vs.

1. The Officer-in-Charge
Crime Investigation Unit,
Police Station,
Puttalam.
2. The Attorney General
Attorney General's Department
Colombo-12.

Respondents

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

COUNSEL : **B.N.Thamboo with P.Navaraj and**
K.Jackson for the Petitioner.
Oswald Perera, SC for the Respondents.

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

DECIDED ON : **28/04/2025.**

ORDER**P.Kumararatnam,J.**

The Petitioner is the wife of the Accused named in B Reports filed in the Magistrate Court of Puttalam under case bearing Nos. B 65868/2020 and B 65869/2020. The Petitioner has filed this bail application along with CA/Bail 0524/2023 under Section 83(2) of the Poisons, Opium and Dangerous Drugs (Amendment) Act No. 41 of 2022.

According to the B reports filed by the police, upon information the Accused was arrested on 09.05.2020 along with three others for aiding and abetting for possession of Heroin recovered from 1st Suspect named in the B Report No. B 65868/2020. The substance suspected to be Heroin recovered from the 1st Suspect weighed about 915 grams.

Upon further investigation, another parcel of substance suspected to Heroin was recovered by the police from the 1st Suspect named in B Report No. B 65869/2020. The substance suspected to be Heroin recovered from the 1st Suspect weighed about 1.745 kilograms. The Accused was arrested for aiding and abetting 1st Suspect for possession of Heroin.

The Accused was produced in the Magistrate Court of Puttalam in both cases under Sections 54A (b) and (d) of the Poisons, Opium and Dangerous Drugs Ordinance as amended by Act No. 13 of 1984.

The Petitioner has pleaded following exceptional circumstances in support of her Bail Application.

1. That the Accused is innocent of for the alleged charges, and he has no other pending cases.
2. As the Accused in remand, he and his family members are undergoing tremendous hardship, pain of mind and humiliation.
3. He is the sole bread winner of the family.
4. The Accused is in remand nearly five years.
5. The third child of the Accused is suffering from severe heart ailment.
6. No previous or pending case reported against the Accused.

The Learned State Counsel submitted that the delay is not an exceptional circumstance to be considered to enlarge the suspect on bail. Further, the time spent for preparing the indictment does not constitute an exceptional circumstance. According to the State, indictment has already gone to the High Court of Puttalam.

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

on bail. According to the Petitioner, at present her family is going through untold hardship without proper income and care.

The Section 83 of the Poison, 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.

shall not be released on bail except by the Court of Appeal in exceptional circumstances.

In this case the pure quantity of Morphine detected in the production by the Government Analyst is 56.9 and 102.2 grams respectively. Hence, this court has jurisdiction to consider granting of bail as per the new amendment.

The Attorney General had filed two indictments against the Accused in the High Court of Puttalam. The indictments were registered under case Nos. HC/20/2023 and HC/48/2023. Both indictments were dated 25.06.2023. The indictments were filed after 03 years of his arrest. While the indictments were pending in the High Court of Puttalam, the

prosecution had withdrawn both indictments and filed one new indictment in the High Court of Puttalam on 25.06.2024 and the indictment is registered under case No. HC 33/2024. This is nearly after 04 years of his arrest. Up to now the trial has not commenced in the High Court of Puttalam.

The Counsel for the Petitioner urged this Court to consider that detaining a suspect without any legal action for an extended period of time amounts to a violation of his fundamental rights which can be considered as an exceptional ground. The Accused has no previous or pending case in any of the Court.

In **Nasher v. Director of Public Prosecution [2020] VSCA 144** the court held that:

“a combination of delay, onerous custodial conditions, and the relative weakness of the prosecution case may, when considered with all relevant circumstances, compel the conclusion that exceptional circumstances have been established”. [Emphasis added]

Offences under Section 54A(b) and 54A(d) of the Poisons Opium and Dangerous Drugs Ordinance as amended by the Act No.13 of 1984 is no doubt serious offences but seriousness of the offence alone cannot form a ground to refuse bail. In considering these matters, the court must bear in mind the presumption of innocence.

Further, bail should never be withheld as punishment. Granting of bail is primarily at the discretion of the Courts. The discretion should be exercised with due care and caution taking into account the facts and circumstances of each case.

Considering all these factors into account, especially the period in remand, the pure quantity of Morphine detected and the other circumstances of the case, I consider this is an appropriate case to grant bail to the Accused. Hence, I order the Accused be granted bail with following strict conditions.

1. Cash bail of Rs.100,000/=.
2. To provide 02 sureties. They must sign a bond of two million each.
3. The Accused and the sureties must reside in the address given until conclusion of his case.
4. Not to approach any prosecution witnesses directly or indirectly or to interfere with.
5. To surrender his passport if any, to court and not to apply for a travel document. The Controller of the Immigration and Emigration is informed of the travel ban on the Accused.
6. To report to the Officer-in-Charge, Crime Investigation Unit, Police Station, Puttalam on the second and the last Sunday of every month between 9am to 1pm.
7. Any breach of these conditions is likely to result in the cancellation of his bail.

The Bail is allowed and the Learned High Court Judge is hereby directed to enlarge the Accused on bail on the above bail conditions.

The Registrar of this Court is directed to send this order to the High Court of Colombo and the Officer-in-Charge, Crime Investigation Unit, Police Station, Puttalam.

JUDGE OF THE COURT OF APPEAL

K.M.S.Dissanayake, J.

I agree.

JUDGE OF THE COURT OF APPEAL