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) Poisons, Opium and Dangerous Drugs Ordinance as amended by the Poisons, Opium and Dangerous Drugs (Amended) Act No. 41 of 2022.

The Officer in Charge,

Police Narcotics Bureau,

Colombo 01.

Complainant

Vs.

Court of Appeal Bail Application:
Case No: 711/2023

Negambo High Court
Case No. HC 528/20

Minuwangoda Magistrates Court
Case No: B 85746/18

Kadirappullige Shalika Chathuranga Fernando
No: 330/40,
Watawana,
Mukunu Watawana,
Chilaw.

Suspect

AND THEN BETWEEN

Democratic Socialist Republic of Sri Lanka

Vs.

Kadirappullige Shalika Chathuranga Fernando
No: 330/40,
Watawana,
Mukunu Watawana,
Chilaw.

Accused

AND NOW BETWEEN

Kadirappullige Shalika Chathuranga Fernando
No: 330/40,
Watawana,
Mukunu Watawana,
Chilaw.

Accused- Petitioner

(Presently in Negambo Remand Prison)

v.

1. Officer-in-charge
   Police Narcotics Bureau,
   Colombo 01.

Complainant- Respondent

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

2nd Respondents

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

Counsel : Asela Serasinhe for the Petitioner.
Nishantha Nagaratnam, SC for the Respondents.

Argued on : 07.06.2024
Decided on : 19.06.2024

MENAKA WIJESUNDERA J.

The instant bail application has been filed to obtain bail to the accused petitioner (petitioner) namely **Kadirappulige Shalika Chathuranga Fernando.**

The petitioner had been taken into custody on 09-11-2018 for being in possession of 49 grammes and 420 milligram of heroin under the **Poisons, Opium's and Dangerous drugs ordinance**.

The Government Analysts report has noted 40.721 grammes of heroin as the pure quantity. Indictment has been forwarded in this matter on 26th of June, 2020.

The counsel for the petitioner submitted that although the petitioner had been incarcerated since November 2018 upto date, his trial has not been taken up and that he is languishing in jail for nearly five years.

The counsel for the respondents objected to the application and stated that the next trial date is on the 27th of September 2024. The petitioner hasno previous convictions but I observe that upto date and when the next trial date approaches the petitioner had been in remand for nearly six years.

In the instant matter, the petitioner had been taken into custody under the provisions of the **Poisons, Opium's and Dangerous drugs Ordinance**, according to which, if a person is accused or suspected of an offence under section 54a and 54b and if the amount is more than 10 grammes the said accused or suspect could be released on bail by the Court of Appeal only upon exceptional circumstances. The term exceptional has not been defined in the Act but according to many of our decided cases it has been held that the exceptionality differs from case to case.

In the instant case, the accused has been in remand for over five years and as said before, when the next trial date approaches it will be nearly six years.

According to the latest amendment to **Poisons, Opium's and Dangerous drugs Ordinance**, Act no. 41 of 2022, according to section 85, it has been stated that a suspect or an accused who has not been tried and has not been convicted under section 54a and 54b should not be detained in custody for more than 12 months. But this has been superseded in the same Act by section 83(2). Nevertheless section 85 of the said Act denotes the fact that the legislature has been mindful of the time period in which a person is incarcerated without seeing a conclusion to his trial.

In the case of **Attorney General v Ediriweera(2006) 1 Sri L. R. 25**, it was held that, "Delay is always a relative term and the question to be considered is not whether there was mere explicable delay, as when there is a backlog of

cases, but whether there has been expressive or oppressive delay and this always depends on the facts and the circumstances of the case."

Hence, in the instant matter I observe that the accused has been taken into custody on 9th of November 2018 and he had been indicted in June 2020 but upto date his trial has not been taken up due to no fault of the petitioner.

Therefore, it is the opinion of this court that considering the period in remand and the fact that he has no previous convictions, that he should be enlarged on the following conditions of bail,

1. A cash bail of Rs. 500,000/-
2. Two sureties to the value of Rs. 1,000,000 each, and the said sureties should be within the jurisdiction of the relevant High Court, (Negombo High Court), and they must have a police report from the relevant police station and Gramasevaka certificates from the relevant Gramasevaka area to verify their residency.
3. The accused must hand over his passport to the registrar of the relevant High Court.
4. The accused must report to the Police Narcotics Bureau on 2nd and 4th Sunday of every month between 9am to 12 noon.

Subject to the above conditions, the instant bail application is allowed and the Registrar of this court is directed to convey this order to the relevant High Court.

Judge of the Court of Appeal

Hon. Justice Wickum A. Kaluarachchi

I agree.

Judge of the Court of Appeal