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

In the matter of an Application for bail under the Provisions of section 83 (2) Poisons, Opium and Dangerous Drugs Ordinance as amended by the Act No. 41 of 2022.

The Officer in Charge,

Police Station,

Wennappuwa.

Complainant

Vs.

Court of Appeal Case No:

CA/BAL/700/2023

Magistrates Court Maravila

Case No: **B 646/2021**

Rathugamage Sanoj Pradeep Fernando

No. 743/A, Peragashandiya Road,

Ulhitiywa North, Wennappuwa

(Presently kept in Remand Prison)

Suspect

AND NOW BETWEEN

Rathugamage Sanoj Pradeep Fernando

No. 743/A, Peragashandiya Road,

Ulhitiywa North, Wennappuwa

(Presently kept in Remand Prison)

Suspect-Petitioner

Vs.

1. The Officer in Charge,
Police Station,

Wennappuwa.

2. Hon. Attorney General,
Attorney General's Department,

Colombo 12.

Respondents

Before : Menaka Wijesundera J.

Wickum A. Kaluarachchi J.

Counsel : Malshike Jayalath fot the Petitioner.

Jayalakshi De Silva, SSC for the Respondents.

Argued on : 07.06.2024

Decided on : 18.06.2024

MENAKA WIJESUNDERA J.

The Instant bail application has been filed to obtain bail to suspect namely **Rathugamage Sanoj Pradeep Fernando**. The instant suspect has been arrested on 23rd of April 2021 by the Wennappuwa Police on a tip off received. Upon arrest the suspect had possessed a substance which the police officers suspected to be heroin. The gross quantity had been over 1000 grammes. The government analyst report had been received on the 14th of August, 2021 and the government analyst has also identified over 1000 grammes of heroin in the parcels sent to him.

The suspect had been arrested under the provisions of the **Poisons, Opiums and Dangerous drugs Ordinance**. When a suspect has been charged or arrested under the provisions of the above mentioned Act, under Section 83(1) to the amended Act 41 of 2022, says that if the particular person is suspected or accused of an offence under sections 54a and 54b, he shall not be released on bail by the High Court except in exceptional circumstances.

But if the person is accused and charged under 54a and 54b, relates to a quantity which is more than 10 grammes or above, he shall only be released on bail by the Court of Appeal under exceptional circumstances.

Therefore, the existence of exceptional circumstances is mandatory. The term exceptional has not been defined in the Act, but in many of our decided cases, it has been held that exceptionality defers from case to case.

In the instant matter, the exceptionality urged by the counsel for the petitioner, is the ill health of his child, whom he claims to be disabled. He has annexed medical reports of the child marked as P6 to the petition.

The State counsel appearing for the respondent stated that she is not objecting for bail in the instant matter.

Considering the submissions of both parties and the exceptional circumstances urged by the petitioner this court thinks that it is fit to enlarge the suspect namely, **Rathugamage Sanoj Pradeep Fernando** on the following conditions of bail,

1. Cash bail of Rs. 100,000/-
2. Two sureties to the value of Rs.500,000 each and they should be residents of the relevant High Court area, which is the Chilaw High Court and each surety should produce certificates from the relevant police station and the Gramasevaka of the area, in which they reside.
3. The suspect should report to the Wennappuwa police station on every last Sunday of the month between 9 am and 12 noon.
4. The suspect also should hand over the passport to the Registrar of the relevant High Courts (if he has one).

The Registrar of the court is directed to convey the instant order to the relevant Magistrate Court.

Judge of the Court of Appeal

Hon. Justice Wickum A. Kaluarachchi

I agree.

Judge of the Court of Appeal