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.

CA Appeal Bail No:

CA Bail 484/2023

Hon. Attorney General,

Attorney General's Department,

Colombo 12.

High Court Negambo Case No.

HC 20/2023

Complainant

Vs.

Rajagopal Shivaneshan

(Presently detained in Remand Prison)

Magistrates Court of Welisara

Case No. B 2846/2020

Accused

NOW BETWEEN

Irulappan Anandi,

36/16, Seemans Road,

Maradana,

Colombo 10.

Petitioner

Vs.

1. Officer-in-charge

   Police Narcotics Bureau,

   Colombo 01.

2. Hon. Attorney General,

   Attorney General's Department,

   Colombo 12.

Respondents

Rajagopal Shivaneshan

(Presently detained in Remand Prison)

Before : Menaka Wijesundera J.

Wickum A. Kaluarachchi J.

Counsel : Vindya Ekanayake for the Petitioner.

Jehan Gunasekera, SC for the Respondents.

Argued on : 10.06.2024

Decided on : 25.06.2024

MENAKA WIJESUNDERA J.

The instant bail application has been filed to obtain bail for Rajagopal Shivaneshan.

The accused had been taken into custody on 08-10-2020 for being in possession of 100 grammes oof heroin but while in detention a statement had been recorded from him and on that statement the PNB officers had recovered an alleged parcel of a substance suspected to be heroin from the house of the accused person's brother.

The Government Analyst report had detected a pure quantity of 101 grammes of heroin in the parcels submitted to the Government Analyst and he has been indicted separately for the said offence in the High Court under a separate indictment. (HC 20-23).

The accused had been indicted on 17-01-2023 but the trial has not been taken up, upto date.

The counsel for the accused submitted that he had been languishing in remand since 2020, which she expressed to be as exceptional.

The accused has been taken in to custody under the provisions of 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, the said person can be enlarged on bail only upon exceptional circumstances.

In the instant matter, the exceptionality submitted is the delay in concluding the legal proceedings against the accused. 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."

The counsel for the respondents submitted that the accused has no previous convictions.

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.

Therefore, considering the time period of incarceration of the accused, without concluding or atleast starting his trial and the fact that he has no previous convictions, it is the opinion of this court 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
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.

Judge of the Court of Appeal

Hon. Justice Wickum A. Kaluarachchi

I agree.

Judge of the Court of Appeal