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

The Democratic Socialist Republic of Sri Lanka

CA Case No: BAL/695/2023
HC- Colombo
Case No: HC 2776/21
MC- Colombo
Case No: B 12363/19

Complainant

Vs.

Piyadigamage Ruwan Prasanga

Accused

AND NOW BETWEEN

Subaudeen Asha Bhanu,
485/H/1, Awissawella Road,
Siriniwasa Street,
Angoda.

Petitioner

On behalf of

Piyadigamage Ruwan Prasanga

Vs.

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

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

Respondents

Before: **R. Gurusinghe J.**

&

M.C.B.S. Morais J.

Counsel: Terin Marasinghe and Tenny Fernando for the Petitioner.

Udara Karunathilaka, SSC for the Respondents.

Inquiry on: 29.04.2024 & 16.05.2024

Decided On: **20.06.2024**

M.C.B.S. Morais J.

The petitioner is said to be the wife of the accused in the case bearing number HC/2776/21 in the High Court of Colombo. It is apparent that the accused was arrested on or about the 14th of June 2019 by the officers attached to the Police Narcotic Bureau and was produced before the Magistrate Court of Colombo and facts were reported under Case No. B 12363/19. The accused was indicted in the High Court of Colombo for being in possession and trafficking of 369.532 grams of 'Diacetylmorphine' alias 'Heroin' but the initial gross quantity was said to be 619.471 grams.

It is apparent that a learned counsel for the accused has made a bail application before the Learned High Court Judge, but it was refused by the court. Thereafter the petitioner has invoked the jurisdiction of this court under case bearing No. CA BAL 51/2023 and it was also refused by the court.

The petitioner has made this application before us under section 83 of the Poisons, Opium and Dangerous Drugs (Amendment) Act, No.41 of 2022. As for the provisions of section 83(2),

> *"83(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 grams 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."

When applied in relation to the material before us, in paragraph 26 of the petition, the petitioner pleads certain grounds which are alleged as exceptional grounds and they are as follows:

I. The prolonged delay in the proceedings of the case amounted to an oppressive delay for the failure of the prosecution to conclude at least PW 1 even after two years of presenting the indictment.
II. False reasoning by PW 1 not to appear before the court to testify to prevent the case from being taken up for trial against the accused and thereby misleading the court and false application submitted to the court.
III. The petitioner submits that the move of the State to appoint a senior prosecuting counsel to conduct the prosecution at the later stage seeking a postponement has also caused an unreasonable delay in taking up the case for trial.
IV. The prolonged absence of a father figure due to being in remand for over four years has various impacts on the rights, social and personal development of three daughters.
    - Emotional and Psychological Impact
    - Lack of Role Model
    - Financial Instability
    - Educational challenges
    - Social relationships
    - The accused is the sole breadwinner of a family.

In paragraphs '24' and '28' of the petition which is well supported by paragraphs '24' and '28' of the affidavit, the petitioner states that the accused has no previous convictions or pending cases. However, in the preliminary objections filed by the respondents, it is revealed that the accused was convicted on his own plea on 29.01.2015 by the Magistrate Court of Welisara for a similar offense and imposed a fine of Rs.5000/- which the petitioner initially denied and subsequently admitted.

Therefore, I am of the view that though there may have been material to grant bail to this suspect, this petitioner cannot be relied on as she has failed to come before this court with a full and a fair disclosure. The petitioner has sworn to the fact that the accused has no previous convictions and pending cases, which seems to be quite untrue and misleading.

S.P.Chengalvaraya Naidu (Dead) By Lrs. V Jaganath (Dead) By Lrs. And Others (1994) 1 SCC 1 held that;

"We have no hesitation to say that a person, who's case is based on falsehood, has no right to approach the court. He can be summarily thrown out at any stage of the litigation."

On the *dicta* of Pathirana J. in ***W. S. Alphonso Appuhamy v. L. Hettiarachchi*** 77 NLR 131 at 135 emphasized the necessity of a full and fair disclosure of all the material facts to be placed before the Court.

Namunukula Plantations Limited V Minister of lands and Others SC Appeal No. 46/2008, Saleem Marsoof J. stated that;

"In other words, he owes a duty of utmost good faith (uberrima fides) to the court to make a full and complete disclosure of all material facts and refrain from concealing or suppressing any material fact within his knowledge or which he could have known by exercising diligence expected of a person of ordinary prudence."

It is highly improbable and unlikely that the petitioner said to be the wife of the accused has been unaware of his previous conviction.

On perusal of document 'X' it is apparent that the accused is married to the present petitioner on 22nd of April 2003 and there he has informed to the Registrar of Marriage that he is unmarried by that. On careful perusal of the material submitted by the petitioner, there is a statement stated by the accused himself to the police in page 277 and according to that statement, he was previously married.

According to the information of the document 'X', 'ෂේක් අමිනිඩීන් ආශාභානු' who is said to be the wife and the petitioner of this application named as 'සුභානුදීන් ආශා භානු' is 21 years old by 22nd of April 2003.

On perusal of the document 'X4A' a birth certificate of a child named 'පියදී ගමගේ දිල්කි නිරාෂා' born on 20th of July 2004 in which the information was provided by this accused

himself. It is said that he is the father of the child and mother is 'සුභානුදීන් ආශා බානු' and she is only 17 years of age but she and the accused (Piyadi Gamage Ruwan Prasanga) are legally married.

Having considered these limited documents submitted by the petitioner herself, it is quite apparent that the accused has been in the habit of giving false information to the authorities and misleading them. As for the dictum, *'falsus in uno, falsus in omnibus'*, the contentions of the petitioner cannot be relied upon.

As the Petitioner has breached his paramount duty of disclosing the relevant, I am of the view that the Petitioner does not deserve the reliefs prayed for, hence without proceeding to consider the merits on exceptional circumstances, this application for Bail is refused *in limine*.

Judge of the Court of Appeal

R. Gurusinghe J.

I agree

Judge of the Court of Appeal