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) of the Poisons, Opium and Dangerous Drugs (Amendment) Act No. 41 of 2022.

CA Case No: BAL/356/2023
MC 8 - Colombo
Case No: B/82419/08/2022

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

Complainant

Vs.

1. Saleem Thuwan Roshan,
   No. 35/3, Baron Thilakaratne Mawatha,
   Mulleriyawa.

2. Liyanaarchchige Ravindu Dilshan,
   No. 122/1/1, Ramahera Road,
   Hewagama, Kaduwela.

Suspects

AND NOW

Mandawala Guruge Nilmini Maduwanthi,
No. 35/3, Baron Thilakaratne Mawatha,
Mulleriyawa.

Petitioner

Vs.

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

Complainant- Respondent

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

2nd Respondent

AND

Saleem Thuwan Roshan

1st Suspect

Before: **R. Gurusinghe J.**

&

M.C.B.S. Morais J.

Counsel: Kanchana Rathwatte with Nuwan de Alwis for the Petitioner.

Malik Azeez, SC for the Respondents.

Inquiry on: 29.04.2024

Decided On: **06.06.2024**

M.C.B.S. Morais J.

The petitioner is the wife of the 1st suspect in the case bearing number B 82419/08/2022 in the Magistrate Court of Colombo. The 1st suspect was arrested along with the 2nd suspect by the Special Task Force of the Sri Lanka Police on or about 14th of December 2022 for having in possession and trafficking a gross quantity of 13 kilograms 410 grams of 'Diacetylmorphine 'alias 'Heroin'. Subsequent to the Report of the Government Analysts the pure quantity of said heroin is said to be 6468.9 grams. It is apparent that the 1st suspect has been produced before the Magistrate Court of Colombo on the 15th of December 2022 and held in remand custody up to this date.

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 facts before us, in paragraphs 20 to 26 of the petition, the petitioner pleads certain grounds which are alleged as exceptional grounds and they are as follows:

20. The petitioner states that a grave miscarriage of justice has been meted out on the suspect by the police who have reported fabricated facts to the learned Magistrate wherein an innocent person is held in incarceration.
21. The petitioner states that ex facie the fact that irrefutable video evidence has been made available by the 2nd suspect which has been submitted to the learned Magistrate wherein it is clear that the entire sequence of events has been fabricated by the Police Department.
22. The petitioner states that an application was made to the Magistrate's Court seeking detailed call records including tower details be submitted to court in order to verify the exact location of the 2nd suspect prior to the raid being conducted by the Police Department STF. The said call records have been submitted to Court now and it is absolutely clear that the 2nd suspect arrived at the location of the raid from a different location and that the 2nd suspect was not in the house where the raid was conducted and had arrived later which is absolute proof that the case has been fabricated. As per affidavit submitted marked 'Y3' submitted to the Magistrate's Court it is clearly stated by the affirmant that she was instructed by the Police officers who were conducting the raid to call the 2nd suspect and that he

came from a different location to the place of the raid whereas the B Report states that the 2nd suspect was in the house where the raid was conducted.

23. The petitioner states that in a matter of this nature where the equitable rights of an innocent person cannot be guaranteed at the hands of a state agency who have fabricated the case ought to be considered as an exceptional circumstance.
24. The petitioner states that the suspect is the sole breadwinner of the family and a father of 3 young children aged 1 year, 8 years and 13 years and a long period of incarceration without any meaningful income coupled with the severe economic hardship faced by the country would result in his family finding it extremely difficult to sustain themselves.
25. The petitioner states that given the pandemic which is still prevalent in the country, there are issues as to when the indictment will be served on him and when this matter will be taken up in Court and as well as when the Trial will conclude, therefore leading him to being incarcerated for a prolonged period of time.
26. The petitioner states that the suspect has no pending litigation nor has he any previous convictions.

Other than the above urged, the petitioner has not relied on any other exceptional ground. When considering the above, many would fall into the category of the *weaknesses of the prosecution* case and mere alleged weaknesses of the prosecution case are insufficient to constitute exceptional circumstances.

Having children of tender age and being the sole breadwinner of the family would not amount to exceptional circumstances but fall into the category of personal circumstances. The economic hardship of the suspect's family is not an exceptional circumstance by itself.

In the case of ***The Queen V. Cornelis Silva*** **(74 NLR 113)** at 114 Weeramantry, J. held that;

"The first of these reasons (having children of tender age) scarcely bears examination while the difficulty envisaged in the second ground is by no means extraordinary as it is one which would be common to many accused persons."

In the case ***Ranil Charuka Kulathunga V. Attorney General*** **CA (PHC) APN 134/2015**, it is said that;

"The petitioner submits several grounds to consider bail. The petitioner states that he is a married person with two school going children is not an exceptional ground. It is the normal day to day life of the people."

The prevailing situation of the country and the time taken to conclude the trial are common to every person held in custody and not exceptional to the petitioner.

Though the suspect has no previous convictions or pending cases, it would not constitute to be an exceptional circumstance to enlarge the petitioner on bail in this instance case.

Hence, I do not see any exceptional ground to grant bail, this application is refused and dismissed.

Judge of the Court of Appeal

R. Gurusinghe J.

I agree

Judge of the Court of Appeal