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

In the matter of an Application for Bail under section 83 of the Poisons, Opium and Dangerous Drugs (Amendment) Act No. 41 of 2022.

Officer in Charge,
Police Narcotics Bureau,
Colombo 01.

Complainant

CA Case No: BAL/541/2023
MC- Matara
Case No: B 3521/2020

Vs.

1- Rajapakshage Indika Prasanna
2- K.R. Asanka Pradeep
3- K. Wasantha Kumara
4- Lokugam Hewage Sudath
5- Lokugam Hewage Shirantha
6- N.A.B. Asanka Priyanath
7- B.J.P. Charith Asanka
8- P.G. Kalum Pushpakumara
9- Sarath Kumara
10- N. Thilak
11- K.G.M.D Sarath Bandara
12- M.W. Ranil Priyantha
13- Dimuthu Daluwatha

Suspects

And Now Between

Kaliyar Perumal Thalai Shelwi,
No. 371/4, Nagahawela Road,
Kotikawatta, Angoda.

Petitioner

On Behalf of

Rajapakshage Indika Prasanna

1st Suspect

Vs.

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

Complainant – Respondent

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

Respondent

Before: **R. Gurusinghe J.**

&

M.C.B.S. Morais J.

Counsel: Shanaka Ranasinghe, PC with Tharakee Manchanayake and Niroshan Mihindukulasuriya for the Petitioner.

Sudharshana De Silva, SDSG with Malik Azeez, SC for the Respondents.

Inquiry on: 13.05.2024

Decided On: **19.06.2024**

M.C.B.S. Morais J.

The petitioner is the wife of the suspect in the case bearing number B 3521/2020 in the Magistrate Court of Matara. The suspect was arrested by the Senior Police Assistance Commissioner P.J.S Silvester, investigating officer namely, M.M.N. Marasinghe together with a team of officers attached to the Police Special Task Force, Gonahena Camp on 20th of

November 2020 for having in possession and trafficking a gross quantity of 27.928 kg of 'Diacetylmorphine 'alias 'Heroin'. Subsequent to the Report of the Government Analyst dated 31st of March 2021 the pure quantity of said 'Heroin' is said to be 18.963 kg. It is apparent that the suspect has been produced before the Magistrate Court of Matara on the 21st of November 2020 and held in remand custody up to this date. However, it seems that the indictment has been dispatched against the suspect on 06th of February 2024 to the High Court of Matara.

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."*

What constitutes exceptional circumstances is not defined in the statute. Our Superior Courts have considered various situations as exceptional circumstances in granting bail for suspects in terms of the Ordinance.

In, ***Ramu Thamotharampillai V. The Attorney General*** **[2004] 3 SLR 180**, it was held that;

> *"the decision must in each case depend on its own peculiar facts and circumstances."*

In, ***Labynidarage Nishanthi V. Attorney General*** **CA (PHC) APN 48/2014)**, said that;

> *"…the term 'exceptional circumstances' has not been explained or defined in any of the statutes. Judges are given a wide discretion in deciding in what creates a circumstance which exceptional in nature."*

In, ***Welathanthrage Amila Sampath Botheju V. Attorney General*** **CA/BAL/0239/23**, it was held that;

"…a certain situation amounts to exceptional circumstances or not, has to be considered on a case-by-case basis, unique to each application before the court."

When applied in relation to the material before us, in paragraph 18 of the petition, the petitioner pleads certain grounds which are alleged as exceptional grounds and they are as follows:

i. The 1st suspect is being held in custody for period of Two Years and Eight Months from the said date of arrest without the indictment being forwarded by the Hon. Attorney General and one Year has passed since the issuance of the Government Analyst Report marked as 'P 2'.
ii. Most of the suspects who were arrested subsequent to the arrest of the 1st suspect has been enlarged on bail.
iii. The 9th suspect who has been identified as a main line drug peddler and underworld figure who has accumulated large amounts of funds who is presently being investigated into for money laundering and as revealed, who has direct connections with the absconding 10th suspect who is in Italy, has also been enlarged on bail.
iv. The presumption of innocence ensured by the Constitution of the Republic is in favour of the Accused.
v. 1st suspect is a father of a child aged of 16 and she preparing to face her ordinary level exams next year, which she finds difficult to accomplish with her father being in custody.
vi. The 1st suspect is the sole bread winner of the family. The Petitioner is unemployed and has been unsuccessful in securing suitable employment, accordingly due to the 1st suspect's being held up in remand custody his family is facing great financial stress.

A good character of a person is undoubtedly a favorable factor in granting bail. In paragraph '19' of the petition supported by the paragraph '20' of the affidavit submitted by the Petitioner states that he has no previous convictions or pending cases.

However, in paragraph '08' of the objections filed by the respondents supported by paragraph '10' of the affidavit signed by 'Kottalage Nilroy Jayarathne', Chief Inspector of Police, Officer-in-Charge of Police Narcotics Bureau declare that the suspect has at least two previous convictions in relation to offences of possession and/or trafficking narcotic substances and they are as follows;

i. Arrested on 2007.10.19 by the Police Narcotics Bureau for possession of 1875 grams of *Cannabis Sativa L*. (Ganja) and produced to the Colombo Chief Magistrate's Court Case No. B 7570/2/2007.
   The suspect pleaded guilty when Indictment was filed under case No. 5006/2009 before the High Court of Colombo (3) on 2010. 06.02. Convicted and imposed a sentence of Rs. 25,000/- fine. 12 months RI in default of the fine.

ii. Arrested on 2011.10.02 by the STF officers for possession of 2 kilograms and 652 grams of *Cannabis Sativa L.* (Ganja) in Angoda and produced to the Colombo Chief Magistrate's Court Case No. B 3765/04/2011.
   The suspect pleaded guilty when Indictment was filed under case No. 6558/2011 before the High Court of Colombo (4) on 2013. 09.12. Convicted and imposed a sentence of Rs. 100,000/- fine (Rs. 50,000/- per count). 12 months RI in default of the fine.

The petitioner has not denied or commented upon these previous convictions. As the petitioner is the wife of the suspect, there is no possibility of her being unaware of the said previous convictions. 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.

Though previous convictions have no bearing upon finding the guilt of the person the character of the suspect is significant when it comes to the issue of bail.

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

"If any party invoking the discretionary jurisdiction of a court of law is found wanting in the discharge of its duty to disclose all material facts, or is shown to have attempted to

pollute the pure stream of justice, the court not only has the right but a duty to deny relief to such person.

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."

The petitioner has sworn to the fact that the suspect has no previous convictions, 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."

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 by misleading the court, 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