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 Ordinance No. 13 of 1984 as Amended Act No. 41 of 2002 of the Constitution of the Democratic Socialist Republic of Sri Lanka.

Court of Appeal No:
CA/BAL/0259/2023

MC Hambantota
Case No: BR 920/2023/ODD

1. The Chief Inspector
   The Officer-in-Charge
   Police Station
   Ambalantota

2. Officer-in-Charge
   Divisional Crime Detective Bureau
   Tangalle

Complainants

Vs.

Udayangani Abeydheera,
No. 167,
Rajapaksa Mawatha,
Ruhunu Ridiyagama,
Ambalantota.
(Presently kept in Angunakolapelessa Remand Prison)

Suspect

And Now

Udayangani Abeydheera,
No. 167,
Rajapaksa Mawatha,
Ruhunu Ridiyagama,
Ambalantota.
(Presently kept in Angunakolapelessa Remand Prison)

Suspect-Petitioner

Vs.

1. The Chief Inspector,
   The Officer-in-Charge
   Police Station,
   Ambalantota.

2. Officer-in-Charge
   Divisional Crime Detective Bureau
   Tangalle.

Complainant-Respondents

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

Respondent

Before : R. Gurusinghe J
&
M.C.B.S. Morais J

Counsel : Rajinda Kandegedara with Rukshan Mendis
Instructed by Praveen Nanayakkara **for the Petitioner**

I.M.M. Fahim, S.C., **for the Respondents**

Argued on : 05/04/2024

Decided on : 04/06/2024

ORDER

R. Gurusinghe J.

The suspect-petitioner (hereinafter referred to as the suspect) filed this application seeking bail for her. The petitioner is the suspect in the Magistrate's Court of Hambantota bearing Case No. BR 920/2023/ODD.

The suspect was arrested by the Officers of the Divisional Crime Detective Bureau, in Tangalle on 11-02-2023, for allegedly being in possession of 95.0 grams of heroin, which is an offence punishable under Section 54A (d) of the Poisons, Opium and Dangerous Drugs Ordinance (hereinafter referred to as the Ordinance) as amended by the Act No. 13 of 1984.

According to the substance sent to the Government Analyst, the quantity of heroin identified is 27.53 grams.

The petitioner filed this application under the provisions of Section 83 of the Ordinance as amended by the Act No. 41 of 2022.

83. (1) Subject to the provisions of sections 84, 85 and subsection (2) of this section, a person suspected or accused of an offence under sections 54A and 54B of this Ordinance, shall not be released on bail by the High Court except in exceptional circumstances.

(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 in ten grammes 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.

(3) For the purposes of this section "dangerous drug" means Morphine, Cocaine, Heroin and Methamphetamine."

According to the above provisions, the petitioner must establish that there are exceptional circumstances that warrant her release on bail.

The petitioner states that she vehemently denies all allegations made against her in the Case bearing No. BR 920/2023/ODD. The complainant deliberately endeavors to keep her in remand custody for a lengthy period. The petitioner has stated the following facts to be considered by Court.

1. The complainant arrested the petitioner without a justifiable reason, and the said arrest solely focused on keeping her in remand custody for a lengthy period.

2. The petitioner denies all allegations leveled against her, as no illegal substance was recovered either from her possession or from her residence.

3. The complainant failed to state the time of the petitioner's arrest in the first B report.

4. The facts stated in the B report regarding the petitioner's arrest, that she had attempted to escape her arrest by running, cannot be considered practically probable. (as she was in the advanced stages of pregnancy)

5. The money that had been recovered belongs to the petitioner's mother from pawning her mother's necklace and the money received by her mother from drawing lots.

6. The petitioner has one previous conviction and no pending cases against her.

7. The petitioner is 39 years old, married with three children, and pregnant with a 5-month-old fetus.

The respondents have filed objections and denied the averments in the petition. They further stated that the grounds which are given in the petition will not constitute exceptional circumstances. It was also stated that the petitioner had been convicted in the Magistrate's Court of Hambantota for being in possession of 60 milligrams of heroin, and she had been fined a penalty of Rs. 5,000/= in the year 2015. The respondents had further stated that the petitioner has suppressed or failed to divulge the above fact.

The petitioner, in her petition and affidavit, has stated that she had one previous conviction, and therefore, there is no suppression of facts. It was admitted in the inquiry that the petitioner was pregnant at the time of her arrest, and a child was born while she was in custody. At the inquiry, Counsel for the petitioner submitted that it is very improbable that a pregnant lady with a five-month fetus ran away with a bag, and the police chased after her and apprehended her.

The child born to the petitioner is only a few months old. The child also had to be in prison since her birth, for no fault of the child. While it ensures that the mother and the child stay together in prison, it exposes the child to a harsh environment that is not conducive to a healthy development. This will

adversely affect the physical and psychological well-being of the child. The hardships that the newborn child had to go through due to the onerous conditions in the prisons cannot be justified.

In the case of *Loku Bahithige Pinona Vs Hon. Attorney General C.A. Revision Application No.03/2002 A,* decided on 11-10-2002, Raja Fernando J granted bail for the suspect who allegedly being in possession of 134.1 grams of heroin and stated *"and there is a child of 6 years without a proper person to look after the child as both parents are now in remand. Taking into consideration the special circumstances in this case that both parents are in remand and there is no one to look after the child and long period of remand, we enlarge the suspect on bail. ……".*

In the case of *Palkada Vidanalage Sunanda Ramyalatha vs. the Attorney General, Case No. CA/Bal/206/23 Sampath Abeykoon J.* decided on 05-09-2023 to grant bail to the suspect, who was in remand for 10 months, for allegedly being in possession of 21.79 grams of heroin, considering the fact that she was the single mother of a 9-year-old child who was suffering from a health condition commonly called autism.

In the case of Sakala *Deepanilage Anuruddika Vs Honourable Attorney-General C.A. (PHC) APN No. 17/12* decided on 14-06-2012, Sisira de Abrew J. and K.T. Chitrasiri, J. granted bail to a suspect who had a previous conviction for a similar offence.

The presumption of innocence ends only upon conviction. My main consideration is that the newborn child had to be in prison for no fault. Considering this fact and the abovementioned Case Law, I am of the view that the petitioner should be granted bail.

The petitioner was granted bail on the following conditions.

1. A Cash bail of Rs. 200,000/- (Two Hundred Thousand).

2. Provide two sureties. Each such surety must enter into a bond of Rs. 1,000,000/- (One Million).

3. She must surrender her passport, if any, to the Court. The accused is banned from travelling overseas until the case is concluded.

4. To report to the Officer in Charge, Divisional Crime Detective Bureau, Tangalle, on the last Sunday of every month between 9.00 a.m. and 1.00 p.m.

The Registrar is directed to send copies of this order to the Magistrate's Court of Hambantota and the Officer-in-Charge of the Divisional Crime Detective Bureau, Tangalle.

Judge of the Court of Appeal.

M.C.B.S. Morais J.
I agree.

Judge of the Court of Appeal.