

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.

Police in charge
Police Narcotic Bureau,
Colombo 01.

Complainant

Vs

Akmeemana Salukapuge Saminda,
No.247/38,
Wolfendal Street,
Colombo 13.
(Presently kept in Remand Custody)

Suspect

And Now

Mohammed Rizvi Fathumma
Rukshana,
NO.247/38, Wolfendal Street,
Colombo 13.

Petitioner

Vs

Police in charge
Police Narcotic Bureau,
Colombo 01.

Complainant – Respondent

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

2nd Respondent

Akmeemana Salukapuge Saminda,
No.247/38, Wolfendal Street,
Colombo 13.
(Presently kept in Remand Custody)

Suspect

Court of Appeal Case No:
CA/BAL/0367/2024
Maligakanda Magistrate Court
Case No: **B 32060/2023**

Before : **P Kumararatnam, J.**
Pradeep Hettiarachchi, J.

Counsel : Shaminda Rodrigo with Eranda Sinharage for the Petitioner
Jehan Gunasekera, SC for the Respondents

Inquiry on : 28.07.2025

Decided on : 04.09.2025

Pradeep Hettiarachchi,

ORDER

1. This is an Application for bail filed by the Petitioner named Mohammed Rizvi Fathumma Rukshana (hereinafter referred to as “the Petitioner”) on behalf of her husband named Akmeemana Salukapuge Saminda (hereinafter referred to as “the Suspect”) under section 83(2) of the Poisons, Opium and Dangerous Drugs Ordinance (hereinafter sometimes referred to as “the Ordinance”).
2. According to the B-Report annexed to the Petition, on 09-08-2023, Sub Inspector Wickremasinghe and the Police Constable Ratnayake had carried out an investigation based on a tip-off received from a private informant. Thereafter, Sub Inspector of the Police Narcotic Bureau and the Police Constable Ratnayake had gone to the road turning towards Modara Water Pumping Station and the Suspect was coming towards them. Upon searching the Suspect, a transparent bag containing some crystalline substance which appeared to be Methamphetamine had been found in his possession by Sub Inspector Wickremasinghe. Subsequent to which, the Suspect was arrested by him in terms of section 54A 1(b) and 54A 1(d) of the Ordinance for having in his possession and trafficking a quantity of 51 grammes and 300 miligrams of Methamphetamine.

3. The Respondents have filed their Objections dated 11-03-2025 along with a document marked R1 which is the previous convictions report of the Suspect. In the Statement of Objections, it was stated that the net quantity of Methamphetamine recovered from the Suspect was not a user quantity, but a commercial quantity; if the Suspect is released on bail it would disturb the existing investigations pertaining to exposing a drug cartel; the Petitioner has blatantly suppressed the 13 previous convictions against the Suspect and upon receiving the dossier of investigative material, the Attorney General is considering the indictment of the Suspect.
4. It is important to note that as per the Government Analyst Report dated 29-02-2024, the net quantity of Methamphetamine recovered from the Suspect was 14 grams.
5. Under section 83(2), this Court can consider bail only if exceptional circumstances are made out. Section 83 as amended by the Poisons, Opium and Dangerous Drugs (Amendment) Act, No. 41 of 2022 reads:

Section 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 - (a) of which the pure quantity of the dangerous drug, trafficked, imported, exported or possessed is 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, [sic] 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.

6. The provisions of section 83 (2) as amended by Act, No. 41 of 2022, manifest the intention of the legislature, i.e., a person accused or suspected of being in possession of 10 grammes or more of the dangerous drugs is required to be kept in remand, unless such person satisfies this Court as to the existence of circumstances that are

exceptional. Therefore, the burden is on the Suspect to establish the existence of exceptional circumstances.

7. However, the exceptional circumstances are not defined in the Ordinance. Therefore, whether the grounds advanced by the Petitioner constitute exceptional circumstances must be determined based on the specific facts and circumstances of each case.
8. As stated in ***Ramu Thamodarampillai v The Attorney General*** [2004] 3 Sri. LR 180, “the decision must in each case depend on its own particular facts and circumstances.
9. The following grounds have been urged by the Petitioner as exceptional circumstances warranting consideration for bail:
 - (a) The Complainant arrested the Suspect without a justifiable reason and the said arrest was solely made to keep the Suspect in remand custody for a long period of time.
 - (b) The Suspect denies all the allegations leveled against him as no illegal substance was recovered either from his possession or from his residence.
 - (c) The Suspect is married with three children and is the sole breadwinner of the family.
 - (d) The family members of the Suspect are undergoing many hardships due to the fact that he is languishing in remand custody for a long period of time.
 - (e) The educational affairs of the child of the Suspect is also very badly affected due to the mental agony caused to them resulted from the Suspect being kept in remand custody.
10. Accordingly, one of the main grounds advanced by the Petitioner as warranting the grant of bail to the Suspect was that he was arrested without a justifiable reason and that the said arrest was done with the sole intention to keep the Suspect in the remand custody. Upon perusal of the documents annexed to the Petition, including the B-Report submitted by the Police, I find no inherent improbabilities that cast serious doubts on the arrest of the Suspect. Therefore, I am not inclined to consider this ground as an exceptional circumstance warranting the grant of bail to the Suspect.

11. Another ground is that no illegal substance was recovered from the possession of the Suspect. However, whether the stated amount of Methamphetamine was actually recovered from the possession of the Suspect or not, is an issue for the trial court to decide. Only if there are inherent improbabilities in the police version, this Court is bound to consider them at this stage.
12. Furthermore, as stated in ***Labukola Ange Gedara Ashani Dhanushika*** CA (PHC) APN 04/2016, the intention of the Legislature is to keep in remand any person who is suspected of or accused of possessing or trafficking heroin until the conclusion of the case. The section 83(1) of the Poisons, Opium, and Dangerous Drugs Ordinance expresses the intention of the Legislature. It is enacted by the Parliament that "No person suspected or accused of an offence under section 54A or section 54B of this Ordinance shall be released on bail, except by the High Court in exceptional circumstances."
13. Similarly, in ***Cader (on behalf of Rashid Khan) v OIC Narcotic Bureau*** [2006] 3 Sri. LR 74 it was held that;

Provision has been made in the Bail Act to release persons on bail if the period of remand extends more than 12 months. No such provision is found in the case of Poison, Opium, and Dangerous Drugs Ordinance. Although bail was granted in some of the cases mentioned above, none of these cases referred to the time period in remand as constituting an exceptional circumstance. Hence, bail cannot be considered on that ground alone. It appears from the cases cited above that there is no guiding principle with regard to the quantity found either.

14. The special bail provisions under Section 83(2) establish a stringent framework for certain types of narcotics offences, primarily to prevent suspects from absconding or re-engaging in similar criminal activities. This is due to the unique nature of drug-related offences, which are often committed in a highly organized and sophisticated manner. Therefore, if courts grant bail solely on the ground that the suspect has spent a long period in the remand custody, without giving due consideration to the surrounding circumstances such as the quantity of the drugs involved and the previous convictions of the suspect, it would, in my view, undermine the very purpose of the Ordinance.

15. It is important to note that the Suspect had been in remand custody since 09-08-2023 without being indicted. However, it should also be noted that, the dossier of investigative material has already been forwarded to the Attorney General's Department under the reference No. CR3/61/2025 after the conclusion of the investigation and the Attorney General is considering the indictment against Suspect under section 54 of the Ordinance.
16. More importantly, the Suspect has suppressed the fact that he has been previously convicted for similar drug related offences which clearly is indicative of the *mala fides* on the part of the Suspect. As per the previous convictions report marked R1, the Suspect has 13 previous convictions for similar drug related offences, including for the possession of user quantities of Cannabis Sativa, Heroin and Methamphetamine, during the period of 2011-2023. This is suggestive of the fact that there is a propensity of the Suspect reoffending if enlarged on bail. Furthermore, this Court has not lost the sight of the fact that as per the Government Analyst's Report, the pure quantity of Methamphetamine recovered from the Suspect's possession is 14 grams.
17. Another ground advanced by the Petitioner is that the Suspect is married with three children and is the sole bread winner of the family and that the education of the Suspect's children is adversely affected due to the mental agony caused to them due to the Suspect's long period of stay in the remand custody.
18. However, it is a natural phenomenon that the family members will have to face various difficulties when the sole bread winner of the family is being incarcerated. The repercussions that a child will have to face, consequent to a primary caregiver being incarcerated has to be addressed by implementing appropriate social security measures. I am not, therefore, inclined to consider this ground as a condition warranting the grant of bail to the Suspect.
19. In light of the aforesaid circumstances, the grounds advanced by the Petitioner cannot be considered as exceptional circumstances warranting the grant of bail to the Suspect, especially given the net quantity of Methamphetamine involved and the Suspect's previous conduct.
20. Accordingly, the bail application stands dismissed.

21. The Registrar of this Court is directed to communicate this Order to the Magistrate Court of Maligakanda and the Officer-in-Charge of the Police Narcotics Bureau of Colombo forthwith.

Judge of the Court of Appeal

P.Kumararatnam, J.

I agree.

Judge of the Court of Appeal