

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

Court of Appeal Bail

Application No:

CA Bail/0228/2024

Magistrate Court of Gampaha

MC No.1926/23

Dadigamuwage Dinusha Jayani

Dias

No.582/2, National Houses,

Thalduwa, Avissawella

PETITIONER

Vs.

1. The Attorney General

Attorney General's Department,

Colombo-12.

2. Officer-in Charge,

Police Narcotics Bureau,

Colombo-01.

RESPONDENTS

1. Hewakankanamlage Romesh

Ireshan Perera

2. Haloluwage Sashikala

Maduwanthi Wijewardena

SUSPECT- RESPONDENTS

BEFORE : **P. Kumararatnam, J.**
R.P.Hettiarachchi, J.

COUNSEL : **Naveen Maha Arachchige instructed by**
Yasinth Kapuwella for the Petitioner.
Wishwa Wijesuriya, SC for the
Respondents.

ARGUED ON : **22/07/2025.**

DECIDED ON : **25/08/2025.**

ORDER

P.Kumararatnam,J.

The Petitioner had applied for bail on behalf of the 1st Suspect under Section 83(2) of the Poisons, Opium and Dangerous Drugs Ordinance amended Act No.41 of 2022. The Petitioner is the wife of the 1st Suspect.

On 09.06.2023, upon receiving an information, the Suspect was arrested by officers attached to the Divisional Crime Branch of Kegalle Police Station and recovered a parcel from the 1st Suspect concealed in his body.

Although, the police officers conducted a further investigation with regard to theft of a motor bike, the 1st Suspect was arrested in front of his temporary resident with the contraband. The parcel recovered from the 1st Suspect contained some substances which reacted for Methamphetamine and Heroin (Diacetylmorphine). The substance weighed about 52 grams Methamphetamine and 10 grams of Heroin (Diacetylmorphine).

The 1st Suspect was produced and facts were reported to the Gamapaha Magistrate under Section 54A (b) and (d) of the Poisons, Opium and Dangerous Drugs Ordinance as amended by the Act No.13 of 1984.

The production had been sent to the Government Analyst Department on 26/06/2023. After analysis, the Government Analyst had forwarded the report to Gampaha Magistrate Court. The Government Analyst Report is dated on 30/10/2023. According to the Government Analyst, 39.25 grams of pure Methamphetamine and 2.42 grams of pure Heroin (Diacetylmorphine) had been detected from the substance sent for the analysis. Even though, the IBEs had been received and a file under CR3/437/2024 is opened by the Attorney General, the indictment has not gone out against the 1st Suspect up to now.

The Following exceptional circumstances are submitted by the Petitioner:

1. The suspect is in remand nearly for about twenty-six months.
2. No indictment has been forwarded to the High Court.
3. The 1st Suspect is a father of child and the sole breadwinner of the family.

One of the preliminary objections taken up by the State is that the Petitioner has failed to establish an acceptable “exceptional circumstance” to invoke the jurisdiction of this Court.

The Learned State Counsel submitted that the delay is not an exceptional circumstance to be considered to enlarge the 1st Suspect on bail. Further, the time spent for preparing the indictment does not constitute an exceptional circumstance.

Exceptional circumstances are not defined in the statute. Hence, what is exceptional circumstances must be considered on its own facts and circumstances on a case by case.

In **Ramu Thamodarampillai v. The Attorney General [2004] 3 SLR 180** the court held that:

“the decision must in each case depend on its own peculiar facts and circumstances”.

The Section 83 of the Poison, Opium and Dangerous Drugs Act which was amended by Act No. 41 of 2022 states:

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 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,

shall not be released on bail except by the Court of Appeal in exceptional circumstances.

In this case the pure quantity of Methamphetamine detected in the production by the Government Analyst is 39.25 grams. Hence, this Court has jurisdiction to consider granting of bail as per the new amendment.

The learned Counsel for the Petitioner urged this Court to consider that the detaining a Suspect for an extended period of time amounts to a violation of his fundamental rights which can be considered as an exceptional ground.

The Learned Counsel for the Petitioner submitted that the 1st Suspect was not in possession any contraband when he was arrested.

The factual and evidentiary matters pertain to the investigations can only be tested at the trial upon the witnesses being cross examined and shall not be tested at the time of hearing this bail application considering the nature of this case.

In **Nasher v. Director of Public Prosecution [2020] VSCA 144** the court held that:

“a combination of delay, onerous custodial conditions, and the relative weakness of the prosecution case may, when considered with all relevant circumstances, compel the conclusion that exceptional circumstances have been established”.

Accordingly, considering the fact that there has been a delay of 26 months since the remand, it falls into the category of excessive and oppressive delay taking into account the circumstances of this case. Further indictment has not been forwarded to the High Court. Trial has not commenced in the High Court of Gampaha. Hence, this court has

come to a conclusion that the 1st has established exceptional grounds for the granting of bail.

The Offences under Section 54A(d) and (b) of the Poisons, Opium and Dangerous Drugs Ordinance as amended by the Act No.13 of 1984 are no doubt serious offences but seriousness of the offences alone cannot form a ground to refuse bail. In considering these matters, the court must bear in mind the presumption of innocence. Further, according to the police, although one pending case is reported against the 1st Suspect, it has no connection with dug offence.

Taking all these into account, especially the pure quantity of Methamphetamine detected, the period in remand, and other circumstances of the case, I consider this is an appropriate case to grant bail to the 1st Suspect pending trial. Hence, I order the 1st Suspect be granted bail with following strict conditions.

1. Cash bail of Rs.50,000/=.
2. To provide 02 sureties. They must sign a bond of Five Hundred Thousand (Rs.500,000/-) each.
3. The Petitioner should be the one of the sureties.
4. The 1st Suspect and the sureties must reside in the address given until conclusion of his case.
5. Not to approach any prosecution witnesses directly or indirectly or to interfere with.
6. To surrender his passport if any, to court and not to apply for a travel document. The Controller of the Immigration and Emigration is informed of the travel ban on the 1st Suspect.
7. To report to the Weeragula Police Station on the last Sunday of every month between 9am to 1pm.
8. Any breach of these conditions is likely to result in the cancellation of her bail.

The Bail Application is allowed and the learned Magistrate of Gampaha is hereby directed to enlarge the 1st Suspect on bail on the above bail conditions.

The Registrar of this Court is directed to send this Bail Order to the Magistrate Court of Gampaha and Officer-in-Charge of the Police Station, Weeragula.

JUDGE OF THE COURT OF APPEAL

R.P.Hettiarachchi, J.

I agree.

JUDGE OF THE COURT OF APPEAL