

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

In the matter of an application for Bail as under and in terms of Section 83(2) of the Poisons, Opium and Dangerous Drugs Ordinance as amended by section 04 of the Act No.41 of 2022.

Court of Appeal

The Attorney General

Application No:

Attorney General's Department

CA Bail/0092/2025

Colombo-12.

High Court of Colombo

COMPLAINANT

No. HC/5246/25

Vs.

MC Maligakanda case No.

B/25139/2023

Nalaka Ramya Prabath Hettiarachchi

ACCUSED

AND NOW

Thotawatte Don Manuel Nirosha De Silva

No. D/02/86,

Saranapala Himi Mawatha,

Borella, Colombo-08.

PETITIONER

Vs.

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

COMPLAINANT-RESPONDENT

2. The Attorney General
Attorney General's Department
Colombo-12.

2ND-RESPONDENT

3. Police Officer Rajapaksha
The Police Narcotics Bureau
Colombo-01.

3RD RESPONDENT

<u>BEFORE</u>	:	P. Kumararatnam, J. R. P. Hettiarachchi, J.
<u>COUNSEL</u>	:	Shamindra Rodrigo with Janith Perera instructed by Eranda Sinharage for the Petitioner. Malik Azeez, SC for the Respondents.
<u>ARGUED ON</u>	:	28/10/2025.
<u>DECIDED ON</u>	:	19/12/2025.

BAIL ORDER

P. Kumararatnam, J.

The Petitioner filing this Application has invoked the jurisdiction of this Court to grant bail to her husband upon suitable conditions as this Court considers appropriate.

On 27.06.2023, the Accused was arrested by officers attached to the Police Narcotics Bureau, Colombo-01 who alleged that the Accused had 4.4 Kilograms of substances suspected to be Methamphetamine and 195.100 grams of substance suspected to be Heroin (Diacetylmorphine) in his possession.

The Accused was produced, and the facts were reported to the Maligakanda Magistrate under Section 54A(d) and 54A(b) 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 28/06/2023. After analysis, the Government Analyst had forwarded the report to Court on 01/12/2023. According to the Government Analyst Report, 2776.1 grams of pure Methamphetamine and 73.68 grams of pure Heroin (Diacetylmorphine) had been detected from the substances sent for the analysis.

Presently, the Accused is indicted in the High Court of Colombo under case No. 5246/2025 and the case was due to be called on 15.05.2025.

The contention of the prosecution is that the Accused was arrested upon an information and the contraband was recovered from a bag he was carrying at the time of his arrest.

The Petitioner has pleaded the following exceptional circumstances in support of the Bail Application.

1. The Petitioner has been in remand custody for over 30 months to date.
2. The Petitioner is the sole breadwinner of the family and the family is going through untold hardships due to his prolonged incarceration.
3. His daughter has fallen sick after his arrest and is currently receiving treatment for severe depression.

According to the Learned State Counsel, the Petitioner was arrested for possession and trafficking of 2776.1 grams of Methamphetamine and 73.68 grams of Heroin. Steps had already been taken to indict the Petitioner in the High Court of Colombo and the case number is HC 5246/2025. The indictment has not been served onto the Accused. Hence, the Learned State Counsel submitted that the delay is not an exceptional circumstance to be considered to enlarge the Accused on bail. Further, the time spent for preparing the indictment does not constitute an exceptional circumstance.

The Counsel for the Petitioner submits that the Accused has been in remand for over 30 months. Considering the facts and the circumstances of this case, the prosecution will not be able to establish a *prima facie* case against the Accused.

Exceptional circumstances are not defined in the statute. Hence, what would constitute *an* exceptional circumstance must be considered on its own facts and circumstances on a case-by-case basis.

In *Ramu Thamotharampillai 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”.

In this case, the pure quantity of 2776.1 grams of Methamphetamine and 73.68 grams of Heroin has been detected in the production. Hence, this court has jurisdiction to consider granting of bail as per the new amendment.

The Counsel for the Petitioner submits that undue and long delay in keeping the Accused in remand custody is a clear violation of his human rights and is against the presumption of innocence guaranteed under the Article 13(5) of the Constitution.

A court can consider evidence in a bail inquiry. During a bail hearing, the court typically evaluates various factors to determine whether a Suspect should be granted bail, such as the risk of flight, the likelihood of reoffending, and the safety of the community. The court may also review evidence related to the Suspect's criminal history, ties to the community, and the specifics of the current charges.

Ultimately, the Court's role during a bail inquiry is to weigh the available evidence to decide if the defendant can be trusted to return for trial or if they pose a danger to public safety.

In this case the Accused alleged to have committed Offences under Section 54A(d) and (b) of the Poisons Opium and Dangerous Drugs Ordinance as amended by the Act No.13 of 1984. The offences are very serious offences and the seriousness of the offence should be considered when bail is considered.

I agree with the learned State Counsel that this is not appropriate case to consider the factual and evidentiary matters pertain to the

investigations at this stage. It can only be tested at the trial upon the witnesses being cross examined and re-examined.

In **Ranil Charuka Kulatunga v. Attorney General CA (PHC) APN 134/2015** the court held that:

“The quantity of cocaine involved in this case is 62.847 grams, which is a commercial quantity. If Petitioner is convicted, the punishment is death or life imprisonment. Under these circumstances, it is prudent to conclude the trial early while the Petitioner is kept in custody.”

In **Carder (On behalf of Rashid Kahan) v Officer-in-Charge Narcotics Bureau** [2006] 3 SLR 74 the Court held that:

“Heroin has become a menace in our society. It is not easily detectable. Due to the fact alone, the tendency to commit this kind of crime repeatedly has become feasible. The repetitive factor prevalent in this sort of crime and the difficulty of detection are significantly strong reasons for refusing bail in this type of cases.”

In this case the pure quantity of 2776.1 grams of Methamphetamine and 73.68 grams of Heroin had been detected, which certainly are very high commercial quantity. Considering the seriousness of the sentence prescribed under the Poison, Opium and Dangerous Drugs Ordinance, there is a high risk of absconding.

Hence, I do not consider the delay little over 30 months in remand falls into the category of excessive and oppressive delay considering the circumstances of this case.

Considering all these factors into account, especially the pure quantity of drugs detected, the charges framed against the Accused and

circumstances of the case, I consider this is not an appropriate case to sanction bail to the Accused at this stage. Hence, I refuse to release the Accused on bail.

Hence, this Bail Application is dismissed.

The Registrar of this Court is directed to send this bail order to the High Court of Colombo and the Officer-in-Charge, Police Narcotics Bureau, Colombo-01.

JUDGE OF THE COURT OF APPEAL

R. P. Hettiarachchi, J.

I agree.

JUDGE OF THE COURT OF APPEAL