

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

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

Officer-in-Charge
Police Narcotic Bureau
Colombo 01.

Complainant

Vs

Court of Appeal Case No:
CA/BAL/394/24

Magistrate Court of Welisara Case No:
B 5719/2023

1. Naufer Jesu Thasan
No. 09/13, Meegastenna Road
Dombagasdeniya Road
Matale
2. Sivanadan Sumadi
No. B 15/119 A
Paranawatte Road
Kerawalapitiya

Suspects

AND NOW BETWEEN

Sivanadan Sumadi
No. B 15/119 A
Paranawatte Road
Kerawalapitiya

(Presently at Welikada remand prison)

2nd Suspect - Petitioner

Vs

1. Hon. Attorney General
Attorney General's Department
Colombo 12
2. Officer-in-Charge
Police Narcotic Bureau
Colombo 01

3. Officer-in-Charge
Police Narcotic Bureau
Kandy Unit
Kandy

Respondents

Before : **Hon. P Kumaratnam, J.**
Hon. Pradeep Hettiarachchi, J.

Counsel : Kasun Liyanage with Thilakkana Indunil for the Petitioner
Oswald Perera, S.C for the Respondents

Inquiry on : 16.07.2025

Decided on : 29.08.2025

Pradeep Hettiarachchi, J

ORDER

1. This is an Application for bail filed by the 2nd Suspect-Petitioner named Sivanadan Sumadi (hereinafter referred to as “the Petitioner”) under section 83(2) of the Poisons, Opium and Dangerous Drugs Ordinance (hereinafter sometimes referred to as “the Ordinance”).
2. The Petitioner had been arrested on 29-12-2023 by the officers of the Police Narcotics Bureau in terms of section 54A 1(b) and 54A 1(d) of the Ordinance for having in her possession and trafficking a quantity of 1kg and 5 grams of Methamphetamine.
3. According to the B-Report annexed to the Petition, a team of police officers attached to the Police Narcotic Bureau, Kandy Unit led by SI Harsha Madushan, had apprehended the Suspect named Naufer Jesu Thasan on 29-12-2023. Thereafter, on the same day,

based on further information received from the said Suspect, they have conducted a raid in Kerawalapitiya consequent to which they have arrested the Petitioner. At the time of arrest, the Petitioner had been standing near the junction headed towards Thuduwa road carrying a black tulip bag inside of which the Police have found 17 transparent packages containing Methamphetamine.

4. The Respondents have filed their Objections dated 24-02-2025. In the Statement of Objections, it was stated that the net quantity of Methamphetamine recovered from the Petitioner was not a user quantity, but a commercial quantity, the Petitioner if found guilty will be served either with a death sentence or life imprisonment, and therefore, the chances of the Petitioner absconding after being released on bail are high.
5. It is important to note that as per the Government Analyst Report dated 28-02-2024, the net quantity of Methamphetamine recovered from the Petitioner was 638.8 grams.
6. 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.

7. 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.

8. 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.
9. 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.”
10. The following grounds have been urged by the Petitioner as exceptional circumstances warranting consideration for bail:
 - (a) The Petitioner’s right for an expeditious trial, being an integral element of a fair trial has been violated, since the Petitioner has not yet been served with an Indictment despite the lapse of 9 months since the date of her arrest.
 - (b) The Petitioner’s right for an expeditious trial, being an integral element of a fair trial has been violated, since the Petitioner has not yet been served with an Indictment despite the lapse of 7 months since the issuance of the Government Analyst Report.
11. Accordingly, the only ground urged in the Petition is that the delay in indicting the Petitioner has denied herself of the right for an expeditious trial, which is an integral element of a fair trial. However, for the delay in prosecuting the Petitioner to be considered as an exceptional ground for granting bail, it must amount to an oppressive and inordinate delay that cannot be reasonably explained by the prosecution, and the time spent in remand custody alone cannot be considered as an exceptional ground warranting the grant of bail.
12. 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 of delay, without giving due consideration to the surrounding circumstances such as the quantity of the drugs involved, it would, in my view, undermine the very purpose of the Ordinance.
15. It is true that the Petitioner had been in remand custody since 29-12-2023 without being indicted. However, it should be noted that, after the conclusion of the investigation IB extracts have already been forwarded to the Attorney General’s Department under the reference no. CR3/323/2024 to prepare the indictment.
16. Furthermore, according to the Government Analyst’s Report, the pure quantity of Methamphetamine is 638.8 grams. Therefore, it cannot, in any event, be considered a user quantity, but rather a commercial quantity, and there exists a risk of absconding since the punishment prescribed in the Poisons, Opium and Dangerous Drugs Ordinance is either death or life imprisonment.
17. More importantly, according to the B-Report annexed to the Petition, the Petitioner has been arrested by the Police subsequent to some information received by another Suspect named Naufer Jesu Thasan and it was further stated in the B-Report that both the

Petitioner and her husband had been involved in this drug racket led by one Dubai based drug trafficker called Kochchikade Sellayyage Watte Rajeev. While this is not the appropriate stage to analyze evidence to see whether the Petitioner is involved in this drug racket, the fact that the Petitioner was arrested subsequent to some information received by a drug trafficker is suggestive of the fact that she could be part of a much larger network.

18. In light of the aforesaid circumstances, the period of one year and eight months in remand alone cannot be considered as an oppressive or inordinate delay. It cannot be considered as an exceptional circumstance in the context of the present case, given the net quantity of Methamphetamine involved and her possible involvement in a much larger drug trafficking network.
19. Therefore, this Court is not persuaded that the grounds urged by the Petitioner constitute exceptional circumstances warranting the Petitioner's release on bail.
20. Accordingly, the bail application stands dismissed.
21. The Registrar of this Court is directed to communicate this Order to the Magistrate Court of Welisara and the Officer-in-Charge of the Police Narcotics Bureau of Colombo and Kandy forthwith.

Judge of the Court of Appeal

P.Kumararatnam, J.

I agree.

Judge of the Court of Appeal