

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 Act as amended by Act No. 41 of 2022.

Officer-in-Charge
Police Narcotics Bureau
Colombo 01.

Complainant

Court of Appeal Case No:
CA/BAL/478/2023

Vs

Suwanda Hennadige Sameer

MC Mount Lavinia Case No:
B/17116/2023

Suspect

AND NOW BETWEEN

Stanley Shiromi Fernando
No. 131/52, Jampattah Street
Colombo 13.

Petitioner

Vs

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

Respondent

Before : **Hon. P Kumararatnam, J.**

Hon. Pradeep Hettiarachchi, J.

Counsel : Shamindra Rodrigo with Eranda Sinharage for the Petitioner.
Jehan Gunasekera SC for the Respondents.

Inquiry on : 16.06.2025

Decided on : 01.08.2025

Pradeep Hettiarachchi, J**ORDER**

1. This is an Application for bail filed on behalf of the Suspect named Suwanda Hennadige Sameer (hereinafter referred to as “the Suspect”) by his wife Stanley Shiromi Fernando (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 Suspect had been arrested on 14-06-2023 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 his possession and trafficking a quantity of 80 grams and 100 milligrams of Methamphetamine, 15 grams of Kush, 20 grams and 100 milligrams of 100 intoxicant tablets, 103 grams of substance similar to Hashish, 14 grams and 100 milligrams of Cocaine and a quantity of cash suspected to be proceeds of sale of narcotics.
3. According to the Petition, when the Petitioner and the Suspect were walking towards the Suspect’s car to bring their child from school, a group of people appeared to be police officers had approached them and taken the Suspect into their custody. There had not been any narcotic substance in his possession at the time he was taken into custody.
4. The Respondents had filed their Objections on 14-10-2024 along with a document marked R1 which is the previous convictions report pertaining to the Suspect. In the Objections it was stated that the Petitioner has failed to establish the existence of exceptional circumstances and, as such, the bail application should be dismissed *in limine*. It was further stated that the Suspect had been apprehended as he was walking on the road in Melfort Crescent Road in Wellawatte and upon searching the Suspect, a parcel containing a white crystalline substance that was suspected to be Methamphetamine had been found in the left side pocket of the Suspect and while searching the house of the Suspect, the police had found Kush (Cannabis Sativa L), Hashish (Cannabis Sativa L), MDMA pills, Cocaine and a digital scale inside a drawer in the wardrobe in the Suspect’s room. Upon further searching the wardrobe the police had found Rs. 3,300,000/= in cash hidden among the clothes in the wardrobe and taken the same into their custody on the suspicion of it being the proceeds of drug sales.

5. It is important to note that, according to the Government Analyst Report dated 15-12-2023, the net quantity of substances found on the Suspect was 11.75 grams of Methamphetamine and 978 mg of Cocaine. Furthermore, Cannabis Sativa L was identified in both Kush and Hashish while MDMA was identified in the pills and the grey powder recovered from the Suspect's house.
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, 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 Suspect is married and a father of two children and also the sole bread winner of the family.
 - (b) Long delay in receiving the Government Analyst Report had caused further delay in forwarding the indictment.
11. The fact that the Suspect is married with two children and is the sole bread winner of the family does not constitute exceptional circumstances within the context of this case. It is a normal occurrence that a family has to go through numerous hardships when its sole bread winner is in custody and unable to make a living.
12. It was stated in the Petition that the long delay in receiving the Government Analyst Report has caused further delay in forwarding the indictment. However, for delay in prosecuting the Suspect to be considered 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.
13. 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.”
14. 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.

15. In the same case, while focusing the attention on the nature and gravity of the offences falling under the Act, Eric Basnayake J. further stated as follows:

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.

16. 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 previous conduct of the Suspect and the quantity of the drugs involved, it would, in my view, undermine the very purpose of the Ordinance.

17. It is true that the Suspect had been in remand custody since 14-06-2023 without being indicted. However, according to the Government Analyst's Report, the pure quantity of Methamphetamine is 11.75 grammes. 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.

18. Also, it was revealed that the Suspect has four previous convictions and three pending cases of similar nature during the period from 2017 to 2023, which further demonstrate the fact that he has gradually become a trafficker. More importantly, the present arrest had been made while he was serving a suspended sentence. Needless to say, given the Suspect's prior conduct, there is a significant risk that he would reoffend if granted bail.

19. In light of the aforesaid circumstances, the period of two years in remand alone cannot be regarded as an exceptional circumstance in the context of the present case, given the

Suspect's prior conduct and the net quantity of Methamphetamine involved and the other drugs recovered from the house of the Suspect.

20. Therefore, this Court is not persuaded that the grounds urged by the Petitioner constitute exceptional circumstances warranting the Suspect's release on bail.

21. Accordingly, the bail application stands dismissed.

22. The Registrar of this Court is directed to communicate this Order to the Magistrate Court of Mount Lavinia and the Officer-in-Charge of the Police Narcotics Bureau forthwith.

Judge of the Court of Appeal

P.Kumararatnam, J.

I agree.

Judge of the Court of Appeal