

**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 No. 17 of 1929 as amended by the Acts No. 13 of 1984 and No. 41 of 2022.

Officer-in-Charge

Vice Branch

Police Station

Ratnapura

**Complainant**

CA Case No:

**CA/Bail/104/2025**

**-Vs-**

MC Ratnapura Case No:

**75967/A**

1. Malmadana Kapuge Dilum Madusanka  
Silva  
200/24, Pubudu Mawatha,  
Kotugoda  
(Presently at prison)
2. Embuldeniya Appuhamilage Thanuja  
Krishantha Dharmasena  
631/A, Epita Gedera  
Paranagama, Ellawala  
(Discharged)
3. Heyawalangu Mudiyanseilage Madupa  
Ayrangani  
Polegelanda, Baduluwala  
Dambagalla, Monaragala

**Suspects**

**AND NOW BETWEEN**

Lankahaluge Dhanushika Erandi  
29/A, Gonagaha  
Makawaita, Ja-Ela

**Petitioner**

**-Vs-**

1. Officer-in-Charge  
Vice Branch  
Police Station  
Ratnapura
2. Hon. Attorney General  
Attorney General's Department  
Colombo 12.
3. Malmadana Kapuge Dilum Madusanka  
Silva  
200/24, Pubudu Mawatha  
Kotugoda  
(Presently at prison)

**Respondents**

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

**Pradeep Hettiarachchi, J.**

Counsel : Chathuranga Bandara for the Petitioner  
Shehan Mahboob, SC for the Respondents

Inquiry on : 19.09.2025

Decided on : 17.10.2025

**Pradeep Hettiarachchi, J**

**Order**

1. This is an Application for bail filed by the Petitioner named Lankahaluge Dhanushika Erandi (hereinafter referred to as “the Petitioner”) on behalf of her husband named Malmadana Kapuge Dilum Madushanka Silva (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 dated 25.05.2023, annexed to the Petition, the Suspect has been arrested on 24.05.2023 along with two other suspects, by the police officers attached to the Gonahena Camp of the Police Special Task Force for trafficking and keeping in his possession 1 kilogram and 19 grams of Methamphetamine, an offence punishable under section 54A1 (b) and 54A 1(d) of the Ordinance. This arrest was done consequent to some information received by IP Deshapriya of Gonahena Camp of Police Special Task Force.
3. Thereafter, the Accused was produced before the Magistrate Court of Ratnapura on 25.05.2023 and he has been in remand custody since the date of arrest.
4. As per the Government Analyst Report dated 31.08.2023, the net quantity of Methamphetamine recovered from the possession of the Suspects is 657 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 grams 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) Excessive period of remand coupled with unexplained and inordinate delay. This oppressive and inordinate delay in the administration of justice amounts to a violation of the Suspect’s right to a fair trial guaranteed under Article 13(3) of the Constitution.
  - (b) The Complainant has arrested the Suspect as a form of retaliation for a previous assault caused by the Suspect on their fellow officer consequent to an encounter between the Suspect and the same team of police officers in Kotugoda area, five

days prior to the arrest of the Suspect in Ratnapura. It was stated that, at the time of arrest, the Suspect has not been in possession of Methamphetamine and it was introduced to the Suspect by the same team of police officers.

- (c) The Suspect has a child and is the sole breadwinner of the family. Due to the continued incarceration of the Suspect the family is facing serious economic hardships as they are unable to fend for themselves.
- (d) Non-compliance with section 115 of the Criminal Procedure Code Act, as the summary of statements have not been provided in any of the B-Reports filed so far. Furthermore, the police have failed to specify the time of arrest of the suspects, which is a crucial element in a case that is solely based on police raid notes and the omission of these fundamental procedural safeguards undermine the integrity of the investigation and deprives the Suspect of critical information necessary for a fair defense.
- (e) In the event that the Suspect has to go through a trial whilst incarcerated, he would be deprived of his right to a fair trial given that access to his lawyers, court proceedings, and the ability to freely and adequately give instructions to his attorneys will be severely restricted and he would not be equally placed as those accused persons who face their trial while on bail.

10. One of the main grounds advanced by the Petitioner is the oppressive and inordinate delay in prosecuting the Suspect. It is stated in the Petition that the Complainant has already concluded the investigations by the end of 2023 October and on 17.11.2023, the learned Magistrate has asked the Complainant to file the information book extracts to be sent to Attorney General's Department for the preparation of indictments. However, the Complainant has purposefully delayed the proceedings for another 9 months without forwarding the information book extracts. After noticing such delay on the part of the prosecution, the learned Magistrate has strictly warned the prosecution to forward the information book extracts to the Attorney General's Department without any further delay and to inform the relevant reference number to Court on the next day. It is also stated that, even at the time of filing the present application, i.e. 17.03.2025, the reference number has

not yet been informed to the Court by the Complainant, nor has the Attorney General's advice been received in respect of the Suspect.

11. However, this Court in a long line of cases has held that the delay in prosecuting a suspect alone will not suffice to consider granting bail to a suspect unless such delay amounts to an oppressive and inordinate delay. As held in ***Attorney General v. Ediriweera*** (S.C. Appeal No. 100/2005), *“Delay is always a relative term and the question to be considered is not whether there was mere explicable delay, as when there is a backlog of cases, but whether there has been excessive or oppressive delay and this always depends on the facts and circumstances of the case...”*.
12. Considering the legislative intent behind section 83(1) (Prior to the Amendment) of the Ordinance, it was stated in ***Labukola Ange Wisin Gedera Ashani Dhanushshika v. OIC Divisional Crimes Investigation Unit Panadura*** CA/PHC/APN/04/2016 (Court of Appeal Minutes dated 06-10-2016] as follows;

*“The Petitioner’s first point is that the suspect is in remand nearly for two years. The intention of the Legislature is to keep in remand any person who is suspected of or accused of possessing or trafficking heroine until the conclusion of the case. The Section 83(1) of the Poisons, Opium and Dangerous Drugs Ordinance express 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. But at the same time this Court is also mindful of the fact that the stringent provisions of a statute should not be used as a tool to deprive a person's liberty, thereby forcing them to live in trepidation without any knowledge of the progress of the investigation or the possible outcome.
14. Our Courts have recognized the prejudice caused to a suspect by lengthy and inordinate delays in prosecuting him. To elaborate further, the right to a speedy trial is not only aimed at expediting the administration of justice but also at preventing the oppression of a citizen by keeping a criminal prosecution hanging over them for an indefinite period.

15. Therefore, it is incumbent upon the relevant authorities to act with due diligence to avoid inordinate delays in prosecuting offenders. If the prosecution fails to act with due diligence and cannot explain the delay on their part, it would, in my opinion, constitute an exceptional circumstance as required by section 83 of the Poisons, Opium and Dangerous Drugs Ordinance.
16. In the present case, the Suspect has been arrested on 24.05.2025. The Government Analyst's Report was ready by 31.08.2025. As the learned Magistrate of Ratnapura correctly noted, the information book extracts have not been forwarded to the Attorney General's Department even after the lapse of nine months from the receipt of the Government Analyst Report. However, in the Statement of Objections, it is stated that the dossier of investigation material had been forwarded to the Attorney General's Department to consider institution of criminal action against the Suspect under reference No. CR3/350/2025. Despite the indication that the dossier of investigation material had been forwarded to the Attorney General's Department, the learned State Counsel has not informed this Court of a possible time frame within which the indictment against the Suspect will be filed. Nor has he informed this Court of a justifiable reason as regards the delay in prosecuting the Suspect despite the investigations were concluded by the police.
17. Another main ground adduced by the Petitioner is that the Complainant has arrested the Suspect as a form of retaliation for a previous assault caused by the Suspect on one of their fellow officers consequent to an altercation between the Suspect and the police officers in Kotugoda area, five days prior to the arrest of the Suspect in Ratnapura.
18. It is stated in the Petition that, five days prior to the alleged raid in Ratnapura, the same police officers from the Gonahena Camp led by IP Deshapriya conducted a search operation in Kotugoda area. During this operation, the Suspect had been staying at a friend's house in that area. The police officers in civil attire had come to the said house and attempted to assault and apprehend the owner of the house who is a friend of the Suspect. Thereafter, the Suspect had intervened and there had been an altercation between the two parties, consequent to which, one of the police officers got wounded as a result of the assault by the Suspect.

19. Subsequently, the Suspect, after realizing the gravity of the situation has decided to leave Kotugoda temporarily and moved to Ratnapura area. While en route to Ratnapura, on 24.05.2025, the same police team led by IP Deshapriya, has arrested the Suspect. It is also stated in the Petition that, at the time of arrest, the Suspect had not been in possession of any drugs and the large quantity of drugs allegedly found in his possession has been introduced to him by the police officers in order to retaliate from the Suspect for the earlier assault, with the intention of preventing him from securing bail and ensuring a severe punishment.
20. The Complainant in their submissions to Ratnapura Magistrate Court has failed to disclose the aforementioned facts. Instead of disclosing the previous incident that took place between the Suspect and the team of police officers in Kotugoda area, the Complainant has portrayed the raid as an isolated and independent operation that has no connection whatsoever to the incident that took place in Kotugoda area, five days prior to the said incident.
21. As regards the failure of the Complainant to disclose the aforesaid facts before the Magistrate Court of Ratnapura, the Respondents in their Objections have stated that Petitioner has merely stated that the Respondents have failed to substantiate the allegations made against the police officers or even to name the officers who made the arrest in the instant bail application. Apart from that, no explanation is forthcoming from the Respondents regarding the said incident that took place on 19.05.2023 in Kotugoda area. Also, upon perusal of the case record of the Magistrate Court Case bearing No. M68348 (The document marked Y to the Petition) instituted against the Suspect regarding the assault caused by him to a police constable named Piyumal, it is clear that the same police officer who led the raid in Ratnapura, IP Deshapriya, has led the investigation in Kotugoda area. In the absence of any explanation from the Respondents regarding the said incident, a doubt arises as to whether the Suspect was arrested as a form of retaliation due to his involvement in the previous assault.
22. Additionally, it is also important to note that, in the B-Report dated 25.05.2023; time of arrest of the Suspect has not been mentioned, which casts a doubt on the prosecution's version of events.

23. In the aforesaid circumstances, the delay of two years and four months, when considered in conjunction with the failure to provide an explanation for the delay in prosecuting the Suspect and the doubt on the prosecution version of events regarding the raid can be regarded as exceptional.
24. It is important to emphasize that when a person is deprived of their liberty and held in detention; those responsible for such deprivation must consciously and diligently take the necessary steps to conclude legal action. If no reasonable explanation is provided for any delay, such delay will be deemed excessive or oppressive.
25. Based on the above analysis, I am inclined to grant bail to the Suspect subject to the following conditions;
- (a) Rupees two hundred thousand cash bail with two sureties;
  - (b) The sureties must enter into a bond amounting to Rupees one million each;
  - (c) The Suspect shall report to the Officer-in Charge, Vice Branch, Police Station Ratnapura on the 1<sup>st</sup> Sunday of every month between 9.00 am and 10.00 am; and,
  - (d) The Suspect shall surrender his passport, if any, to the Magistrate Court of Ratnapura.
26. This Bail Application is accordingly allowed, and the Registrar of this Court is directed to transmit a copy of this Order to the Registrar of the Magistrate Court of Ratnapura and to the Officer-in-Charge of the Vice Branch, Police Station Ratnapura forthwith.

**Judge of the Court of Appeal**

**P. Kumararatnam, J**

I agree,

**Judge of the Court of Appeal**

