

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

In the matter of an application for bail in terms of the Section 83 of the Poisons, Opium and Dangerous Drugs Ordinance as amended by the Act No.41 of 2022.

Court of Appeal

The Officer-in-Charge

Application No.

Police Narcotics Bureau,

CA Bail 0386/2025

Colombo-01.

COMPLAINANT

Vs.

Magistrate Court Negombo

1. Mohomed Najeem Dool

Case No: B 15396/2024

2. Madawa Mithun Abeywickrama

3. Duwage Kalpani Shri Kumari

4. Niroshan Shri Chamila

Abeykoon

5. Mohommed Siddhik Mohamad

Azan

6. Pubudu Asanka Herman

7. Dhanushka Lakmal

Samarasekera

8. Pushparaj Wigneswaran

SUSPECTS

AND NOW BETWEEN

Kandana Arachchige Shehari

Dilrukshi Perera

131/52/H, Jampata Street,

Colombo-13.

PETITIONER

On behalf of

Pushparaj Wigneswaran

(In remand)

8th SUSPECT

Vs.

1. The Officer-in-Charge

Police Narcotics Bureau

Colombo-01.

2. The Attorney General

Attorney General's Department,

Colombo-12.

RESPONDENTS

BEFORE : **P. Kumararatnam, J.**
Pradeep Hettiarchchi, J.

COUNSEL : **Tenny Fernando with Pasindu Gamage**
for the Petitioner.
Malik Azeez, SC for the Respondents.

ARGUED ON : **16/01/2026.**

DECIDED ON : **16/03/2026.**

ORDER

P.Kumararatnam,J.

The Petitioner is wife of the 8th Suspect named in the Negombo Magistrate Court Case No. B/15396/24.

According to the report submitted by the Police Narcotics Bureau, Cololmbo-1, 1st to 7th Suspects were arrested upon an investigation carried out consequent to a tip off received by the police. The Salute had

recovered 4.0642 kilograms of Methamphetamine (net) from the raid in which 1st to 7th Suspect were arrested on 26.10.2024.

The 8th Suspect to whom bail has been sought was brought from India and named as 8th Suspect in this case on 16.02.2025. He was produced in this case on the charge of aiding and abetting above named 1st to 7th Suspects for possession, trafficking and importing 4.0642 kilograms of Methamphetamine which is an offence punishable under Sections 54A (d), (c) and (b) of the Poisons, Opium and Dangerous Drugs Ordinance as amended by the Act No.41 of 2022.

The 8th Suspect and others were produced and facts were reported to the Negombo Magistrate under Section 54A (d), (c) and (b) of the Poisons, Opium and Dangerous Drugs Ordinance as amended by the Act No.13 of 1984.

Upon a Court order, the 8th Suspect and others were placed under a detention order to facilitate the Police Narcotics Bureau to conduct further investigation with regard to the detection.

The Petitioner alleges that 8th Suspect was taken into custody by the Police narcotics Bureau on a mere conjecture without any reasonable suspicion upon brought to Sri Lanka from India. The Petitioner further alleges that no any contraband had been detected in his possession.

The Petitioner submits that 8th and seven others had been in remand for nearly one year without filing any charge against them.

The Counsel for the Petitioner contends that non-existence of a prima-facie case against the 8th Suspect could be considered as an exceptional circumstance.

Larned State Counsel submits that preliminary investigation revealed that the 8th Suspect had aided and abetted the 4th Suspect by handling all financial matters to narcotics business of him. Further, investigation has surfaced that the 8th Suspect had constant contact with 4th Suspect in handling his finances. At present the police has sought assistance

from Indian counterparts to get down a diary and a mobile phone said to have used to contact the 4th Suspect. Hence, investigation is not over, as it runs beyond our jurisdiction.

The 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 4.0642 kilograms. Hence, this court has jurisdiction to consider granting of bail as per the new amendment.

The Counsel for the Petitioner submits that keeping the 8th Suspect in remand custody without any evidence 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 8th Suspect and others alleged to have committed Offences under Section 54A(d), (c) 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 Methamphetamine detected is 4.0642 kilograms, which certainly a 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.

The police had reported that a pending matter of a similar nature reported in the High Court Colombo under case No. 2806/2021.

Considering all these factors into account, especially the pure quantity of Methamphetamine detected, the charges going to be framed against the 8th Suspect and others and other circumstances of the case, I consider this is not an appropriate case to sanction bail to the 8th Suspect at this stage. Hence, I refuse to release the 8th Suspect on bail.

Hence, this Bail Application is dismissed.

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

JUDGE OF THE COURT OF APPEAL

Pradeep Hettiarachchi, J.

I agree.

JUDGE OF THE COURT OF APPEAL