

**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.

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

**Complainant**

**Vs**

Court of Appeal Bail Application:  
**CA/Bail/0049/2025**

Colombo High Court Case No:  
**HC 4985/24**

Magistrates Court Maligakanda Case  
**No: B 2224/23**

Sathyakala Ananda Kumar  
(Currently in Colombo Magazine Prison)

**Accused**

**AND NOW BETWEEN**

Jesmine Jebamalar,  
No.185/21A, State Road,  
Grandpass, Colombo 14.

**Petitioner**

**Vs**

1. Hon. Attorney General,  
Attorney General's Department,  
Colombo 12.
2. Officer in charge,  
Police Narcotics Bureau,  
Colombo 01.

**Respondents.**

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

**Hon. Pradeep Hettiarachchi, J.**

**Counsel** : Erandhi Abeynayaka for the Petitioner.  
Jehan Gunasekara SC for the Respondents.

Inquiry on : 26.05.2025

Decided on : 04.07.2025

**Pradeep Hettiarachchi, J**

**ORDER**

1. This is an Application for bail filed on behalf of the Accused named Sathyakala Ananda Kumar (hereinafter referred to as “the Accused”) by her friend Jesmine Jebamalar (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. According to the Petition, the Accused was arrested on 16-01-2023 by the officers the Police Narcotics Bureau for allegedly possessing and trafficking 92 grams and 800 milligrams of Methamphetamine, an offence punishable under section 54A 1(b) and 54A 1(d) of the Poisons, Opium, and Dangerous Drugs Ordinance as amended by the Act No 41 of 2022.
3. Subsequently, the Accused was produced before Maligakanda Magistrate Court under the case bearing No. B/2224/23.
4. The provisions of Section 83(2) of the Poisons, Opium and Dangerous Drugs Ordinance as amended by the Act No 41 of 2022, decrees that a person accused or suspected of being in possession of 10 grams or more of the prescribed drugs, is required to be kept in remand, unless such person satisfies the Court as to the existence of exceptional circumstances.
5. Section 83 reads:

*83(1). Subject to the provisions of section 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 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 77; 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.*

6. Nevertheless, exceptional circumstances are not defined in the Statute. Therefore, whether the grounds advanced by the Petitioner when seeking bail can be considered exceptional circumstances must be determined based on the facts and circumstances of each individual case.
7. 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.*”
8. In ***W.A.Deepa Nandani v OIC-Police Station Marawila*** CA-PHC-APN 134-20 Iddawela J. stated *inter alia*;

*[t]he threshold of what amounts to ‘exceptional circumstances’ varies with each case. A demarcation of the boundaries of an exceptional circumstance is purely a subjective exercise and as such it cannot be given a rigid interpretation. What is recognized as an exceptional circumstance in one case may not be so in another. As such, the facts of each case must be carefully examined in deciding whether or not the circumstances presented are exceptional.*

9. In the instant application, the Petitioner has urged following grounds as exceptional circumstances:
  - (a) The police version of the incident is incoherent, vague and not credible.
  - (b) The Police has failed to produce a rational B report to the Court of law at the time of producing the Accused to the Court. The B report says that Methamphetamine was found inside the brassiere of the Accused but no notes have been produced to the Court that the Accused was physically examined inside her house. Therefore, any layman can be of the view that the Accused was physically examined on the road.
  - (c) The Accused is a mother of 5 children and at the moment the under aged 3 children are vulnerable to any form of abuse as they are being neglected by the husband of the Accused.
  - (d) Methamphetamine was introduced to the Accused.

(e) The Accused is in the remand since 16-01-2023.

(f) The Accused was indicted in the High Court under HC 4985/ 24 and the Indictment was served on the Accused on 02-05-2024, but the trial has not yet been commenced.

10. Upon receiving the notices, the Respondents filed their Objections. In the Objections, it is stated that the Petitioner has failed to establish the existence of exceptional circumstances and, as such, the bail application should be dismissed. It is further stated that the large quantities of the drugs found in the possession of the Accused indicates that the Accused is a drug dealer of large scale, dealing in commercial quantities and not user quantities and that releasing the Accused to the society on bail would disturb the existing investigations pertaining to exposing a drug cartel.
11. It is important to note that according to the Government Analyst Report, the net quantity of Methamphetamine recovered was 61.01 grams. This is not a user quantity, but clearly intended for commercial purposes.
12. Furthermore, the Petitioner has stated that the police version of the incident is incoherent, vague and not credible and that the Police have failed to produce a rational B report to the Court of law at the time of producing the Accused to the Court. The B report says that Methamphetamine was found inside the brassiere of the Accused but no notes have been produced to the Court that the Accused was physically examined inside her house. Therefore, any layman can be of the view that the Accused was physically examined on the road. It was also stated in the Petition that the Methamphetamine was introduced to the Accused.
13. Even if the Petitioner has urged the above as exceptional circumstances that warrant consideration of this Court, unless exist some inherent improbabilities in the police version of events, these are matters to be decided at the trial before the High Court.
14. Also, the fact that the Accused is the mother of 5 children and that in her absence her 3 under-aged children are vulnerable to any form of abuse as the father of the children, the Accused's husband is neglecting them is not, in my opinion, an exceptional circumstance that warrant granting of bail to the Accused. In fact, it is a normal occurrence that children may become vulnerable to abuse when the primary caregiver is absent and such issues have to be addressed by the relevant authorities by implementing appropriate social security measures.

15. In the aforesaid circumstances, the only ground that has to be considered is whether two-year period spent in the remand custody can be considered as an exceptional circumstance. However, the duration of remand alone cannot be considered an exceptional ground warranting the grant of bail.
16. For delay in prosecuting the Accused 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.
17. 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...*”.
18. In the instant case, it is important to note that the Government Analyst has issued his report on 12-06-2023, less than 6 months after the arrest of the Accused. The Indictment had been filed on 02-05-2024 and as per the journal entries submitted by the Petitioner the case had been fixed for trial on 04-03-2025. However, it had been postponed to 24-06-2025 due to the unavailability of production material. Therefore, nearly one year has lapsed after filing the Indictment at the High Court. This cannot, in my view, be considered as an exceptional circumstance that warrant granting of bail. Accordingly, it is evident that no oppressive delay has occurred in the prosecution of the Accused.
19. It is also pertinent to note that, even though both the B Report and the Government Analyst Report specifically mention that the dangerous drug in the possession of the Accused was Methamphetamine, the Petition and Affidavit state that the Accused was arrested for allegedly possessing and trafficking Heroin. This clearly shows negligence on the part of the Attorney-at-Law in preparing the bail application.
20. To elaborate further, the purpose of tendering an affidavit along with the petition is to affirm the facts contained in the petition. Therefore, when it appears that the contents of the petition are erroneous, particularly regarding the drugs constituting the alleged offence, there is no material before the Court to act upon in either the petition or the affidavit.
21. Furthermore, it can be observed that the supporting Affidavit of the Petitioner is defective, as it also reads like a petition of the petitioner, even though it was tendered as an affidavit.

22. Upon consideration of the above, I am not inclined to release the Accused on bail at this stage. Accordingly, the bail application remains dismissed.
23. The Registrar of this Court is directed to communicate this bail Order to the Magistrate Court of Colombo, and the Officer-in Charge of the Police Narcotic Bureau, Colombo 01 forthwith.

**Judge of the Court of Appeal**

**P.Kumararatnam, J.**

I agree.

**Judge of the Court of Appeal**