

**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

Amila Menaka Parनावithana

Application No.

(Presently incarcerated in Welikada

CA Bail 0032/2025

Prison)

PETITIONER

Vs.

Magistrate Court of Colombo

1. The Officer-in-Charge

Case No: HC 8126/01/2024

Police Narcotics Bureau,
Colombo-01.

2. The Hon. Attorney General

Attorney General's Department,
Colombo-12.

RESPONDENTS

BEFORE

**: P. Kumararatnam, J.
R.P.Hettiarachchi, J.**

COUNSEL : **Jagath Nanayakkara for the Petitioner.
Tharaka Kodagoda, SC for the
Respondents.**

ARGUED ON : **15/12/2025.**

DECIDED ON : **09/03/2026.**

ORDER

P.Kumararatnam,J.

The Petitioner is the 18th Suspect named in the Colombo Magistrate Court Case No. HC 8126/01/2024.

In this case B reports were submitted by the Police Narcotics Bureau, Cololmbo-1. According to the initial and subsequent B Reports filed against the other Suspects in the Colombo Magistrate Court, it was alleged that the Suspects had trafficked and possessed of 189.388 Kilograms of Methamphetamine (Gross) and 55.648 Kilograms of Heroin (Diacetylmorphine) (Gross). By a further report dated 18.09.2024 the Petitioner was named as 18th Suspect by the police. The Petitioner, on 28.09.2024 surrendered to Court and he is remanded to date. The allegation levelled against the Petitioner is that he had aided and abetted the other suspects for possession of the narcotics mentioned in the B Report.

Upon a Court order, the contraband had been sent to the Government Analyst Department and the report is pending as at today.

The Petitioner was produced in the Magistrate Court of Colombo and facts were reported under Section 54A (b) (c) and (d) of the Poisons, Opium and Dangerous Drugs Ordinance as amended by the Act No.13 of 1984.

Upon a Court order, the Petitioner was placed under a detention order to facilitate the Police Narcotics Bureau to conduct further investigation with regard to the detection.

The allegation levelled against the Petitioner is that he had obtained a boat from the registered owner who is the 16th Suspect in this case using an agreement. Hence, the boat was under the Petitioner's name during the questionable time period. Further he had obtained fuel and bought dry rations from a shop. But the bill was settled by the 16th Suspect.

The Petitioner submits that he has been in remand nearly 15 months. Indictment had not been filed in this case.

The Petitioner has pleaded following exceptional circumstances in support of this Bail Application.

1. Non-existence of a prima-facie case against the Petitioner.
2. That he has been in remand custody for nearly 15 months.
3. No previous case recorded against the Accused and has no pending cases.
4. The Petitioner is married with two children and the sole breadwinner of the family.
5. The Petitioner has surrendered to police upon naming him as a Suspect.
6. The Petitioner had obtained the boat from 16th Suspect in order to use for fishing.
7. The Petitioner neither in the boat nor participated to the voyage.

The State opposing to bail submitted that the dossier of the investigations has not been received by the Attorney General's Department. Further investigation is underway due to the complex nature of the case. Hence, Learned State Counsel submitted that the delay is not an exceptional circumstance to be considered to enlarge the Petitioner on bail.

The Petitioner has been in remand nearly 15 months. The Government Analyst Report is still pending.

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 gross quantity of Methamphetamine weighed 189.333 Kilograms and 55.648 Kilograms of Heroin. Even though, the Government Analyst Report is not available, considering the gross quantity of drugs detected, this court can reasonably assume that this Court has jurisdiction to consider granting of bail as per the new amendment.

The Counsel for the Petitioner submits that undue and long delay in keeping the Petitioner in remand custody is a clear violation of his human rights and is against the presumption of innocence guaranteed under the Article 13(5) of the Constitution.

The Counsel for the Petitioner submits to this Court that according to the very version of the Respondent, no actual, exclusive and conscience possession could be established against the Petitioner.

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. Ultimately, the court's role during a bail inquiry is to weigh the available evidence to decide if the Suspect can be trusted to return for trial or if he poses a danger to public safety.

In this case the Petitioner alleged to have committed Offences under Section 54A(b) (c) and (d) 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 an 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 this case the Methamphetamine and Heroin detected are 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.

Hence, I do not consider the delay nearly 15 months in remand falls into the category of excessive and oppressive delay considering the circumstances of this case.

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

Hence, this Bail Application is dismissed.

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

JUDGE OF THE COURT OF APPEAL

R.P. Hettiarachchi, J.

I agree.

JUDGE OF THE COURT OF APPEAL