

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

In the matter of an application for Bail as under and in terms of Section 83(2) of the Poisons, Opium and Dangerous Drugs Ordinance as amended by section 04 of the Act No.41 of 2022.

Court of Appeal

The Attorney General

Application No:

Attorney General's Department

CA Bail/0137/2026

Colombo-12.

High Court of Colombo

COMPLAINANT

No. HC/5246/25

Vs.

MC Maligakanda case No.

B/25139/2023

Nalaka Ramya Prabath Hettiarachchi

ACCUSED

AND NOW

Thotawatte Don Manuel Nirosha De Silva

No. D/02/86,

Saranapala Himi Mawatha,

Borella, Colombo-08.

PETITIONER

Vs.

1. Officer-in-Charge
Police Narcotics Bureau
Colombo-01.

COMPLAINANT-RESPONDENT

2. The Attorney General

Attorney General's Department

Colombo-12.

2ND-RESPONDENT

3. Police Officer Rajapaksha
The Police Narcotics Bureau
Colombo-01.

3rd RESPONDENT

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

COUNSEL : **Dilan Ratnayake, PC with Vivendra Ratnayake, Ashani Kankanamge, Nipun Nawaratne and Dilendra Ratnayake instructed by Lakshani Imashi for the Petitioner.**
Shezan Mahboob, SC for the Respondents.

ARGUED ON : **02/07/2026.**

DECIDED ON : **24/08/2026.**

BAIL ORDER

P. Kumararatnam, J.

The Petitioner filing this Application has invoked the jurisdiction of this Court to grant bail to her husband upon suitable conditions as this Court considers appropriate. This is the third bail application filed by the Petitioner on behalf of her husband.

Facts in brief:

On 27.06.2023, the Accused was arrested by officers attached to the Police Narcotics Bureau, Colombo-01 who alleged that the Accused had 4.4 Kilograms of substances suspected to be Methamphetamine and 195.100 grams of substance suspected to be Heroin (Diacetylmorphine) in his possession.

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

The production had been sent to the Government Analyst Department on 28/06/2023. After analysis, the Government Analyst had forwarded the report to Court on 01/12/2023. According to the Government Analyst Report, 2776.1 grams of pure Methamphetamine and 73.68 grams of pure Heroin (Diacetylmorphine) had been detected from the substances sent for the analysis.

Presently, the Accused is indicted in the High Court of Colombo under case No. 5246/2025 and the case was due to be called on 15.05.2025.

The contention of the prosecution is that the Accused was arrested upon an information and the contraband was recovered from a bag he was carrying at the time of his arrest.

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

1. The Petitioner has been in remand custody for over 03 years to date.
2. The Petitioner is the sole breadwinner of the family and the family is going through untold hardships due to his prolonged incarceration.
3. His daughter has fallen sick after his arrest and is currently receiving treatment for severe depression.

According to the Learned State Counsel, the Petitioner was arrested for possession and trafficking of 2776.1 grams of Methamphetamine and 73.68 grams of Heroin. Steps had already been taken to indict the Petitioner in the High Court of Colombo and the case number is HC 5246/2025. The indictment has been served onto the Accused. Hence, the Learned State Counsel submitted that the delay is not an exceptional circumstance to be considered to enlarge the Accused on bail. Further, the time spent for preparing the indictment does not constitute an exceptional circumstance.

The Counsel for the Petitioner submits that the Accused has been in remand for over three years. Considering the facts and the circumstances of this case, the prosecution will not be able to establish a prima facie case against the Accused.

According to the learned President's Counsel although, another person was produced along with the Accused, indictment was forwarded only against the Accused. When this matter was taken up for trial on 19.03.2026, the learned State Counsel made application to layby this case until the prosecution considers indictment against the other person who was produced in this case along with the Accused. Therefore, learned President's Counsel inform this court now the Accused has a very exceptional circumstances to request for bail on the basis of delay.

The learned President's Counsel for the Petitioner submits that undue and long delay in keeping the Accused 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.

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 Accused has been in remand custody over three years. Although the indictment has been served, the trial is not started yet. Further, the indictment filed against the Accused without being considering the case against another person who was named as second

Suspect in the B report. Hence, the learned State Counsel made an application to lay by the case till they take a decision with regard to the second Suspect named in the B report. Considering these developments, it is obvious that the State will take some times to consider the case against the second Suspect in this case.

Under these circumstances, the delay of more than 03 years in remand custody definitely falls into the category of excessive and oppressive delay considering the circumstances of this case. Whatever offences committed under the Poisons Opium and Dangerous Drugs Ordinance as amended by the Act No.13 of 1984, the delay is significant and cannot be considered usual in a case of this nature.

Considering all the materials placed before this court, the Accused has successfully adduced that he has exceptional ground/s to be released on bail. Hence, he is granted bail on the following conditions;

1. Cash bail of Rs.500,000/=.
2. To provide 03 sureties. They must sign a bond of one million each. The Petitioner should be one of the sureties.
3. The Accused and the sureties must reside and not vacate the local address given until the conclusion of his case.
4. Not to approach or interfere with any prosecution witnesses directly nor indirectly.
5. To surrender his passport if any, to court and not to apply for a travel document. The Controller of the Immigration and Emigration is informed of the travel ban on the Accused.
6. To report to the Police Narcotics Bureau, Colombo-01 on every Wednesday and Sunday of the month between 9am to 1pm.
7. Any breach of these conditions is likely to result in the cancellation of his bail.

The Bail Application is allowed and the Learned High Court Judge of Colombo is hereby directed to enlarge the Accused on bail on the above bail conditions.

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

JUDGE OF THE COURT OF APPEAL

R. P. Hettiarachchi, J.

I agree.

JUDGE OF THE COURT OF APPEAL