

**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

Sirimal Naidelage Ayesha Nisansala

Application No.

Shyamali Jayatissa

CA Bail 0019/2026

Beddegama, Madahapola.

PETITIONER

Vs.

Magistrate Court of Dambulla

1. The Officer-in-Charge

Case No: B 37/2025

Police Narcotics Bureau,

Sub Unit, Kandy.

2. Head Quarters Inspector

Police Station,

Dambulla.

3. The Hon. Attorney General

Attorney General's Department,

Colombo-12.

RESPONDENTS

Dissanayake Mudiyanseelage Deepal

Chandima Bandara

(Currently in remand Prison)

SUSPECT-RESPONDENT

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

COUNSEL : **Danushka Rahubadda with**
D.Udahawatte instructed by Praveen
Premathilake for the Petitioner.
Tharaka Kodagoda, SC for the
Respondents.

ARGUED ON : **12/06/2026.**

DECIDED ON : **07/08/2026.**

ORDER

P.Kumararatnam,J.

The Petitioner is the wife of the Suspect named in the Magistrate Court of Dambulla Case No. B 37/2025.

According to the B report submitted by the Police Narcotics Bureau, Kandy Sub Unit, the Suspect was arrested upon an investigation carried out by the police for allegedly having in possession of gross quantity of 100 grams of Heroin (Methamphetamine). He was arrested on 07.01.2025 and the contraband was recovered concealing in his under garment.

Upon a Court order, the contraband had been sent to the Government Analyst Department and according the Government Analyst Report dated 17.10.2025, 78.99 grams of pure Methamphetamine had been detected in the parcel.

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

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

The Petitioner alleges that the Suspect was taken into custody on a mere conjecture without any reasonable suspicion. The Petitioner further alleges that no any contraband had been found in the exclusive and conscience possession of the Suspect.

The Petitioner submits that the Accused has been in remand for nearly 19 months. Indictment has not been finalized yet.

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

1. Non-existence of a prima-facie case against the Suspect.
2. The Suspect has been in remand custody nearly 19 months.
3. Existence of material contradictions in the report filed by the investigation authority.
4. The Suspect is the sole breadwinner of the family.

According to the State Counsel, the dossier of the investigations has not been received by the Attorney General's Department yet. Further, the Suspect has no previous or pending matter reported in any court of Sri Lanka.

The Suspect has been in remand for nearly 19 months. According to the Government Analyst Report, the pure quantity of Methamphetamine detected from the possession of the Suspect is 78.99 grams.

The amendment brought to Poisons, Opium and Dangerous Drugs Ordinance as amended by the Act No.13 of 1984 which came in to operation from 23.11.2022 had taken away the bail jurisdiction from the High Court, if the net quantity of Heroin exceeds 10 grams and above.

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 78.99 grams. Hence, 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 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. The Counsel further alleges that although the indictment is filed in the High Court, the trial date is not determined yet.

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 Suspect.

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.

Offences under Section 54A(d) and 54A(b) of the Poisons Opium and Dangerous Drugs Ordinance as amended by the Act No.13 of 1984 is no doubt serious offences but seriousness of the offence alone cannot form a ground to refuse bail. In considering these matters, the court must bear in mind the presumption of innocence.

Further, bail should never be withheld as punishment. Granting of bail is primarily at the discretion of the Court. The discretion should be exercised with due care and caution taking into account the facts and circumstances of each case separately.

Considering all these factors into account, especially the period in remand, the uncertainty of commencement of trial in case, the circumstances of his arrest and other circumstances of the case, I consider this an appropriate case to grant bail to the Suspect. Hence, I order the Suspect be granted bail with following strict conditions.

1. Cash bail of Rs.100,000/=.
2. To provide 02 sureties. They must sign a bond of two million each. The Petitioner should be one of the sureties.
3. The Suspect and the sureties must reside in the address given until conclusion of his case.
4. Not to approach any prosecution witnesses directly or indirectly or to interfere with.
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 Suspect.
6. To report to the Dambulla Police Station on the 2nd and last Sunday of every 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 Magistrate of Dambulla is hereby directed to enlarge the Suspect on bail on the above bail conditions.

The Registrar of this Court is directed to this order to the Magistrate Court of Dambulla, the Officer-in-Charge of the Police Station, Dambulla.

JUDGE OF THE COURT OF APPEAL

R.P. Hettiarachchi, J.

I agree.

JUDGE OF THE COURT OF APPEAL