



**Vs.**

1. The Officer-in-Charge  
Police Station,  
Bandaragama.
2. The Attorney General  
Attorney General's Department,  
Colombo-12.

**RESPONDENTS**

Gunasekara Gajaman Kankanamlage  
  
Prasad Nishshanka  
  
(Detained in Remand Prison)

**2<sup>nd</sup> ACCUSED-RESPONDENT**

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

**COUNSEL** : **Amila Nawalage for the Petitioner.**  
**Tharaka Kodagoda, SC for the**  
**Respondents.**

**ARGUED ON** : **30/03/2026.**

**DECIDED ON** : **09/06/2026.**

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**ORDER**

**P.Kumararatnam,J.**

The Petitioner is the mother of the Suspect named in the Magistrate Court of Panadura bearing case No. 5558/2023.

According to the B report submitted by the Officer-in-Charge, Police Station, Bandaragama, the Suspect was arrested upon an investigation carried out consequent to a tip off received by the officers of the Bandaragama Police Station. As per the information, the police team had gone to the Suspect's house and arrested him for trafficking 130 grams of Heroin and 490 grams of Methamphetamine.

Upon a Court order the contraband had been sent to the Government Analyst Department and according the Government Analyst Report dated 30.11.2023, 20.96 grams of pure Heroin (Diacetylmorphine) and 139.8 grams of pure Methamphetamine had been detected in parcels sent for analysis.

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

Upon a Court order the Suspect was placed under a detention order to facilitate the Bandaragama Police to conduct further investigation with regard to the detection.

The Petitioner alleges that her son was arrested on a mere conjecture without any reasonable suspicion. The Petitioner further alleges that no Heroin or any other contraband had been detected from the Suspect.

The Petitioner submit that the Suspect had been in remand for two years. No steps are taken to send out indictment against the Suspect.

**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. Improbability of the version of the prosecution.
3. The Suspect has been in remand custody for two years.

The State opposing to bail submitted that the dossier of the investigations has been received by the Attorney General's Department and registered under CR3/143/2023. At present the matter is under consideration.

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 Heroin detected in the production by the Government Analyst is 20.96 grams and the pure quantity of Methamphetamine detected is 139.8 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 Suspect 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.

Although 2 years passed after his arrest, the indictment has not gone to the High Court.

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 alleged to have committed Offences under Section 54A(d) and (b) of the Poisons Opium and Dangerous Drugs Ordinance as amended by the Act No.13 of 1984. Above cited offences are 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.

Further, the Suspect has no previous or pending cases reported in any court of Sri Lanka.

Considering all these factors into account, especially the period in remand, the delay in sending out indictment, 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 one million each.
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 Weerawila Police Station on the 2<sup>nd</sup> 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 is allowed and the Learned Magistrate of Panadura is hereby directed to enlarge the Suspect on bail on the above bail conditions.

The Registrar of this Court is directed to send this order to the Magistrate Court of Panadura, the Officer-in-Charge of Bandaragama Police Station and the Officer-in-Charge Police Station Weerawila.

**JUDGE OF THE COURT OF APPEAL**

**R.P.Hettiarachchi, J.**

I agree.

**JUDGE OF THE COURT OF APPEAL**