

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 of 17 of 1929 as amended by section 04 of the Act No.41 of 2022.

Court of Appeal Bail Application
CA Bail/0479/23

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

Complainant

MC Maligakanda
No. B 11254/2024

Mohamed Samsudeen Rizan
No14, Awwal Zavia Road,
Grandpass, Colombo-14.
(Presently at the Magazine Remand
Prison)

Suspect

AND NOW BETWEEN

Mohamed Samsudeen Rizan
No14, Awwal Zavia Road,
Grandpass, Colombo-14

Suspect-Petitioner

Vs

1. The Officer-in-Charge
Police narcotics Bureau,
Colombo-01.
2. The Attorney General
Attorney General's Department
Colombo-12.

Respondents

BEFORE : **P. Kumararatnam, J.**
K.M.S. Dissanayake, J.

COUNSEL : **Rienzie Arsecularatne, P.C, for the**
Petitioner.
Oswald Perera, SC for the
Respondents.

ARGUED ON : **17/03/2025.**

DECIDED ON : **28/04/2025.**

ORDER

P.Kumararatnam,J.

The Petitioner is the Suspect named in the Magistrate Court of Maligakanda case bearing No. B 11254/2024.

According to the B report filed by the police, upon information derived from an informant that Heroin being trafficked by the Petitioner, he was intercepted at 125 Watta off Orugodawatta and Kosgas Junction Road. The Suspect was searched and some substances believed to be Methamphetamine was recovered from a knot in his sarong. After his arrest, his temporary resident No. 125/3E was searched and the officers had recovered an electronic scale from that house. His permanent resident at No.14 Awwal Saviya Road, Colombo-14 was not checked.

The parcel was weighed by an electronic scale and it revealed that the Petitioner had in possession 60.700 grams of Methamphetamine. As such, he had been arrested and named as the Suspect in this case.

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

Further, a detention order was obtained from the Maligakanda Magistrate Court to detain the Petitioner to conduct further investigation.

According to the Petitioner, the Suspect has been in remand for more than thirteen months to date.

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

1. The Petitioner has been in remand custody more than 13 months.
2. The Petitioner has no previous conviction nor pending cases.
3. The improbability of the story of the prosecution arising from the failure of the officers of the Narcotics Bureau to search premises No. 14, Awwal Zavia Road, Colombo-14, where according to the officers of the Narctics Bureau the Petitioner resides in addition to No.125/3E, Stace Road, Colombo-14.
4. The Petitioner being the sole bread winner of a family of an unemployed wife and 04 young children, 03 of whom are schooling.

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”.

In **CA(PHC)APN 107/2018** decided on 19.03.2019 the court held that remanding for a period of one year and five months without being served with the indictment was considered inter alia in releasing the suspect on bail. According to the Petitioner, at present her family is going through untold hardship without proper income and care.

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 12.22 grams. Hence, this court has jurisdiction to consider granting of bail as per the new amendment.

The learned President's Counsel for the Petitioner urged this Court to consider that detaining a suspect without any legal action for an extended period of time amounts to a violation of his fundamental rights which can be considered as an exceptional ground.

According to the Petitioner, he had given a loan of Rs.285,000/- to a lady called Nazreen. As she avoided returning the same, a heated argument erupted between them in the month of January 2024.

On 23.02.2024 while he was working at about 1.45 hours, he received a phone call from Nazreen to come near Sampath Bank, Grandpass to return the money. When he went near the bank, a team of police officers attached to the Police Narcotics Bureau had arrested and fabricated this case against him.

In a bail inquiry when the Petitioner brings to the notice of the Court the circumstances which could be capable of shaking the prosecution case, the Court has the discretion to tentatively look to the facts and circumstances of the case to ascertain whether a reasonable ground exists or not either to grant or refuse bail. The Court should not probe into the merits of the case, but restrict itself to the material placed before it. But, even for the purpose of bail any benefit of doubt arising in the case must accrue to the Suspect.

One of the grounds urged by the learned President's Counsel is that Methamphetamine said to have recovered from the Petitioner was an introduction. At any time, the Petitioner never possessed any illegal substances.

In this case the probability of the happening of the incident as described by the police need to be assessed thoroughly before the court could come to a final decision. This could only be done at a trial. Until such time keeping the Suspect in remand, I consider is not proper under the circumstances of this matter.

Hence, I consider the delay more than 13 months in remand falls into the category of excessive and oppressive delay considering the circumstances of this case.

Offences under Section 54A(b) and 54A(d) 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 Courts. The discretion should be exercised with due care and caution taking into account the facts and circumstances of each case.

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

1. Cash bail of Rs.50,000/=.
2. To provide 02 sureties. They must sign a bond of two million each.
3. The Suspect and the sureties must reside in the address given until conclusion of her 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 Police Narcotics Bureau on the 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 Maligakanda 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 of Maligakanda and Officer-in-Charge of the Police Narcotics Bureau, Colombo-01.

JUDGE OF THE COURT OF APPEAL

K.M.S.Dissanayake, J.

I agree.

JUDGE OF THE COURT OF APPEAL