

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

In the matter of an Application for Bail under and in terms of Section 83(2) of the Poisons, Opium and Dangerous Drugs Ordinance No. 17 of 1929 as amended by Poisons, Opium and Dangerous Drugs (Amendment) Act No. 41 of 2022.

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

Court of Appeal Case No.
CA/BAL/0333/2024

Complainant

Magistrate Court of Maligakanda Vs.
Case No. 28152/23

Thiththagala Gamage Sri Rukman
Kumara/ Market Kumara.

Suspect

AND NOW BETWEEN

Thiththagala Gamage Sri Rukman
Kumara.
No.79/32/C, Umagiliya Watta,
Sedawatta, Wellampitiya.

Suspect-Petitioner

Vs.

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

Complainant-Respondent

2. Hon. Attorney General,
Attorney General's Department,
Colombo 12.

Respondent

BEFORE : **P. KUMARARATNAM, J.**
 K.M.G.H KULATUNGA, J.

COUNSEL: Vindya Ekanayake for the Petitioner.
 Jehan Gunasekara, SC for the Respondents.

INQUIRY ON: 06.03.2025

DECIDED ON: 04.04.2025

K.M.G.H KULATUNGA, J.

ORDER

1. This is an application for bail made under the Provisions of Section 83(2) of the Poisons, Opium and Dangerous Drugs Ordinance. It is alleged that suspect was in possession of 50 grammes of Methamphetamine, which according to the Government Analyst's Report dated 08.12.2023 contains a pure quantity of 37.34 grammes.

The date of arrest is 01.07.2023. The main ground urged is the delay without an indictment been dispatched for fifteen months.

2. According to the State Counsel, the Attorney General is in receipt of the IB Extracts and steps are being taken to dispatch the indictment within the next two weeks. It is also submitted that the petitioner has suppressed his previous convictions. According to R-1 annexed along with the objections, the petitioner has the following previous convictions;
 - i. MC Maligakanda Case No. 29370/2015 – for being in possession of 10 cannabis cigars on 19.11.2015 – a fine of Rs. 9,500.00;
 - ii. MC Maligakanda Case No. 31872/2015 – for being in possession of 1,500 mg of heroin on 14.12.2015 – a fine of Rs. 4,000.00; and
 - iii. MC Maligakanda Case No. 1502/2021 – for being in possession of 5 g of cannabis on 30.03.2021 – a fine of Rs. 2,500.00.
3. The State Counsel stated that the petitioner has not disclosed the previous convictions. He emphasized that the petitioner had very cunningly and deceptively stated, in paragraph 9, that he has “*no any pending cases*” but made no reference to the previous convictions. As the suspect himself is the petitioner, the State Counsel submitted that this is not only a suppression of a relevant fact, but a serious attempt to mislead court by putting it in the form as aforesaid. The Attorney General is said to have received the IB Extract now, and the State Counsel informs that the indictment will be dispatched within the next two weeks. – repeated in 6.
4. The suspect is yet to be indicted or otherwise charged. It is a glaring fact that the suspect had been in remand for almost 21 months as at

now. The State Counsel has not provided any plausible reason for this delay. This, on the face of it, is quite a straightforward detection,

5. The suspect is alleged to have been apprehended whilst on a motorcycle parked opposite the Mutwal Branch of the Sampath Bank. The narcotics have alleged to have been found in his trouser pockets. Admittedly, the Government Analyst's Report is dated 18.12.2023, according to which, the pure quantity of methamphetamine is 37.34 grammes. The IBEs were received by the Attorney General on 13.01.2025 and is now registered under AG's Reference CR3/29/2025. In the above circumstances, this being a quite straightforward detection and recovery, I see no necessity to conduct any further investigations.
6. In this backdrop, it is apparent that the relevant Police had taken 18 months to forward the IB Extracts. The indictment is yet to be dispatched, and the respondents have not placed any material to explain the delay in forwarding the IBEs to the Attorney General.
7. In these circumstances, the unexplained delay may amount to an exceptional circumstance within the meaning of Section 83 (2). However, the failure to disclose the previous convictions and the effect and import of such previous convictions are relevant, and should be now considered.
8. Even when exceptional circumstances have been made out, that would not, by itself, lead to granting of bail, if there be other relevant matters presented, that would not warrant the granting of bail. Such other matters would be the propensity to reoffend, flight risk or absconding, or the tendency to abscond.
9. The Legislature by incorporating special bail provisions in Section 83 has established an effective bail system for specific narcotic offences for which the normal bail regime would not suffice. This was also to prevent reoffending or the continuity of such criminal behaviour and the risk of

absconding. This is primarily in view of the unique nature and particular dynamics of narcotic offences. Unlike most other offences, narcotic offences are committed in a very different context. For instance, trafficking in narcotics occurs systematically in a highly sophisticated and organised manner. It also is extremely lucrative. This by itself is a compelling incentive for an offender to continue with the criminal behaviour even after arrest and release on bail. This propensity is evident in this instance by the previous convictions and pending matter. Similarly in view of the serious penal sanctions that may entail there is also the appreciable and real danger of such accused or suspects absconding.

10. Accordingly, the suspect himself being the petitioner, has suppressed the previous convictions. If the suspect was mindful to have mentioned the absence of pending matters, there is no rational reason as to why he would not have stated his previous convictions in a similar manner. This is not a mere oversight or lapse of memory, but a deliberate concealment or suppression, so to say.
11. As aforesaid, in view of the high profitability in drug-related offences, there is a certainly an appreciable propensity and tendency to continue with such activity. According to the previous convictions, they no doubt appear to be of small quantities and convictions in the Magistrate's Court. The said previous convictions are between 2015 and 2021. What is relevant is that several years hence, he is alleged to have been apprehended with a commercial quantity of an extremely dangerous narcotics, known as ice, the gross quantity of which is 50 grammes. These are extremely relevant matters in considering bail under Section 83 (2) of the Poisons, Opium and Dangerous Drugs Ordinance. Accordingly, even if the unexplained delay may amount to an exceptional circumstance, the other factors referred to above become relevant. In these circumstances, we are of the view that this is not a fit matter to consider bail at this stage.

Accordingly, this application for bail is refused and rejected.

JUDGE OF THE COURT OF APPEAL

P. Kumararatnam, J.

I agree.

JUDGE OF THE COURT OF APPEAL