

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
Act No. 41 of 2022.

Officer-in-Charge
Police Narcotics Bureau
Colombo 01.

Complainant

Vs

Court of Appeal Bail Application:
CA/BAL/112/25

Magistrate Court Mahara Case No:
B 1966/2024

- 1) Mathupitiya Pathirajage Damith
Prabhashitha Attanayake also known
as 'Makola Sudda'
- 2) Asarathpulige Iresh Nilpul Shrimal
Perera

Suspects

And Now

Ilandari Dewage Nipuni Kaushalya
No. 33/44, Ferguson Road
Colombo 14.

Petitioner

Vs

- 1) Officer-in-Charge
Police Narcotics Bureau
Colombo 01.
- 2) Hon. Attorney General
Attorney General's Department
Colombo 12.

Respondents

Asarathpulige Iresh Nilpul Shrimal
Perera
(Presently in remand custody)

2nd Suspect-Respondent

Before : **P. Kumararatnam, J.**
Pradeep Hettiarachchi, J.
Counsel : Isuri Cooray for the Petitioner
Tharaka Kodagoda, SC for the Respondents
Inquiry on : 29.09.2025
Decided on : 02.12.2025

Pradeep Hettiarachchi, J

Order

Background to the Application

1. This is an Application for bail filed by the Petitioner named Ilandari Dewage Nipuni Kaushalya (hereinafter referred to as “the Petitioner”) on behalf of her husband named Asarappulige Iresh Nilupul Shrimal Perera (hereinafter referred to as “the Suspect”) under section 83(2) of the Poisons, Opium and Dangerous Drugs Ordinance (hereinafter sometimes referred to as “the Ordinance”).
2. According to the B-Report dated 06-05-2024, Police Constable Subasinghe has received an information from the Police Inspector Deshapriya attached to the Special Task Force Gonahena that a person named “Makola Sudu” is transporting dangerous drugs from a white color motor car bearing No. CAH-3468. Accordingly, a team of police officers

have gone to Kadawatha Interchange and have arrested one Mathupitiya Pathirajage Damith Prabhashitha Attanayake also known as Makola Sudda (hereinafter referred to as the “1st Suspect”) on 05-05-2024 at 16:30 hours for the possession and trafficking of Methamphetamine.

3. Upon being questioned by the said police officers, the 1st Suspect has allegedly revealed that one Nipuna is in the possession of the rest of the dangerous drugs belonging to the 1st Suspect. Thereafter, the police officers have gotten the said Nipuna to come before the Thotagala Market and the 1st Suspect has then showed a person wearing a light green colored collarless t-shirt and black color shorts carrying a black and white striped bags as Nipuna. Upon searching the said bag, the police officers have found a parcel covered with cello tape containing Methamphetamine. The 2nd Suspect-Respondent namely, Asarappulige Iresh Nilupul Shrimal Perera (hereinafter referred to as the “2nd Suspect”) was arrested on 06-05-2024 at 00:35 hours for the possession and trafficking of Methamphetamine known as ICE.
4. Thereafter, the police officers have taken the Suspects to the Police Narcotics Bureau and weighed the drugs found in their possession. The weight of the Methamphetamine recovered from the 1st Suspect was 10 grams and 650 milligrams while the weight of the Methamphetamine recovered from the 2nd Suspect was 1 kilogram and 12 grams.
5. Both Suspects were produced before the Magistrate’s Court of Mahara under the case bearing No. B 1966/2024 for the possession and trafficking of Methamphetamine, an offence punishable under section 54A (1) (d) and 54A (1) (b) of the Ordinance.
6. As per the Government Analyst Report dated 30-08-2024, net quantity of Methamphetamine recovered from the 2nd Suspect was 661.47 grams.

Relevant Law

7. Section 83(2) of the Ordinance has introduced special provisions when a person is accused or suspected of offences under section 54A and 54B of the Ordinance. Under section 83(2), this Court can consider bail only if exceptional circumstances are made out. Section 83 as amended by the Poisons, Opium and Dangerous Drugs (Amendment) Act, No. 41 of 2022 reads:

Section 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 - (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, [sic] shall not be released on bail except by the Court of Appeal in exceptional circumstances.

(3) For the purposes of this section “dangerous drug” means Morphine, Cocaine, Heroin and Methamphetamine.

8. The provisions of section 83 (2) as amended by Act, No. 41 of 2022, manifest the intention of the legislature, i.e., a person accused or suspected of being in possession of 10 grams or more of the dangerous drugs is required to be kept in remand, unless such person satisfies this Court as to the existence of circumstances that are exceptional. Therefore, the burden is on the Suspect to establish the existence of exceptional circumstances.
9. However, the exceptional circumstances are not defined in the Ordinance. Therefore, whether the grounds advanced by the Petitioner constitute exceptional circumstances must be determined based on the specific facts and circumstances of each case.
10. As stated in ***Ramu Thamodarampillai v The Attorney General*** [2004] 3 Sri. LR 180, “the decision must in each case depend on its own particular facts and circumstances.”
11. In ***S v Peterson 2008*** (2) SACR (C) 355 the Court held that;

Generally speaking “exceptional” is indicative of something unusual, extraordinary, remarkable, peculiar or simply different but that because of varying degrees, it will

therefore depend on the context and on the particular circumstances of the case under consideration.

Consideration of the Exceptional Circumstances

12. The following grounds have been urged by the Petitioner as exceptional circumstances warranting consideration for bail:

- (a) Remote possibility of proving the case beyond reasonable doubt;
- (b) Continued incarceration causing the irreparable damage to the 2nd Suspect;
- (c) Delay
- (d) Hardships faced by the Petitioner and her family.

13. Accordingly, the main ground advanced by the Petitioner is that there exists only a remote possibility of proving the prosecution's case beyond reasonable doubt. The Petitioner primarily disputes the place and manner in which the 2nd Suspect was arrested. According to the Petitioner, at the date and time the 2nd Suspect was alleged to have been arrested, he was at Nagalamweediya, 361 Watte, attending the funeral of his maternal grand-aunt, Uduwidanalage Leelawathie, who had passed away on 05-05-2024.

14. While the 2nd Suspect and several other people were waiting to carry the body of the said deceased person, a red car had come and stopped before them. Thereafter, a person who was inside the vehicle had pointed out a scooter stopped at Nagalam Weediya. Meanwhile, another person had alighted from the same car and proceeded towards the scooter. The said person had obtained a parcel and come back to the vehicle. Thereafter, some other persons have alighted from the vehicle and apprehended the 2nd Suspect. The Petitioner states that the said scooter from which the parcel was obtained is not even owned by the 2nd Suspect and therefore there is a reasonable doubt as to the prosecution's version of events. As such, there is only a remote possibility of proving the prosecution's case beyond reasonable doubt. Furthermore, the Petitioner has annexed the affidavits marked A5 (i) -A5 (iii) in support of the above position.

15. Undoubtedly, if there is an inherent improbability or glaring discrepancy in the initial B-Report concerning the circumstances of arrest or the recovery of drugs from a suspect, that may amount to an exceptional circumstance. It is true that the Petitioner has annexed

the death certificate of the deceased as well as several affidavits from relatives to support the position that, at the time of arrest, the 2nd Suspect was neither in exclusive possession of Methamphetamine nor engaged in trafficking, but was attending the funeral of his grand-aunt. It is also important to note that no explanation has been offered by the Respondents regarding this version of events given by the Petitioner. However, these facts do not reveal any inherent improbability or glaring discrepancy in the initial B-Report. The Petitioner's account of the arrest merely presents a competing narrative to that of the Police. Furthermore, whether the 2nd Suspect was arrested at the place and in the manner stated in the B-Report or at the location disclosed by the Petitioner is a matter to be determined at trial.

16. Another ground advanced by the Petitioner is the delay in prosecuting the 2nd Suspect and the fact that continued incarceration is causing him an irreparable damage, especially in the light of the fact that there is only a remote possibility of proving the prosecution's case beyond reasonable doubt.
17. As regards the time period spent in remand, this Court has previously in a long line of judicial authorities has held that the period spent in remand custody alone does not suffice to grant bail to a suspect or an accused. For instance, in ***Labukola Ange Gedara Ashani Dhanushika*** CA (PHC) APN 04/2016, Dehideniya J stated that the time spent in remand custody alone cannot be considered as an exceptional circumstance warranting the grant of bail to a suspect when the suspect has been previously convicted for similar offences. He stated;

In the present case he Petitioner has failed to establish any exceptional circumstances warranting this Court to exercise the revisionary jurisdiction. The Petitioner's first point is that the suspect is in remand nearly for two years. The intention of the Legislature is to keep in remand any person who is suspected of or accused of possessing or trafficking heroin until the conclusion of the case. The section 83(1) of the Poisons, Opium, and Dangerous Drugs Ordinance express the intention of the Legislature. It is enacted by the Parliament that "No person suspected or accused of an offence under section 54A or section 54B of this Ordinance shall be released on bail, except by the High Court in exceptional circumstances."

18. Similarly, in **Cader (on behalf of Rashid Khan) v OIC Narcotic Bureau** [2006] 3 Sri. LR 74 it was held that;

Provision has been made in the Bail Act to release persons on bail if the period of remand extends more than 12 months. No such provision is found in the case of Poison, Opium, and Dangerous Drugs Ordinance. Although bail was granted in some of the cases mentioned above, none of these cases referred to the time period in remand as constituting an exceptional circumstance. Hence, bail cannot be considered on that ground alone. It appears from the cases cited above that there is no guiding principle with regard to the quantity found either.

19. Therefore, by introducing special bail provisions under Section 83(2) of the Ordinance, the intention of the legislature was to establish a stringent framework for certain types of narcotics offences, primarily to prevent suspects from absconding or re-engaging in similar criminal activities. This is due to the unique nature of drug-related offences, which are often committed in a highly organized and sophisticated manner. Therefore, if the Courts grant bail solely on the ground of delay, without giving due consideration to the surrounding circumstances such as the quantity of the dangerous drugs involved, nature of the previous convictions and the pending cases against the Suspect, possibility of the suspect reoffending and evading trial if granted bail, it would, in my view, undermine the legislative intent behind enacting this Act.
20. Hence, when deciding whether to grant bail or not to a suspect in an application of this nature, the Courts have to be mindful of the other attendant circumstances such as the previous conduct of the suspect, the sophisticated manner in which the drug trafficking operation was planned and executed, the possibility of the suspect re-offending and evading trial if granted bail and the overall impact that the suspect's release on bail may have on the society.
21. In the present case, the 2nd Suspect has two previous convictions for offences of similar nature. More importantly, he has one pending case for possession and trafficking of 1 kilogram and 16 grams (Net quantity of which is 610.2 grams) of Methamphetamine at the Magistrate Court of Mahara under the case bearing No. ୧୩୪ ୧/୧ ସି. 3903/2022. Therefore, considering the previous conduct of the 2nd Suspect, it is my considered view that there is a propensity to re-offend and engage in offences of similar nature if granted

bail. Furthermore, if the 2nd Suspect, if found guilty, would either be punished with death sentence or life imprisonment. Therefore, the likelihood of the 2nd Suspect absconding and evading the trial is also quite high.

22. Also, this Court cannot lightly disregard the quantity of dangerous drugs involved in this case. The quantity is not a user quantity, but a commercial quantity. Considering the amount of Methamphetamine recovered in both cases against the 2nd Suspect, it can be reasonably inferred that the 2nd Suspect is engaged in the drug trafficking business. In ***Abdul Quideer Aboobucker v. AG*** CA/PHC/APN 42/2011 (Decided on 31-08-2011), this Court has rejected the application for bail, considering the fact that the alleged quantity of drugs recovered from the suspect is of a commercial nature.
23. In the aforesaid circumstances, this Court is of the view that, the delay in prosecuting the 2nd Suspect alone cannot be considered as an exceptional circumstance warranting the grant of bail to the 2nd Suspect. In other words, the previous conduct of the 2nd Suspect, his propensity to re-offend and the likelihood of him absconding and evading trial if released on bail, when considered cumulatively, dissuade this Court to grant bail to the 2nd Suspect.
24. It is also stated in the Petition that the 2nd Suspect's family is facing severe hardships and was adversely affected due to the prolonged detention in remand custody. This cannot, in my view, be considered as an exceptional circumstance warranting the 2nd Suspect's release on bail. In the majority of cases, this is often the situation especially when the sole bread winner of the family is in remand.
25. Moreover, the learned State Counsel informed this Court that they have received the IB Extracts on 05-09-2025 and the draft indictment is to be sent to the High Court of Gampaha and the 2nd Suspect will be charged without any delay.
26. In light of the facts of the present application and the aforementioned authorities, this Court is not persuaded that the grounds urged by the Petitioner constitute exceptional circumstances warranting the 2nd Suspect's release on bail.

27. Accordingly, the bail application of the Petitioner is dismissed. The Registrar of this Court is directed to transmit a copy of this Order to the Registrar of the Magistrate Court of Mahara and the Officer-in-Charge of the Police Narcotic Bureau forthwith.

Judge of the Court of Appeal

P.Kumararatnam, J.

I agree.

Judge of the Court of Appeal