

**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

The Officer-in-Charge

Application No.

Police Narcotics Bureau

CA Bail 0438/2025

Colombo-01.

High Court of Colombo

COMPLAINANT

Case No. HC 5443/2025

Vs.

Suwanda Hannadige Sameer Nishantha
(Presently in remand prison)

SUSPECT

AND NOW BETWEEN

Uluddeen Samsun Neesha
No.509/01, Yapa Gunasekara Mawatha,
Gothatuwa.

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.**
R.P.Hettiarchchi, J.

COUNSEL : **Shamindra Rodrigo with Janith Perera**
for the Petitioner.
Shezan Mahboob, SC for the
Respondents.

ARGUED ON : **19/02/2026.**

DECIDED ON : **15/05/2026.**

ORDER

P.Kumararatnam,J.

The Petitioner is the mother of the Accused named in the Magistrate Court of Mount Lavinia bearing case No. B 17116/2023 and in the High Court of Colombo Case No.5443/25.

According to the B report submitted, the Accused was arrested upon an investigation carried out consequent to a tip off received by the officers attached to the Police Narcotics Bureau. As per the information the officers had checked the Accused at the junction where Melford Crescent Road turns into Wellawatte Sea Street. The police officers had detected a transparent bag from the left side denim trouser pocket of the Accused. In the said bag contained some crystals which are similar to salt. Having identified the substance similar to be Methamphetamine, the Accused was arrested and brought to his house at No. 51/D, Milford Crescent, Dehiwala where the Accused was staying on a temporary basis. Upon search his house the police officers had recovered Kush, Hashish, Narcotics Tablets and Cocaine.

The recovered Methamphetamine weighed about 80.100 grams, Kush weighed about 15 grams, Hashis weighed about 103.200 grams and Cocaine weighed about 14.100 grams. 73 Narcotics tablets also recovered from him.

The Accused was produced in the Magistrate Court of Mount Lavinia 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.

Upon a Court order the contrabands had been sent to the Government Analyst Department and according the Government Analyst Report dated 15.12.2023, 11.75 grams of pure Methamphetamine had been detected in the parcel sent for analysis. The Government Analyst further stated that Cannabis Sativa L was identified in both Kush and Hashis, and 0.978 grams pure Cocaine detected. MDMA9 N-methyl-3-4(methylenedioxyphenethylamine) was identified in the Narcotics tablets.

The Petitioner alleges that the Accused was taken into custody by the police on a mere conjecture without any reasonable suspicion. The Petitioner further alleges that no Methamphetamine or any other contraband had been detected from the Accused.

The Petitioner submit that the Accused had been in remand for little over 02 years and 09 months. Indictment has been filed in the High Court of Colombo..

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 Accused has been in remand custody for little over 02 years and 09 months.
3. The Accused is married and has two children.
4. He is the sole breadwinner of the family.
5. The Accused's wife is under treatment for mental depression.

The State Counsel submits that the dossier of the investigation has been received by the Attorney General's Department and the indictment has already filed in the High Court of Colombo under case No. HC 5443/2025.

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 11.75 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.

Although 02 years and 09 months had been passed after her arrest, the trial before the High Court has not been commenced. Expeditious trial is an integral element of a fair trial.

The Accused had committed similar offences four times before he was arrested for this offence. He has two pending matters before the High Court.

In this case the Accused alleged to have committed Offences under Section 54A(b) and (d) of the Poisons Opium and Dangerous Drugs Ordinance as amended by the Act No.13 of 1984.

The varieties of drugs including Methamphetamine were found in the possession of the Accused shows that he is drug dealer not a user.

I agree with the learned State Counsel that this is not an appropriate case to consider the factual and evidentiary matters pertain to the investigations at this stage. It can only be tested at the trial upon the witnesses being cross examined and re-examined.

In this case the pure Methamphetamine detected is 11.75 grams. Considering the seriousness of the sentence prescribed under the Poison, Opium and Dangerous Drugs Ordinance, there is a high risk of absconding. Further, the Accused has committed these offences when he has five previous convictions related to possession and trafficking of drugs. Further he has two pending matters before the High Court. This is a clear testament of his propensity in committing drug related offences.

Hence, I do not consider the delay little over 02 years and 09 months in remand falls into the category of excessive and oppressive delay considering the circumstances of this case.

Considering all these factors into account, especially the pure quantity of Methamphetamine detected, the charges framed against the Accused, the previous convictions and pending matters reported against him and other circumstances of the case, I consider this is not an appropriate case

to sanction bail to the Suspect at this stage. Hence, I refuse to release the Accused on bail.

Hence, this Bail Application is dismissed.

The Registrar of this Court is directed to this Bail Order to the High Court of Colombo and Officer-in-Charge of the Police Narcotics Bureau.

JUDGE OF THE COURT OF APPEAL

R.P.Hettiarachchi, J.

I agree.

JUDGE OF THE COURT OF APPEAL