

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 the Acts No. 13 of 1984 and No. 41 of 2022.

**Court of Appeal Bail Application No:
CA/BAL/103/2026**

Officer-in- Charge
Police Narcotics Bureau
Colombo 01

MC Maligakanda : B 44831/24

Complainant

-Vs-

1. Aldo Blison Fernando
2. Ramakrishnan Ananth

Suspects

AND NOW BETWEEN

Mary Jaseyntha Lourdaiyah
No. 4205/A, Station Road,
Bluemendal Road
Colombo 13

Petitioner

On behalf of the 1st Suspect who is currently
languishing in remand

-Vs-

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

Complainant-Respondents

Before : **Hon. P Kumararatnam, J.**
Hon. Pradeep Hettiarachchi, J.

Counsel : Tenny Fernando with Pasindu Gamage and Suraj Dissanayake
for the Suspect Petitioner
Wishwa Wijesuriya, SC for the Respondents

Inquiry on : 02-07-2026

Decided on : 25-09-2026

Pradeep Hettiarachchi, J

Order

Background Facts

1. This is an Application for bail filed by the Petitioner named Mary Jaseyntha Lourdaiyah (hereinafter referred to as “the Petitioner”) on behalf of her son named Aldo Blison Fernando (hereinafter referred to as “the 1st Suspect”) under section 83(2) of the Poisons, Opium and Dangerous Drugs Ordinance (hereinafter sometimes referred to as “the Ordinance”).
2. The 1st Suspect had been arrested along with the 2nd Suspect on 08-07-2024, by the officers attached to the Police Narcotic Bureau in front of Cargills Food City, Kotahena, pursuant to a tip off received from an informant.
3. Upon searching the 1st Suspect, police officers had recovered a tulip bag containing a cellophane bag with white solid pellets, later identified as Methamphetamine. He was arrested at 22:00 hours for possession and trafficking of Methamphetamine.
4. The 2nd Suspect was found to be in possession of Rs. 1,000,000/= in his right trouser pocket suspected to be proceeds from narcotics smuggling. He was arrested at 22:25 hours for aiding and abetting narcotics trafficking.
5. According to the ‘B’ Report dated 09-07-2024 filed by the Police Narcotics Bureau (PNB), a detention order had been obtained, pursuant to which the 1st Suspect was detained until 14-07-2024. Since the expiration of the detention period, the 1st Suspect has been in remand custody.

Relevant Law

6. 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.

7. 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 Petitioner to establish the existence of exceptional circumstances.
8. 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.
9. 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.

Exceptional Circumstances

10. The following grounds have been urged by the Petitioner as exceptional circumstances warranting consideration for bail:
 - (a) The discrepancy in the narcotic evidence undermines the prosecution case.
 - (b) The determination that 517.9 grams of Methamphetamine was detected from the sample is inherently unreliable as it is based on a compromised sample.

- (c) A thorough financial investigation by the authorities found no suspicious transactions in the 1st Suspect's personal or business bank accounts.
- (d) Lack of physical evidence linking the 1st Suspect to narcotic smugglers or drug peddlers.
- (e) Despite having access to modern investigative tools, officers have failed to produce any credible technological evidence (such as call records, data from the seized mobile phone or CCTV footage) linking the 1st Suspect to the parcel in question. Lack of such evidence further undermines the prosecution's case and raises doubts on the thoroughness and the objectivity of the investigation.
- (f) The allegation that the 2nd Suspect was present at the time of the 1st Suspect's arrest is a fabrication. In reality, the 2nd Suspect was brought to the scene separately. The prosecution's failure to produce available CCTV footage casts doubts on the police version of events.
- (g) The delay in prosecuting the Suspect.

11. The Petitioner has placed much emphasis on the discrepancy in the gross weight of Methamphetamine stated in the B-Report and the gross weight of Methamphetamine stated in the Government Analyst Report. In the B-Report dated 09-07-2024, it is mentioned that 1014 grams were found from the possession of the 1st Suspect. However, the Government Analyst Report indicates that only 982.4 grams were received for analysis. Therefore, the Petitioner's contention is that, this discrepancy in the gross weight of Methamphetamine (i.e., 31.6 grams) casts serious doubts on the reliability and the integrity of the prosecution evidence.

12. It is further stated that this unexplained loss of narcotics between seizure and analysis demonstrates a broken chain of custody, violating the Standard Operating Procedures for narcotics handling (Narcotics Bureau Circular No. 12/2020) and therefore, this procedural flaw creates a serious doubt on the integrity of productions and significantly weakens the prosecution case. The Petitioner's position is that the Government Analyst's determination

on the pure quantity of Methamphetamine (which is stated in the Government Analyst Report to be 517.9 grams) is inherently unreliable as it based on a compromised sample.

13. It is pertinent to note that, this unexplained shortfall of 31.6 grams constitutes 3.1% of the total seizure. However, such discrepancy alone, cannot be considered as an exceptional circumstance warranting the grant of bail to the Suspect.
14. Another ground advanced by the Petitioner is that, there is no physical evidence linking the 1st Suspect to narcotic smugglers or drug peddlers. It is also stated that, despite having access to modern investigative tools, officers have failed to produce any credible technological evidence (such as call records, data from the seized mobile phone or CCTV footage) linking the 1st Suspect to the parcel in question and therefore, this lack of evidence further undermines the prosecution's case and raises doubts on the thoroughness and the objectivity of the investigation.
15. It was also pointed out that the allegation that the 2nd Suspect was also present at the scene is merely a fabrication and in reality, he was brought to the scene separately. The prosecution's failure to produce available CCTV footage casts doubts on the police version of events.
16. However, I am of the opinion that the aforesaid grounds advanced by the Petitioner do not constitute exceptional circumstances that warrant the grant of bail to the 1st Suspect, especially considering the amount of Methamphetamine said to have been recovered from the possession of the 1st Suspect.
17. According to the Government Analyst Report dated 31-01-2025, pure quantity of Methamphetamine detected was 517.9 grams. Therefore, the weight of the Methamphetamine is far beyond what could be intended for personal consumption and is undoubtedly meant for commercial purposes. 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.

18. Therefore, in the event of a conviction, the likely sentence would be either the death penalty or life imprisonment. Given the seriousness of the offence and the severity of the possible punishment, the likelihood of the 1st Suspect absconding if enlarged on bail is also very high.
19. The Petitioner has also pointed out that the delay in prosecuting the 1st Suspect is also an exceptional circumstance that warrants consideration of this Court. It is stated in the petition that, Police Narcotic Bureau has not forwarded the investigation dossier to the Attorney General's Department, despite the Government Analyst Report having been available since 31-01-2025. Therefore, no indictment has been served on the 1st Suspect yet.
20. However, this Court in a long line of cases has held that the delay in prosecuting a suspect alone will not suffice to consider granting bail to a suspect unless such delay amounts to an oppressive and inordinate delay. As held in ***Attorney General v. Ediriweera*** (S.C. Appeal No. 100/2005), *"Delay is always a relative term and the question to be considered is not whether there was mere explicable delay, as when there is a backlog of cases, but whether there has been excessive or oppressive delay and this always depends on the facts and circumstances of the case..."*.
21. Considering the legislative intent behind section 83(1) (Prior to the Amendment) of the Ordinance, it was stated in ***Labukola Ange Wisin Gedera Ashani Dhanushshika v. OIC Divisional Crimes Investigation Unit Panadura*** CA/PHC/APN/04/2016 (Court of Appeal Minutes dated 06-10-2016] as follows;

"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 heroine 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."

22. 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.

23. In the same case, while focusing the attention on the nature and gravity of the offences falling under the Ordinance, Eric Basnayake J. further stated as follows:

Heroin has become a menace in our society. It is not easily detectable. Due to the fact alone, the tendency to commit this kind of crime repeatedly has become feasible. The repetitive factor prevalent in this sort of crime and the difficulty of detection are significantly strong reasons for refusing bail in this type of cases.

24. The special bail provisions under Section 83(2) 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 previous conduct of the suspect or the accused concerned, the quantity of the dangerous drug that has been recovered, the possibility of the suspect or the accused re-offending and evading the judicial process, the sophisticated manner in which the crime was committed and its impact on the society at large, then it would, in my view, undermine the very purpose of the Ordinance.

25. The 1st Suspect in the present case had been arrested on 08-07-2024. The Government Analyst Report was ready by 31-01-2025. The Respondents in their Statement of Objections dated 01-07-2026, has stated that 1st Suspect had been served with the

indictment under the case no. bearing 5665/09/2026 and the matter was fixed for pre-trial conference on 24-07-2026. Therefore, it is anticipated that the trial against the 1st Suspect will commence soon.

26. The foregoing facts demonstrate that there has been no inordinate or oppressive delay on the part of the prosecution in serving the indictment and arraigning the 1st Suspect for trial.
27. Therefore, I am of the view that the grounds adduced by the Petitioner do not constitute exceptional circumstances warranting the grant of bail to the 1st Suspect. This Application is accordingly dismissed.
28. The Registrar of this Court is directed to communicate this bail Order to the Magistrate Court of Maligakanda, 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