

IN THE COURT OF APPEAL OF THE DEMOCRATIC SOCIALIST

REPUBLIC OF SRI LANKA

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

Officer-in-Charge,
Police Narcotic Bureau,
Colombo 01.

Court of Appeal Bail Application:
CA/BAL/ 416/2025

MC Negambo Case No:
B/3937/24

Complainant

-Vs-

1. Abdulla Ahammed Hijam
2. Weerakutti Mohottalage Kanchana
Madhukari
(Currently in remand custody)

Suspects

AND NOW BETWEEN

Abdulla Ahammed Hijam
No. 34, Mariya Gorenthi Road,
Rilaula, Kandana.

1st Suspect- Petitioner

-Vs-

1. Officer-in-Charge,
Police Narcotic Bureau,
Colombo 01.

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

Respondents

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

Counsel : Shashiranga M. Perera for the 1st Suspect-Petitioner
: Shezan Mahboob, SC for the Respondents

Inquiry on : 24-06-2026

Decided on : 30-07-2026

Pradeep Hettiarachchi, J

Order

1. This Bail Application is preferred to this Court by the 1st Suspect- Petitioner named Abdulla Ahammed Hijam (hereinafter referred to as "1st Suspect") in terms of Section 83(2) of the Poisons, Opium and Dangerous Drugs Ordinance (hereinafter sometimes referred to as "the Ordinance").
2. According to the Petition, the 1st Suspect had been arrested on 02-03-2024 along with another Suspect for alleged trafficking and possession of 4 kg 260 g and 52 mgs of Methamphetamine, an offence punishable under Section 54A (1) (d) and 54A (1) (b) of the Ordinance.

3. The two suspects were produced before the Magistrate Court of Negombo on 03-03-2024, and the 1st Suspect has been in incarceration since then.

Relevant Law:

4. The provisions of Section 83(2) of the Poisons, Opium and Dangerous Drugs Ordinance as amended by the Act No. 41 of 2022, decree that a person accused or suspected of being in possession of 10 grammes or more of the prescribed drugs is required to be kept in remand, unless and until such person satisfies the Court as to the existence of exceptional circumstances.

5. Section 83 reads:

83(1). Subject to the provisions of section 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 77; 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.

6. However, exceptional circumstances are not defined in the Statute. Therefore, whether the grounds advanced on behalf of the Petitioner can be considered exceptional circumstances must be determined based on the facts and circumstances of each case.

7. 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.”

8. Also, in *Attorney General v Ediriweera S.C. Appeal No. 100/2005* [2006 BLR 12], it was held that;

“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 [...].”

9. In *Abdul Quideer Aboobucker v AG* [CA/PHC/APN 42/2011 (CAM 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.

Exceptional Circumstances Urged by the Petitioner

10. In the instant Application, the 1st Suspect has mainly averred the following grounds as exceptional circumstances;
- (a) The B-Report submitted to the Negombo Magistrate Court is inconsistent with the provisions of the Code of Criminal Procedure Act No. 15 of 1979.
 - (b) The submitted B-Reports are defective.
 - (c) Investigating officers had allegedly arrested the 1st Suspect without any evidence.
 - (d) He is a married man with three children. His wife has left him, and the children are being maintained by him.
 - (e) He has no previous convictions.
 - (f) He was met with grave prejudice by being arrested and incarcerated with no proper evidence.
 - (g) He is being incarcerated on false and fabricated charges of possession and trafficking of Methamphetamine, thereby restricting his freedom.
 - (h) If released on bail, the 1st Suspect undertakes not to influence the witnesses or influence in any way to destroy evidence.
 - (i) The 1st Suspect is currently held in remand custody for a period of one year and six months.

- (j) If the 1st Suspect is acquitted after the conclusion of the trial, the period of imprisonment will be unfair.
- (k) Restricting the freedom of the 1st Suspect is contrary to the basic fundamental rights guaranteed under Article 13(1) of the Constitution.

11. Accordingly, one of the main grounds advanced by the 1st Suspect is that he has been in remand custody for nearly one year and six months and the indictment has not yet been filed in the High Court in relation to his case.

12. Regarding the time period spent in remand, this Court has, in a long line of judicial authorities have 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, the 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 for nearly 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. 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.”

13. 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.”

14. 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, the sophisticated manner in which the drug trafficking operation was executed and the possibility of the suspect re-offending and evading trial if granted bail, it would, in my view, undermine the very purpose of the Act.
15. 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, especially the nature of the suspect's involvement, the possibility of the suspect re-offending and evading trial if granted bail and also the overall impact that the suspect's release on bail may have on the society.
16. Therefore, in determining whether the 1st Suspect should be granted bail, this Court cannot lose sight of the fact that he willfully suppressed his five previous convictions for offences of a similar nature, which he failed to disclose when preferring the present application. On the contrary, he expressly stated in the application that he had no previous convictions. Such a false representation constitutes a deliberate attempt to

mislead this Court and demonstrates a clear lack of *uberrima fides* on the part of the 1st Suspect.

17. Moreover, as per the Government Analyst Report dated 20-11-2024, the pure quantity of Methamphetamine detected in the present case was 3939.0 grams. Therefore, the weight of the Methamphetamine is far beyond what could be intended for personal consumption and is undoubtedly meant for commercial purposes. It is further suggestive of the fact that the 1st Suspect, who earlier used to deal in user quantities, has progressed to trafficking narcotic drugs on a significantly larger scale. 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. It is also mentioned in the Petition that the 1st Suspect is married with three children and his wife has left him. It is also submitted that he is the primary caregiver and the sole breadwinner of the family. However, this cannot, in my view, be considered as an exceptional circumstance warranting the 1st Suspect's release on bail. In the majority of cases, this is often the situation, especially when the sole breadwinner of the family is in remand.

20. Furthermore, at the inquiry, the learned State Counsel informed this Court that the Indictment against the 1st Suspect has already been dispatched. Therefore, it is anticipated that the 1st Suspect will be prosecuted without any further delay.

21. In the aforesaid circumstances, this Court is of the view that the aforesaid grounds adduced by the 1st Suspect cannot be considered as exceptional circumstances warranting his release on bail. In other words, the previous conduct of the 1st Suspect,

his lack of *uberrima fides* when preferring the instant bail application before this Court, the quantity of Methamphetamine recovered, his propensity to re-offend and the likelihood of him absconding if released on bail, when considered cumulatively, dissuade this Court from granting bail to the 1st Suspect.

22. Accordingly, the bail application of the 1st Suspect is dismissed. The Registrar of this Court is directed to transmit a copy of this Order to the Magistrate Court of Negombo and the Officer-in-Charge of the Police Narcotic Bureau, Colombo 01 forthwith.

Judge of the Court of Appeal

P. Kumararatnam, J

I agree

Judge of the Court of Appeal