

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 as amended by Act No. 41 of 2022.

Officer-in-Charge

Colombo Crime Division

Dematagoda

Court of Appeal Bail Application:

CA/BAL/ 428/2024

Magistrate Court of Maligakanda:

17413/2024

Complainant

1. Jamal Deen Mohamed Safraz
2. Kotawila Withanage Padmasiri

Suspects

Ibrahim Jaspiya

No. 117/20, Avissawella Road,

Orugodawatte

Petitioner

On behalf of

1. Jamal Deen Mohamed Safraz

Vs

1. Officer-in-Charge

Colombo Crime's Division

2. Hon. Attorney General

Attorney General's Department

Colombo 12.

Respondents

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

Counsel : Tenny Fernando for the Petitioner
Shehan Mahboob, SC for the Respondents

Inquiry on : 07.10.2025

Decided on : 12.12.2025

Pradeep Hettiarachchi, J

Order

1. This is an Application for bail filed by the Petitioner named Ibrahim Jaspiya (hereinafter referred to as “the Petitioner”) on behalf of her husband named Jameel Deen Mohamed Safraz (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, on or about 22-03-2024, the Suspect was arrested by the police for allegedly keeping in his possession and trafficking 440 grams and 1140 grams of Methamphetamine, an offence punishable under section 54A (1) (d) and 54A (1) (b) of the Ordinance.
3. It was further stated in the Petition that, on 22-03-2024, officers from the Kirulapona police station and the Colombo Crime Division’s Special Operation Unit, were conducting some routine patrols when they received information regarding the potential trafficking of dangerous drugs. Acting immediately on this information, the officers have proceeded to the Sirisara Uyana Flats, where they established a roadblock to intercept the vehicles passing by. They have stopped the three wheeler bearing No. SP YX 1045 in which the Suspect was seated at the rear passenger seat. Upon searching the Suspect, the

police have found that the Suspect was carrying in his right trouser pocket a transparent parcel containing Methamphetamine. Also, another parcel containing Methamphetamine concealed in his undergarments was found.

4. The driver of the three-wheeler was also apprehended, for his role in aiding and abetting the drug trafficking operation. Thereafter, the Suspect was questioned thoroughly by the police officers, following which the Suspect has allegedly directed the officers to his temporary residence located at 1C/F10/U27 Methsara Uyana from where the police have recovered another parcel.
5. The police have taken the Suspect to the police and weighed the dangerous drugs recovered from the Suspect. Accordingly, 440 grams were found to be in the two parcels that were recovered from the Suspect (i.e., the parcel marked “A”), while the amount of Methamphetamine recovered from his temporary residence was 1140 grams (i.e., the parcel marked “B”).
6. Subsequently, the Suspects were produced before the Magistrate Court of Maligakanda on 23-03-2024 and thereafter detained till 29-03-2024. On 29-03-2024, when the Suspects were produced before the Magistrate Court of Maligakanda, the learned Magistrate ordered them to be remanded till 02-04-2024. The Suspect has been in remand custody since then.
7. As per the Government Analyst Report dated 24-07-2024, the net quantity of Methamphetamine contained in the parcel A was 359.78 grams while the net quantity of Methamphetamine contained in parcel B was 752.7 grams.

Relevant Law

8. 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 grams 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.

9. 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.
10. 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.
11. 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.”*
12. 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

13. The exceptional circumstances adduced by the Petitioner are succinctly as follows;

- (a) Failure to establish that the Suspect has any connection whatsoever to the place that was mentioned as his temporary residence in the B-Report submitted by the Police.
- (b) Discrepancies between the B-Report and the Government Analyst Report, especially regarding the gross quantity of Methamphetamine recovered from the possession of the Suspect.
- (c) The police have deviated from the standard weighing procedures by collectively weighing the two parcels recovered from the Suspect, which is a significant breach of the protocol.
- (d) The Suspect is the primary caregiver and the sole breadwinner of the family.
- (e) The visible contradictions in date of arrest as claimed by the Suspect and corroborated by the case record highlights a lack of clarity and consistency in the police's version of events.
- (f) In the light of the evidence and procedural lapses highlighted, there is a strong argument to uphold the principle of 'innocent until proven guilty'. Given the questionable conduct of the police and the inconsistencies in their version of events, there is a risk that the Suspect is being wrongfully held in custody.

14. The Petitioner vehemently denies having any association with the address of the temporary residence that Methamphetamine was recovered from. It was stated in the Petition that the police have failed to adequately establish that the Suspect has any connection whatsoever to the place that was mentioned as his temporary residence in the B-Report and that the absence of clear evidence linking the Suspect to the alternative evidence undermines the legitimacy of the charges, thereby supporting the argument that the grounds for continued detention are unfounded.

15. However, whether the Suspect has any link to this temporary residence is a matter to be determined at the trial. The Petitioner has also stated that there exist several discrepancies between the gross quantities stated in the B-Report submitted by the police and the

Government Analyst Report. It was stated that such discrepancies in the weight highlights severe procedural flaws within the police investigation and cast serious doubt on the chain of custody and the integrity of the police investigation.

16. It is important to note that the gross quantity of Methamphetamine contained in Parcel A was 440 grams while the gross quantity as per the Government Analyst Report was 435.3 grams. Accordingly, the difference between the two quantities is 4.7 grams. Similarly, the gross quantity of Methamphetamine contained in parcel B was 1140 grams while the gross quantity as per the Government Analyst Report was 1126.5 grams. The difference between the two quantities was 13.5 grams.
17. It is common knowledge that such discrepancies may occur due to the errors in the weighing equipment used by the police at the time the weighing was done and the aforesaid differences are, in my opinion, trivial in nature and in any event, can be explained by the prosecution at the trial stage.
18. It was also stated that the police have deviated from the standard weighing procedures when weighing the Methamphetamine recovered from the possession of the Suspect. According to the Petition and the B-Report marked X2, the police have weighed the two parcels that were alleged to have recovered from the Suspect collectively rather than separately, thereby deviating from their standard operational procedures, which raises questions about the integrity of the evidence collected.
19. While deviating from the standard procedure certainly casts doubts on the prosecution's version of events, such deviation and the possible impact that it may have had on the chain of custody of the productions is also another matter to be considered at the trial stage.
20. The Petitioner also disputes the date of arrest of the Suspect. The Petitioner states that the Suspect was actually arrested on the day prior to the date mentioned in the B-Report and this discrepancy as to the date of arrest casts a serious doubt on the police's version of events. It is also stated that the visible contradictions in the date of arrest as claimed by the Suspect and corroborated by the case record highlight a lack of clarity and consistency in the police's version of events.

21. The Petitioner, other than mentioning that the Suspect's account of being arrested on a different date is substantiated by the case record, has not placed any material before this Court to substantiate her position that the Suspect had been arrested on the day prior to the date mentioned in the B-Report. This discrepancy, in my view, is not a glaring discrepancy that warrants consideration of this Court, but a trial issue that has to be taken up before the learned High Court Judge.
22. Furthermore, 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 quantity of the dangerous drugs involved, the possibility of the suspect reoffending and evading trial if granted bail and the overall impact that the suspect's release on bail may have on the society. The cumulative impact of all these factors should be carefully taken into consideration when granting bail to a Suspect.
23. In the Statement of Objections dated 11-03-2025, it is stated that the Suspect has one pending case before the High Court of Gampaha under the case bearing No. HC/186/02/2020 for the possession of 9.94 grams of Heroin and the next date of trial is 2025-03-27. This means that the Suspect has committed the offences as alleged in the B-Report while he was out on bail for an offence of similar nature. It is pertinent to note that the Petitioner has not made a fuller disclosure in the Petition regarding the aforesaid case pending against the Suspect. Even if it has been mentioned that the Suspect has a pending case in the High Court of Gampaha, neither the case number, nor the nature of the case against the Suspect has been disclosed in the Petition.
24. This willful omission to make a fuller disclosure of the case pending against the Suspect indicates a lack of *uberrimae fides* on the part of the Petitioner. In addition to the aforesaid grounds, it is mentioned in the Petition that the police officers have assaulted the Suspect subsequent to the arrest and the Police threatened him not to disclose anything regarding such arrest. It is also mentioned that the Suspect was admitted to the hospital due to the assault. However, the Petitioner has not placed any material before this Court to substantiate the aforesaid statement. It is pertinent to note that in the Medico Legal Reports dated 23-03-2024 and 29-03-2024, the medical officer, who examined the Suspect has made no observations/comments regarding the injuries suffered by the

Suspect. Also, the police's version regarding the hospitalization of the Suspect is that, the Suspect, upon being produced before the Judicial Medical Officer prior to being produced before the Court after the expiration of the detention period, suffered a chest pain, consequent to which he was admitted to the Colombo National Hospital.

25. Moreover, it is important to note that the Suspect, if found guilty will either be punished by death or life imprisonment. Therefore, the possibility of the Suspect re-offending and absconding is high if granted bail.
26. 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 Suspect, it can be reasonably inferred that the 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.
27. It is also in the Petition that the Suspect is the primary caregiver and the sole breadwinner of the family and his continued absence due to the prolonged detention in remand custody will impose severe hardships on the family both financially and emotionally. However, this cannot, in my view, be considered as an exceptional circumstance warranting the 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.
28. In the aforesaid circumstances, this Court is of the view that, the aforesaid grounds adduced by the Petitioner cannot be considered as exceptional circumstances warranting the grant of bail to the Suspect. In other words, the previous conduct of the Suspect, the Petitioner's failure to make a full and honest disclosure of pending case against the Suspect and especially the fact that he has been arrested, while he is on bail for an offence of similar nature, his propensity to re-offend and the likelihood of him absconding if released on bail, when considered cumulatively, dissuade this Court to grant bail to the Suspect.

29. 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 Maligakanda and the Officer-in-Charge of the Colombo Crime Division, Dematagoda forthwith.

Judge of the Court of Appeal

P.Kumararatnam, J.

I agree.

Judge of the Court of Appeal