IN THE COURT OF APPEAL OF THE DEMOCRATIC SOCIALIST REPUBLIC OF SRI LANKA

In the matter of an application for Bail made under and in terms of Section 83(2) of the Poisons, Opium and Dangerous Drugs (Amendment) Act No. 41 of 2022 dated 23.11.2022.

The Officer-in-Charge
Police Narcotics Bureau,

Colombo-01.

Court of Appeal

Bail Application No: **COMPLAINANT**

CA Bail 0565/2023 **Vs**

MC Maligakanda Case No. Remgees Sagaya Fernando

BR/24429/2023 (Presently in Colombo Remand Prison)

SUSPECT

AND NOW BETWEEN

Reeta Jayanthi Fernando

No.23/13, Jampettah Street,

Colombo-13.

PETITIONETR

Vs

1. The Attorney General
   Attorney General's Department,
   Colombo-12.

2. The Officer-in Charge,
   Police Narcotics Bureau,
   Colombo-01.

RESPONDENTS

BEFORE : **P. Kumararatnam, J.**
K.M.G.H, Kulatunga J.

COUNSEL : **Eranga Sirisena for the Petitioner.**
Oswald Perera, SC for the Respondents.

ARGUED ON : **27/01/2025.**

DECIDED ON : **24/02/2025.**

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ORDER

P.Kumararatnam,J.

The Petitioner is the wife of the 1st Suspect (Hereinafter referred to as the Suspect) named in M.C. Maligakanda Case No. B 24429/2023.She had applied for bail for her Suspect-husband.

On 22.06.2023, the Suspect was arrested at Jempettah Street, Colombo-13 by officers attached to the Police Narcotics Bureau upon an information relating to possession of 350 grams of Methamphetamine. According to police the contraband was seized from a Tulip bag he was carrying at that time.

The suspect was produced and facts were reported to the Maligakanda Magistrate under Section 54A (d) and (b) of the Poisons, Opium and Dangerous Drugs Ordinance as amended by the Act No.13 of 1984.

The production had been sent to the Government Analyst Department on 27/07/2021. After analysis, the Government Analyst had forwarded the report to Court on 26/06/2023. According to the Government Analyst, 161.4 grams of Methamphetamine had been detected from the substance sent for the analysis.

According to the Petitioner, the Suspect was arrested without any contraband in his possession. The Petitioner further alleges that the police had failed to disclose the location of the raid and the names of the officers who took part in the raid and the mode of journey and the manner in which the raid was conducted and other attendant circumstances.

The Petitioner has pleaded following exceptional circumstances in support of this Bail Application.

1. No illegal substance was recovered from the possession of the Suspect at the time of his arrest and which was introduced by the police.
2. The Suspect is 54 years old and sole bread winner of the family.
3. The Suspect is the sole breadwinner of the family.
4. Due to his incarceration his mother had passed away one month before of filing this application.
5. The Petitioner had been in remand for 01 year and 8 months.

The Learned State Counsel opposing for bail, submitted that the delay is not an exceptional circumstance to be considered to enlarge the suspect on bail. Further, the time spent for preparing the indictment does not constitute an exceptional circumstance. According to him the indictment against the Suspect had already been sent to the High Court.

The suspect is in remand for 01 year and 08 months to date. According to the Government Analyst Report, the pure quantity of Methamphetamine detected from the possession of Suspect is 161.4 grams.

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 161.4 grams. Hence, this court has jurisdiction to consider granting of bail as per the new amendment.

Upon receipt of the investigation notes from the Police Narcotics Bureau, the Hon. Attorney General has forwarded the indictment to the High Court of Colombo.

The Counsel for the Petitioner submitted that the police have fabricated a case against the Suspect.

I agree with the learned State Counsel that the factual and evidentiary matters pertaining to the investigations can only be tested at the trial upon the witnesses being cross examined and shall not be tested at the time of hearing this bail application considering the nature of this case.

Further, I do not consider the delay 01 year and 08 months in remand falls into the category of excessive and oppressive delay considering the circumstances of this case. At present the indictment has already been sent to the High Court of Colombo. Further, family situation of the Suspect cannot be considered as an exceptional circumstance, as it is the normal day to day life of the people.

The Offence under Section 54A (d) and (b) of the Poisons Opium and Dangerous Drugs Ordinance as amended by the Act No.13 of 1984 is a serious offence and the seriousness of the offence should be considered when bail is considered.

In this case the pure Methamphetamine detected is 161.4 grams, which certainly a commercial quantity. Considering the seriousness of the sentence prescribed under the Poison, Opium and Dangerous Drugs Ordinance, there is a high risk of absconding. Hence, it is prudent to conclude the High Court case expeditiously keeping the Suspect in remand.

Taking all these factors into account, especially the pure quantity of Methamphetamine detected, and other circumstances of the case, I

consider this not an appropriate case to grant bail to the Suspect at this stage.

Hence, the bail application is hereby dismissed.

The Registrar of this Court is directed to send this order to the Magistrate Court of Maligakanda and Officer-in-Charge of the Police Narcotics Bureau, Colombo-01.

JUDGE OF THE COURT OF APPEAL

K.M.G.K. Kulatunga, J.

I agree.

JUDGE OF THE COURT OF APPEAL