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

In the matter of an application for bail in terms of Section 83 of the Amended Act No.41 of 2022 to the Poisons, Opium and Dangerous Drugs Ordinance and in terms of Article 138 of the Constitution of the Democratic Socialist Republic of Sri Lanka.

Court of Appeal Bail Application No.CA Bail/0596/23

The Officer-in-Charge
Police Station
Pettah.

COMPLAINANT

Magistrate Court of Maligakanda Case No. B 33024/23

Nugaduwa Withanalage Nimesha Harshani

SUSPECT

AND NOW BETWEEN

Kaluthanthrige Shiron Malkanthi
No. 582/2/2, Nedungamuwa,
Gampaha.

PETITIONER

Vs

1. The Officer-in Charge
   Police Station,
   Pettah.
2. The Attorney General
   Attorney General's Department,
   Colombo-12.

RESPONDENTS

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

COUNSEL : **Shamindra Rodrigo with Eranda Sinharage for the Petitioner.**
Jehan Gunasekera, SC for the Respondents.

ARGUED ON : **12/02/2025.**

DECIDED ON : **17/03/2025.**

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ORDER

P.Kumararatnam,J.

The Petitioner filing this Application has invoked the jurisdiction of this Court to grant bail to her daughter who is the Suspect in this case upon suitable condition as this Court considers appropriate.

The Suspect was arrested on 07.08.2023 by the Police officers attached to the Pettah Police Station. She was produced before the Magistrate of Maligakanda in the case bearing No. B/33024/2023.

The Suspect was arrested upon an information received by the officers attached to the Pettah Police Station on 17.08. 2023.The Suspect was arrested at the private bus station at Bastian Mawatha, Colombo-11. When WSI/ Lakmini checked her found a parcel containing some substance believed to Methamphetamine (ICE) hidden underneath her undergarment and kept between her thighs. The substance weighed about 50.05 grams. The Suspect was handed over along with the production to the Pettah Police Station for further investigation and necessary action.

The Suspect was produced and facts were reported to the Maligakanda Magistrate under Sections 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 and after analysis, the Government Analyst had forwarded the report to the Maligakanda Magistrate Court. According to the Government Analyst, 27.25 grams of Methamphetamine had been detected from the substance sent for the analysis.

The Petitioner has pleaded following exceptional circumstances in support of her Revision Application.

1. The Suspect has been in remand custody little more than 18 months.
2. The Suspect is married and a mother of two school going children. Her husband had been deserted her family.

The Learned State Counsel 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 the State, indictment has already been forwarded to the High Court of Kandy.

The suspect is in remand little more than 18 months. According to Government Analyst Report the pure quantity of Methamphetamine detected is 27.25 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 basis.

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".*

In **CA(PHC)APN 107/2018** decided on 19.03.2019 the court held that remanding for a period of one year and five months without being served with the in indictment was considered inter alia in releasing the suspect on bail. According to the Petitioner, at present the Suspect's

family is going through untold hardship without proper income and care.

The Section 83 of the Poisons, 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.

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

The Learned Counsel for the Petitioner urged this Court to consider that detaining a suspect without any legal action for an extended period of time amounts to a violation of his fundamental rights which can be considered as an exceptional ground.

The Government Analyst Report pertaining to this case has been received by the Magistrate Court of Maligakanda on 01.03.2024. The indictment was sent to the High Court of Colombo after 06 months of the receipt of the Government Analyst Report by the Magistrate Court.

Although little more than 18 months passed after the arrest of the Suspect, the indictment has not been served on the Suspect. Therefore, no indication of commencing the trial in near future.

In **Nasher v. Director of Public Prosecution [2020] VSCA 144** the court held that:

> *"**a combination of delay**, onerous custodial conditions, and the relative weakness of the prosecution case may, when considered with all relevant circumstances, compel the conclusion that exceptional circumstances have been established".* [Emphasis added]

The right to trial without undue delay is found in numerous international and regional human rights instruments; for example, the International Covenant on Civil and Political Rights (Article 14(3)(c), the American Convention on Human Rights (Article 8(1), the African Charter on Human and People's Rights (Article 7(1)(d), and the European Convention for the Protection of Human Rights and Fundamental Freedoms (Article 6(1).

Hence, I consider the delay little more than 18 months in remand falls into the category of excessive and oppressive delay considering the circumstances of this case. Hence, considering all the circumstances of this case, the Suspect has very good exceptional circumstances to consider this application in her favour. Further, remanding a Suspect

without commencing his or her trial will prejudice his or her rights and family as well.

Offences under Section 54A(d) and 54A(b) of the Poisons Opium and Dangerous Drugs Ordinance as amended by the Act No.13 of 1984 is no doubt serious offences but seriousness of the offence alone cannot form a ground to refuse bail. In considering these matters, the court must bear in mind the presumption of innocence.

Further, bail should never be withheld as punishment. Granting of bail is primarily at the discretion of the Courts. The discretion should be exercised with due care and caution taking into account the facts and circumstances of each case.

Considering all these factors into account, especially the pure quantity of Methamphetamine detected and the circumstances of the case, I consider this an appropriate case to grant bail to the Suspect. Hence, I order the Suspect be granted bail with following strict conditions.

1. Cash bail of Rs.50,000/=.
2. To provide 02 sureties. They must sign a bond of two Rs.500,000/- each.
3. To surrender her passport if any, to court and not to apply for a travel document. The Controller of the Immigration and Emigration is informed of the travel ban on the suspect.
4. To report to the Pettah Police Station on the last Sunday of every month between 9am to 1pm.
5. Any breach of these conditions is likely to result in the cancellation of his bail.

The Bail Application is allowed and the Learned Magistrate of Maligakanda is hereby directed to enlarge the Suspect on bail on the above bail conditions.

The Registrar of this Court is directed to send this Bail Order to the Magistrate Court of Maligakanda and the Officer-in-Charge, Police Station, Pettah.

The Application is allowed.

JUDGE OF THE COURT OF APPEAL

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

I agree.

JUDGE OF THE COURT OF APPEAL