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

In the matter of an application for Bail as under and in terms of Section 83(2) of the Poisons, Opium and Dangerous Drugs Ordinance of 17 of 1929 as amended by section 04 of the Act No.41 of 2022.

Court of Appeal Bail Application
No.CA Bail/0643/23
High Court of Avissawella
Case No.HCA 27/2024
MC Avissawella
No. B 9531/2023

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

Complainant

Chaminda Samarasinghe
(Presently in remand prison)

Suspect

AND NOW BETWEEN

Chaminda Samarasinghe

Suspect-Petitioner

Vs

1. The Officer-in-Charge
   Police Narcotics Bureau
   Colombo-1.

Complainant-Respondent

2. The Attorney General
Attorney General's Department
Colombo-12.

Respondent

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

COUNSEL : **Asanka Mendis with Shehan Rajapaksha for the Petitioner.**
Malik Azeez, SC for the Respondents.

ARGUED ON : **28/01/2025.**

DECIDED ON : **27/02/2025.**

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ORDER

P.Kumararatnam,J.

The Petitioner is the Accused named in the High Court of Avissawella case bearing No. HCA 27/2024.

According to the B report filed by the police, upon information the Petitioner was arrested by the Police Narcotics Bureau of Kandy Unit on 30.01.2023. The Petitioner was searched and some substances believed to be Methamphetamine and money Rs.300,000/- were recovered from

his shorts pocket. When police checked his bag found a stock of Cannabis in the bag.

The both parcels were weighed by an electronic scale and it revealed 40 grams of Methamphetamine in the first parcel and 8.400 Kg of Cannabis in the second parcel.

The Petitioner was produced in the Court under Section 54A(d) and (b) of the Poisons, Opium and Dangerous Drugs Ordinance as amended by Act No. 13 of 1984

According to the Petitioner, he has been in remand for more than two years to date. According to the Government Analyst Report, the pure quantity of Methamphetamine and Cannabis Sativa L detected from the possession are as follows:

1. Methamphetamine- 28.24 grams.
2. Cannabis Sativa L- 08.400 Kg.

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

1. The police have fabricated a case against him.
2. He is in remand tittle more than two year to date.
3. The Government Analyst Report was received after 7 months from the date of arrest.

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.

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

In this case, as per the submission of the Learned State Counsel, the indictment had already been dispatched to the High Court of Avissawella and the pre-trial is concluded. Further the Learned State Counsel brought to the notice of this Court that the Petitioner has not come before this Court with clean hand as he wilfully omitted to mention in the Petition about one pending case which is connected to possession and trafficking of narcotics substance.

Further, unusually the Petitioner filed an amended Petition to reveal his pending case to this Court. This step he had taken only after the revelation of his pending case by the State in their amended objection filed on 21.05.2024.

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 **Ranil Charuka Kulatunga v. Attorney General CA (PHC) APN 134/2015** the court held that:

> *"The quantity of cocaine involved in this case is 62.847 grams, which is a commercial quantity. If Petitioner is convicted, the punishment is death or life imprisonment. Under these circumstances, it is prudent to conclude the trial early while the Petitioner is kept in* custody*."*

In this case the pure Methamphetamine detected is 28.24 grams, which certainly a commercial quantity. Further, the Petitioner was in his possession 08.400Kg of Cannabis. Additionally, the Petitioner has been charged under the Anti Mony Laundering Act for the possession of Rs.300,000/-

Considering the seriousness of the sentence prescribed under the Poison, Opium and Dangerous Drugs Ordinance and in the Money Laundering Act, it is prudent to conclude the High Court case expeditiously keeping the Petitioner in remand.

Hence, I do not consider the delay more than 2 years in remand falls into the category of excessive and oppressive delay considering the circumstances of this case.

Considering all these factors into account, especially the pure quantity of Methamphetamine and Cannabis detected and the charges in the indictment against the Petitioner and other circumstances of the case, I consider this is not an appropriate case to sanction bail to the Petitioner at this stage. Hence, I refuse to release the Petitioner on bail.

Hence, this Bail Application is dismissed.

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

JUDGE OF THE COURT OF APPEAL

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

I agree.

JUDGE OF THE COURT OF APPEAL