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 Ordinance No. 17 of 1929 as amended by Poisons, Opium and Dangerous Drugs (Amendment) Act No 41 of 2022.

Officer in Charge,
Police Station, Wellampitiya.
Colombo 01.

Complainant

CA/BAL/325/2024

High Court of Colombo Case: No **HC/4987/24**

Magistrate's Court of Colombo No: **B 81587/02/23**

Vs.

Omaththage Hashan Udayanga Perera,
No1C, /F11/U15,
Laksanda Sevana, Salamulla, Kolonnawa.

(Presently in remand custody)

Accused

And Now Between

Thirimunige Chaluka Anuradha,
No.1C/F11/U15,
Laksanda Sevana, Salamulla, Kolonnawa.

Petitioner

Vs.

1. The Hon Attorney General,
   Attorney Generals' Department,
   Colombo.

   Respondent

2. Officer-in-Charge,
   Police Station,
   Wellampitiya.

   Complainant-Respondent

Omaththage Hashan Udayanga Perera,
No1C, /F11/U15,
Laksanda Sevana, Salamulla,
Kolonnawa.

(Presently in remand custody)

Accused-Respondent

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

Pradeep Hettiarachchi, J.

Counsel : Sanjith Senanayake for the Petitioner.

Oswald Perera, S.C. for the Respondent

Inquiry on : 21.05.2025

Decided on : 13.06.2025

Pradeep Hettiarachchi, J.

ORDER

1. This is an Application for bail filed on behalf of the Accused-Respondent named Omaththage Hashan Udayanga Perera (hereinafter referred to as "the Accused") under Section 83(2) of the Poisons, Opium and Dangerous Drugs Ordinance.

2. The Accused was arrested on 04.12.2022 by the officers of Wellampitiya Police for alleged possession of Methamphetamine, which is an offence punishable under Section 54 A (a) and (d) of the Poisons Opium and Dangerous Drugs Ordinance as amended by the Act No 41 of 2022. He was subsequently produced before the Magistrate Court of Colombo and remanded.

3. According to the Petition, at the time of the arrest, it is alleged that the Accused had in his possession 20 grams of Methamphetamine.

4. The Petitioner in this Application has averred following grounds to be considered as exceptional circumstances;
    a) At the time of the arrest there was no illegal substance in the possession of the Accused;
    b) The Accused is the father of two children, age seven and two years respectively;
    c) Although the Indictment was served on the Accused in the High Court of Colombo, the trial has not commenced yet.
    d) The Accused has been languishing in remand custody from the date of his arrest.

e) The Accused who is the wife of the Accused suffering from a chronic otitis media with year drum perforation and that she needs a surgery to rectify it. It cannot be performed without the assistance of the Accused as there is no one to look after two children.

5. Upon receiving notices, the Respondents filed their Objections. In their Objections they mainly averred that the Indictment against the Accused bearing number HC 4987/2024 has been served on the Accused and the case has already been fixed for trial. The quantity of drugs allegedly recovered from the Accused is significantly higher, and if he is convicted, the punishment would be either death or life imprisonment. Therefore, there is a high risk of absconding if bail is granted.

6. Furthermore, it is stated that the Accused is having one pending case bearing number 31651/2022 for possession of heroin at the Maligakanda Magistrate Court.

7. According to the Government Analyst Report dated 26.05.2023, the net quantity of the substance (methamphetamine) is 14.55 grams and therefore this Court has jurisdiction to deal with this bail Application.

8. It could be observed that the Indictment was served on the Accused on 09.09. 2024. Thereafter, the pre-trial conference was scheduled for the 22.11.2024. However, it has not yet been concluded and has been rescheduled for the 25.06.2025.

9. Apparently, the trial proper has not yet commenced, and the Accused has been in remand for almost two and a half years. Needless to say, since the pre-trial has not been concluded, there is no prospect of the trial proper commencing within the next couple of months.

10. Furthermore, it can be observed that the Respondents took one and a half years to prepare the Indictment, even though the Government Analyst's Report was available by the 26.05. 2023, which further shows that one year had lapsed between the date of the Government Analyst's Report and the date of the indictment

11. The Provisions of section 83 of the Poisons, Opium and Dangerous Drugs Ordinance as amended by the Act number 41/2022 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 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,[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."

12. In light of the above section, a person accused or suspected of being in possession of 10 grammes or more, is required to be kept in remand, unless such person satisfies this Court as to the existence of circumstances that are exceptional. So, the burden is on the Accused to establish the existence of exceptional circumstances.

13. Although the Petitioner has urged several grounds as exceptional circumstances in support of the bail Application, I shall only consider whether the delay in prosecuting the Accused could be treated as an exceptional ground to grant bail, as the first two grounds advanced by the Petitioner do not amount to exceptional circumstances.

14. Evidently, the Petitioner had filed a bail Application on a previous occasion bearing No BAL/186/2023, which had been dismissed on 06.03.2024.

15. Admittedly, the Accused was arrested on 04.12.2022. The Government Analyst's Report was ready by 26.05.2023. However, the Indictment was signed only on 17.05.2024, almost one year after the receipt of the Government Analyst's Report. No valid reason was forthcoming from the Respondents to justify the delay in filing the Indictment.

16. Furthermore, by 16.07.2024, the Indictment had been received by the High Court, as evidenced by the journal entry dated 16.07.2024. The Indictment was served on the Accused on 09.08.2024, but the original case record was not available on that day. Thereafter, the case was called on several occasions for various reasons and was finally scheduled for pre-trial on 22.11.2024.

17. Nevertheless, even by 31.01.2025, the pre-trial had not been concluded. What can be gleaned from the aforementioned sequence of events is that the delay in prosecuting the Accused is inordinate and oppressive, given the nature of the case against him.

18. The objective of Section 83 of the Ordinance is to keep a person suspected or accused of committing an offence under this Act in remand custody until the conclusion of the trial. At the same time, the legislature does not intend to keep a suspect or an accused in remand for an indefinite period due to shortcomings in investigations or prosecutions, as it would deny the individual's freedom guaranteed by the Constitution.

19. In the present case, the Accused has been languishing in remand since 2022, and the trial against him has not yet commenced due to reasons beyond his control. The delay in dispatching the indictment, the non-availability of the case record, and the absence of vital documents relevant to the trial have contributed to the delay. Given the net quantity of Methamphetamine and the facts and circumstances of the case, particularly those reported in the 'B' Report, the delay observable in the present case cannot be justified and amounts to an oppressive and inordinate delay, which constitutes exceptional circumstances that persuade this Court to grant bail to the accused

20. As held in ***Attorney General v. Ediriweera*** S.C. Appeal No. 100/2005 [2006 BLR 12];

> *"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…".*

21. For the reasons stated above, I order to enlarge the Accused on bail subject to following conditions:

    a. Rs. 200,000/- cash bail;
    b. To provide two sureties who should execute bonds to the value of Rs. 500,000.00 each;
    c. The sureties should provide certificates from the Grama Sevaka and police reports from respective residential areas of such sureties;
    d. The Accused shall surrender the passport or any travel document of the Accused, if he has any, to the Registrar of the High Court of Colombo;

e. The Accused is ordered to report to the Officer-in-Charge of the Wellampitiya Ratnapura Police Station on every last Sunday of the month before 12 noon.

22. This Application is accordingly allowed and the Registrar of this Court is directed to transmit a copy of this Order to the Registrar of the High Court of Colombo and the officer-in-charge, Police Station Wellampitiya forthwith.

Judge of the Court of Appeal

P.Kumararatnam, J.

I agree.

Judge of the Court of Appeal