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:
CA Bail/0444/24

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

Complainant

MC Colombo
No. B 88240/3/2023

Vs.

Aravinth Kathirgamanathan

3rd Suspect

AND NOW BETWEEN

Aravinth Kathirgamanathan
No. 35/5/6, Boswell Residence,
Boswell Place, Wellawatta.
(Presently in remand)

3rd Suspect-Petitioner

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.**
R.P.Hettiarachchi, J.

COUNSEL : **Sanjith Senanayake for the Petitioner.**
Tharaka Kodagoda, SC for the Respondents.

ARGUED ON : **22/05/2025.**

DECIDED ON : **1 7 /06/2025.**

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ORDER

P.Kumararatnam,J.

The Petitioner is the 3rd Suspect named in the B Report filed in the Magistrate Court of Colombo case bearing No. B 88240/03/2023.The Petitioner has filed this bail application under Section 83(2) of the Poisons, Opium and Dangerous Drugs (Amendment) Act No. 41 of 2022.

According to the B report filed by the police, Initially, upon an information the police had arrested two persons who were named as the 1st and 2nd Suspects in this case. Acting on the information provided by the 1st Suspect, the Petitioner was arrested on 14.03.2023 and recovered some substance suspected to be Methamphetamine from left side trouser pocket of the Petitioner. The substance weighted about 50 grams.

The Petitioner was produced in the Magistrate Court of Colombo under Section 54A (b) and (d) of the Poisons, Opium and Dangerous Drugs Ordinance as amended by Act No. 13 of 1984.Further, a detention order under Section 83(3) of the said Act was obtained for further investigation.

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

1. The Petitioner states that he has no previous conviction or pending case of the same nature.
2. The raid on the Petitioner is false, as the Petitioner was consuming alcohol when the police officer entered the Petitioner's house.

3. Although the Petitioner has been in custody for almost 1 year and 7 months since the date of his arrest, the indictment has not been served to the Petitioner even though it has been almost 1 year and 6 months since the government analysis report was received.
4. Since the indictment has not been served and the trial has not commenced, it is imperative to consider the fact that it will take a long duration of time for the trial to be concluded, and the Petition will languish in remand indefinitely.
5. The Petitioner respectfully states that the wife of the Petitioner has been suffering from Epilepsy for a long period of time, and she finds it challenging to survive alone by herself without the support of the Petitioner when the symptoms of the said illness appear in day-to-day life at spontaneous occasions that could end with grave danger to petitioner's wife.
6. The Petitioner further states that her wife, apart from suffering from epilepsy, she is also a psychiatric patient who has been under treatment for depression for a long duration of time, she is continuously treated at the university psychiatric unit of the National Hospital. She is a person who has suicidal thoughts and thoughts of endangering her life.
7. The Petitioner respectfully states that the Petitioner is the father of her 11-year-old daughter.
8. The Petitioner respectfully states that his daughter is diagnosed of Pulmonary Stenosis, which falls into the category of heart diseases that involves the narrowing of the pulmonary valve, which controls the flow of blood from the heart's right ventricle into the pulmonary artery towards lungs, and, she is suffering from Epilepsy.
9. The Petitioner is a 42-year-old person, and he is a sales Executive at Suganthan Fish Market. and the Petitioner is a person of very good character.

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 been forwarded to the High Court.

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".*

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 indictment was considered inter alia in releasing the suspect on bail. According to the Petitioner, at present her family is going through untold hardship without proper income and care.

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

The 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. Further, his wife is suffering from Epilepsy for a longer period of time. She is also suffering from psychiatric disorder. Her medical reports obtained from the National Hospital has been filed and marked as P15.

Further, his daughter is diagnosed of Pulmonary Stenosis, which falls into the category of heart diseases that involves the narrowing of the pulmonary valve, which controls the flow of blood from the heart's right ventricle into the pulmonary artery towards lungs, and, she is suffering from Epilepsy. The relevant clinical reports are annexed to this application.

He has no previous or pending case in any of the Court.

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 Petitioner states that the Government Analyst Report was received on 25.04.2023. Even though the indictment filed in the High Court, it takes long time to commence the trial. Further the Petitioner contends that the Methamphetamine was not recovered from his possession.

Offences under Section 54A(b) and 54A(d) 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 period in remand, the pure quantity Methamphetamine detected, the medical condition of his wife and daughter and other circumstances of the case, I consider this an appropriate case to grant bail to the Petitioner. Hence, I order the Petitioner be granted bail with following strict conditions.

1. Cash bail of Rs.100,000/=.

2. To provide 02 sureties. They must sign a bond of two million each.
3. The Petitioner and the sureties must reside in the address given until conclusion of his case.
4. Not to approach any prosecution witnesses directly or indirectly or to interfere with.
5. To surrender his 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 Petitioner.
6. To report to the Officer-in-Charge, Police Narcotics Bureau, Colombo-01. on the last Sunday of every month between 9am to 1pm.
7. Any breach of these conditions is likely to result in the cancellation of his bail.

The Bail is allowed and the Learned Magistrate of Colombo is hereby directed to enlarge the Petitioner on bail on the above bail conditions.

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

JUDGE OF THE COURT OF APPEAL

R.P.Hettiarachchi, J.

I agree.

JUDGE OF THE COURT OF APPEAL