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 Act as amended by Act No 41 of 2022.

Officer in Charge,
Police Narcotics Bureau,
Colombo 01

Complainant

Vs

Court of Appeal Bail Application:
CA/BAL/468/2024

Magistrates Court: Welisara
Case No: **B 2227/23**

Sanmugam Udayaraj,
No.21/32, Church Lane,
Wattala.
(Presently in Remand Custody)

Suspect

AND NOW BETWEEN

Murugesan Hellan Dilani,
No.10, /78,
Sri Kalyani Gangarama Mawatha,
Mattakkuliya,
Colombo 12.

Petitioner

Vs

1. Officer in Charge,
   Police Narcotic Bureau,
   Colombo 01.

2. Hon. Attorney General,
   Attorney General's Department,
   Colombo 12.

Respondents

Shanmugam Udayaraj,
(Presently in remand Custody)
Suspect

Before : **Hon. P Kumararathnam, J.**

Hon. Pradeep Hettiarachchi, J.

Counsel : Chinthaka Rankothge, Shanuka Bandara, Roshanth Perera for the Petitioner.

Tharaka Kodagoda, S.C for the Respondents.

Inquiry on : 14.05.2025

Decided on : 25.06.2025

Pradeep Hettiarachchi, J

ORDER

1. This is a bail application preferred under Section 83(2) of Poisons, Opium and Dangerous Drugs Ordinance by the petitioner on behalf of the Suspect Shanmugam Udayaraj. The suspect had been arrested on 08.05.2023. by the team of officers attached to the Special Task Force of Gonahena Camp.

2. At the time of the arrest, it is alleged that he had in his possession of Rs.1.4 million concealed in a helmet. Thereafter, the officers went to the suspect's house with him and had recovered further Rs 110000/- and a parcel of 1.14Kg of methamphetamine of which the pure quantity according to the Government Analyst is 558.9 grammes.

3. According to the B Report dated 09.05.2023 filed by the Police Narcotic Burau, a detention order was issued by the Magistrate Court for a period of 9 days. Thereafter, the suspect was produced before the Magistrate of Welisara on 14.05.2023 and was remanded. He has been in remand since that date.

4. The petitioner urged the following grounds to be considered as exceptional circumstances for releasing the suspect on bail.
    a. The suspect is the sole breadwinner of his family and has two children aged 8 years and 3 years respectively. The suspect's mother who had undergone a heart

surgery, and mother-in-law also live with the petitioner and suspect. Both the mother and mother-in-law are suffering from diabetes and high blood pressure;

b. The suspect is suffering from kidney decease and needs constant medical care; and,

c. The suspect has no previous convictions.

5. Opposing the bail application, the State Counsel submitted that the petitioner had failed to demonstrate the existence of exceptional circumstances. It was further submitted that the indictment had been signed and was ready to be dispatched, and therefore, the trial could commence without further delay.

6. Under Section 83(2), this Court can consider bail only if exceptional circumstances are made out.
Section 83 as amended by the Poisons, Opium and Dangerous Drugs (Amendment) Act, No. 41 of 2022 reads:

Section 83. (1) Subject to the provisions of sections 84, 85 and subsection (2) of this section, a person suspected or suspect 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 suspect 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."

7. The provisions of Section 83 (2) as amended by Act, No. 41 of 2022, decrees that a person suspect 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 suspect to establish the existence of exceptional circumstances.

8. As stated in ***Labukola Ange Gedara Ashani Dhanishika CA (PHC) APN 04/2016***, the intention of the Legislature is to keep in remand any person who is suspected of or accused of possessing or trafficking heroin until the conclusion of the case. The section 83(1) of the Poisons, Opium, and Dangerous Drugs Ordinance expresses the intention of the Legislature. It is enacted by the Parliament that *"No person suspected or accused of an offence under section 54A or section 54B of this Ordinance shall be released on bail, except by the High Court in exceptional circumstances*

9. What constitutes exceptional circumstances is not comprehensively defined in the Act and must be determined based on the context and circumstances of each case.

10. In the instant application, the petitioner argued that the suspect's health condition should be considered an exceptional circumstance justifying the grant of bail. It is worth noting, however, that although the petitioner submitted several medical records, none indicate that the suspect cannot receive appropriate treatment at the prison hospital. Moreover, the records do not suggest any life-threatening condition that would arise if bail were not granted.

11. Furthermore, the petitioner submitted that the suspect is the sole breadwinner of the family and has two children aged 8 and 3 years, respectively. It was further submitted that the suspect's mother, who has undergone heart surgery, and his mother-in-law also live with the petitioner and the suspect. Both the mother and mother-in-law are reportedly suffering from diabetes and high blood pressure. In my opinion, these grounds do not constitute exceptional circumstances warranting the grant of bail.

12. Needless to say, when the suspect is the sole breadwinner and is in remand, it may affect his family. However, this is a common situation observed in many cases. These are not unusual or extraordinary circumstances that justify a deviation from the standard practice of refusing bail in cases of this nature.

13. In ***S v Peterson 2008 (2) SACR (C) 355*** the Court held that 'Generally speaking "exceptional" is indicative of something unusual, extraordinary, remarkable, peculiar or simply different but that because of varying degrees, it will therefore depend on the context and on the particular circumstances of the case under consideration.

14. Therefore, I find it difficult to regard the suspect's health condition or the other personal difficulties raised by the petitioner as sufficient grounds constituting exceptional circumstances for the grant of bail.

13. Moreover, according to the Government Analyst's report dated 30.11.2023, the net quantity of the drug is 558.9 grams, which, in my view, was intended for commercial purposes.

14. In ***Abdul Quideer Aboobucker v. AG [CA/PHC/APN 42/2011 (CAM 31.08.2011)***], this Court has rejected the application for bail, considering the fact that the alleged quantity of drugs recovered from the suspect is of a commercial nature.

15. In any event, the punishment for an offence of this nature is either the death penalty or life imprisonment. Hence, there is a high likelihood that the suspect would abscond if granted bail.

16. In the present case, for the reasons stated above, this Court is not persuaded by the grounds advanced by the petitioner in favor of the suspect. Hence, the petitioner's bail application is dismissed.

17. The Registrar of this court is directed to communicate this order to the Magistrate Court of Welisara and the Officer-in-Charge of the Police Narcotics Bureau.

Judge of the Court of Appeal

P.Kumararatnam, J.

I agree.

Judge of the Court of Appeal