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

In the matter of an application for bail in terms of the Section 83 of the Poisons, Opium and Dangerous Drugs Ordinance as amended by the Act No.41 of 2022.

Court of Appeal

Application No.

CA Bail 0492/2024

The Officer-in-Charge

Police Narcotics Bureau,

Colombo-01.

MC Maligakanda

COMPLAINANT

Case No: B 26928/2023

Vs.

Rupasinha Arachchige Nirupa Kumar

(Presently in remand prison)

SUSPECT

AND NOW BETWEEN

Mirissa Deeyagahage Sunethra Malkanthi

AG 4, Dias Place, Gunasinghapura,

Colombo-12.

PETITIONER

Vs.

1. Th Officer-in-Charge
   Police Narcotics Bureau,
   Colombo-01.
2. The Attorney General
   Attorney General's Department,
   Colombo-12.

RESPONDENTS

BEFORE : **P. Kumararatnam, J.**
K.M.S.Dissanayake, J.

COUNSEL : **Hansani Rupasinghe for the Petitioner.**
Malik Azeez, SC for the Respondents.

ARGUED ON : **04/04/2025.**

DECIDED ON : **03/06/2025.**

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ORDER

P.Kumararatnam,J.

The Petitioner is the wife of the Suspect named in the Magistrate Court of Maligakanda bearing case No. B 26928/2023.

According to the B report submitted, the Suspect was arrested upon an investigation carried out consequent to a tip off received by the officers attached to the Police Narcotics Bureau. As per the information the officers had gone to a hotel named Earl's Red Colombo situated in Dematagoda and arrested the Suspect and recovered two parcels of substance suspected to be Methamphetamine. The gross quantity of the contraband recovered from the Suspect is weighed about 20 grams and 48.13 grams respectively. Further, Rs.55,000/- cash also recovered from the Suspect.

Upon a Court order the contraband had been sent to the Government Analyst Department and according the Government Analyst Report dated 30.11.2023, 13.34 grams and 18.84 grams of pure Methamphetamine had been detected in the parcels sent for analysis.

The Suspect was produced in the Magistrate Court of Maligakanda and facts were reported under Section 54A (b) and (d) of the Poisons, Opium and Dangerous Drugs Ordinance as amended by the Act No.13 of 1984.Upon a Court order the Suspect was placed under a detention order to facilitate the Police Narcotics Bureau to conduct further investigation with regard to the detection.

The Petitioner alleges that the Suspect was taken into custody by the police on a mere conjecture without any reasonable suspicion. The Petitioner further alleges that no Methamphetamine or any other contraband had been detected from the Suspect.

The Petitioner submit that the Suspect had been in remand for little over 21 months. Indictment has not been filed in the High Court.

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

1. Non-existence of a prima-facie case against the Suspect.
2. Improbability of the version of the prosecution.
3. The Suspect has been in remand custody for little over 21 months.

4. The Suspect is a married person and the sole breadwinner of the family. At present the members of the family are undergoing untold hardship due to the incarceration of the Suspect.

The State Counsel submits that the dossier of the investigation has been received by the Attorney General's Department and registered under AG reference No. CR3/275/2024 and is under consideration.

The 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.

In this case, the pure quantity of Methamphetamine detected in the production by the Government Analyst is 13.34 grams and 18.84 grams. Hence, this court has jurisdiction to consider granting of bail as per the new amendment.

The Counsel for the Petitioner submits that undue and long delay in keeping the Suspect in remand custody is a clear violation of his human rights and is against the presumption of innocence guaranteed under the Article 13(5) of the Constitution.

Although 21 months had been passed after her arrest, the trial before the High Court has not been commenced. Expeditious trial is an integral element of a fair trial.

The Suspect had committed the offence while he was on bail for two similar offences. On 07.11.2021 the Suspect was arrested by the Keselwatte Police for possession of 66.348 kilograms of Cannabis Sativa L. The case is pending before Maligakanda Magistrate Court under case No. 22455/2021. On 01.01.2022 the Suspect was arrested by the Police Narcotics Bureau for the possession of 16.150 grams of Heroin (Diacetylmorphine) and 156 grams of Methamphetamine. The case is now pending before the High Court of Colombo under case No. HC 4385/2023.

The learned State Counsel very correctly submitted that the Petitioner had not come before this Court with clean hands, as she suppressed the information regarding the pending similar matter before Magistrate Court and the High Court.

In this case the Accused alleged to have committed Offences under Section 54A(b) and (d) of the Poisons Opium and Dangerous Drugs Ordinance as amended by the Act No.13 of 1984.

I agree with the learned State Counsel that this is not appropriate case to consider the factual and evidentiary matters pertain to the investigations at this stage. It can only be tested at the trial upon the witnesses being cross examined and re-examined.

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 13.34 grams and 18.84 grams respectively. Considering the seriousness of the sentence prescribed under the Poison, Opium and Dangerous Drugs Ordinance, there is a high risk of absconding. Further, the Suspect has committed these offences while two similar cases are pending before Courts, which is a clear testament of his propensity in committing drug related offences.

Hence, I do not consider the delay little over 21 months 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 detected, the charges going to be framed against the Suspect, the pending cases and other circumstances of the case, I consider this is not an appropriate case to sanction bail to the Suspect at this stage. Hence, I refuse to release the Suspect on bail.

Hence, this Bail Application is dismissed.

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

JUDGE OF THE COURT OF APPEAL

K.M.S.Dissanayake, J.

I agree.

JUDGE OF THE COURT OF APPEAL