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

In the matter of an application for Bail under Section 83(2) of the Poisons, Opium and Dangerous Drugs Ordinance (Amendment) Act No. 41 of 2022.

Karunapalage Don Hasini Rakshala
No. C/3/4, Sanchi Arachchi Watta,
Colombo-12.

Court of Appeal Application No:

CA/Bail 0501/24

High Court of Colombo
Case No.HC 5245/2025
MC Maligakanda
Case No.B 28517/2023

Petitioner

Vs.

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

Respondents

AND

Hettiarachchige Rumesh Udaya Kumara

(Presently in remand)

Suspect

BEFORE : **P. Kumararatnam, J.**
R.P.Hettiarachchi, J.

COUNSEL : **Nalin Weerakoon with Shalini Jayasinghe for the Petitioner.**
Tharaka Kodagoda, SC for the Respondents.

ARGUED ON : **26/05/2025.**

DECIDED ON : **20/06/2025.**

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ORDER

P.Kumararatnam,J.

The Petitioner is the husband of the Suspect named in the Petition. The Petitioner filing this Application has invoked the jurisdiction of this Court to grant bail to the Accused upon suitable condition as this Court considers appropriate.

The Accused was produced under the case bearing No. B/28517/23 in the Magistrate Court of Maligakanda.

According to the B report filed in the Magistrate Court of Maligakanda, the Accused in this case was arrested by the police officers attached to the Police Narcotics Bureau, Colombo-01 on 17.07.2023 on the allegation of possession and trafficking of 35.600 grams of Methamphetamine which is punishable under Sections 54A (d) and (b) of the Poisons, Opium

and Dangerous Drugs Act No. 13 of 1984 as amended by Act No.41 of 2022.

The substances recovered from the Accused had been sent to the Government Analyst Department. According to the Government Analyst Report, 20.00 grams of pure Methamphetamine detected in the parcel recovered from the Accused.

According to the Petitioner, the Accused vehemently denies the charges levelled against him.

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

1. Extended incarceration could cause irreparable damage to the accused.
2. The Accused was arrested on 17.07.2023 and he is still in remand custody
3. No proper investigation has been conducted in this case.

The Counsel for the Accused submits that the Accused is in remand for 01 year and 11 months. Considering the facts and the circumstances of this case, the Petitioner states that the prosecution will not be able to establish a prima facie case against the Accused.

According to the Learned State Counsel, the Accused has been indicted in the High Court of Colombo under case No. HC 5245/2025, which is due to be called on 09.05.2025.

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.

(3) For the purpose of this section "dangerous drug" means Morphine, Cocaine, Heroin and Methamphetamine.

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 **Labynidarage Nishanthi v. Attorney General CA (PHC) APN 48/2014** the court held that:

> *"It is trite law that any accused or suspect having charged under the above act will be admitted to bail only in terms of section 83(1) of the said Act and it is only on exceptional circumstances. Nevertheless, it is intensely relevant to note, the term 'Exceptional circumstances' has not been explained or defined in any of the Statutes. Judges are*

given a wide discretion in deciding in what creates a circumstance which is exceptional in nature.

There is plethora of cases in the legal parlor which had identified what creates an 'exceptional circumstances' in relation to granting bail…"

The Learned Counsel for the Petitioner contended that the Accused has been in remand custody for 01 year and 11 months. Hence, he invites this Court to consider this as an exceptional circumstance.

Period in remand custody cannot be considered as an exceptional circumstance in all case. It has to be decided on a case-by-case basis to consider whether the remand period already spent could be considered as an exceptional circumstance.

In **Ashani Dhanushshika v. Attorney General [CA (PHC) APN 04/2016]** the court held that:

" In the present case the petitioner failed to establish any exceptional circumstances warranting this court to exercise the revisionary jurisdiction. The petitioner's first point is that the suspect is in remand nearly for two years. The intention of the legislature is to keep in remand any person who is suspected or accused of possessing or trafficking heroin until the conclusion of the case. The Section 83(1) of the Act expresses the intention of the legislature…"

In **Carder v. Officer-in-Charge, Narcotics Bureau (2006) 3 SLR 74** the court held that:

" …Provision has been made in the Bail Act to release persons on bail if the period of remand extends more than 12 months. No such provision is found in the case of Poison, Opium and

> *Dangerous Drugs Ordinance. Although bail was granted in some of the cases mentioned above, none of these cases refer to the time period in remand as constituting an exceptional circumstance. Hence bail cannot be considered on that ground alone.*

According to the decisions cited above, the period spent in the remand custody cannot be considered as an exceptional circumstance in this case.

Further, facts of this case do not constitute exceptional circumstances. Issues pertaining to the case should only be considered at the trial stage.

In the case of **A.K.Nandasena v. The Attorney General CA(PHC) APN 147/2017 the court held that:**

> *"…that facts of a case do not constitute exceptional circumstances and such issues need to be addressed at the trial stage."*

Hence, the facts of the case will not be addressed in considering this bail application.

In this case the pure quantity of the Methamphetamine detected in the production by the Government Analyst is 20.00 grams. The dangerous drugs found in the possession of the Accused indicates that he is a drug dealer of large.

Further, the delay 01 year and 11 months in remand does not fall into the category of excessive and oppressive delay considering the circumstances of this case as the offences committed under Sections 54A(d) and 54A(b) of the Poisons Opium and Dangerous Drugs Ordinance as amended by the Act No.13 of 1984 and Act No. 41 of 2022.

The Accused has five previous convictions. Out of five two are for the possession of Methamphetamine.

Considering all the materials placed before this court, the Petitioner has failed to establish exceptional circumstances to release the Accused on bail. Hence, this bail application is refused.

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

JUDGE OF THE COURT OF APPEAL

R.P.Hettiarachchi, J.

I agree.

JUDGE OF THE COURT OF APPEAL