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

In the matter of an application for Bail made under and in terms of Section 83(2) of the Poisons, Opium and Dangerous Drugs (Amendment) Act No. 41 of 2022 dated 23.11.2022.

Karahampitigoda Pamunuwalage

Court of Appeal Hemapala

Bail Application No: No. 195, Kandy Road, Molagoda,

CA Bail 0175/2024 Kegalle.

MC Kegalle Case No. **PETITIONER**

B/6812/PE/2023

Vs

1. The Head Quarter Inspector
   Police Station
   Kegalle.
2. The Attorney General
   Attorney General's Department,
   Colombo-12.

COMPLAINANTS-RESPONDENTS

1. B.M.Rukman Basnayake
   No.B/21/A, Beragala,
   Kegalle.

2. Karahampitigoda Pamunuwalage Inosha Swarnamali Dissanayake
No. 195, Molagoda,
Kegalle.

SUSPECT-RESPONDENTS

(Presently at Kegalle remand prison)

BEFORE : **P. Kumararatnam, J.**
K.M.G.H, Kulatunga J.

COUNSEL : **Kamal Suneth Perera instructed by Anjali Fernando for the Petitioner.**
Malik Azeez, SC for the Respondents.

ARGUED ON : **04/03/2025.**

DECIDED ON : **26/03/2025.**

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ORDER

P.Kumararatnam,J.

The Petitioner is the father of the 2nd Suspect (Hereinafter referred to as the Suspect) named in M.C. Kegalle Case No. B 6812/2023.He had applied for bail for the Suspect-daughter.

On 19.12.2023, the Suspect was arrested along with another who was named as 1st Suspect, at Kegalle on a tip off received from an officer attached to the Kegalle Police Station. The Suspect along with the 1st Suspect were arrested while they were traveling in car bearing No.65-

2186 driven by the 1st Suspect. A parcel containing Methamphetamine was recovered underneath the driving seat of the car. Further a small grocery bag was recovered from the trouser pocket of the 1st Suspect. The substance in that parcel was reacted for Heroin. The gross quantity of Methamphetamine weighed about 636.680 grams and the gross quantity of the Heroin weighed about 9.840 grams.

The Suspect was searched thereafter and the salutes had found Rs.1,020,000/- in Rs.5000/- denomination from the hand bag of the Suspect. The Suspect was arrested for aiding and abetting of 1st Suspect for trafficking and possession of Methamphetamine and Heroin. A separate investigation is being carried out under the Anti Money Laundering Act against the Suspect.

The Suspect and the 1st Suspect were produced and facts were reported to the Kegalle Magistrate under Section 54A (d) and (b) of the Poisons, Opium and Dangerous Drugs Ordinance as amended by the Act No.13 of 1984.

The production had been sent to the Government Analyst Department on 16/01/2024. After analysis, the Government Analyst had forwarded the report to Court on 13/09/2024. According to the Government Analyst, 533.4 grams of Methamphetamine (Net) and 2.90 grams of Heroin (Net)had been detected from the substance sent for the analysis.

According to the Petitioner, the Suspect was arrested without any contraband in his possession. She was arrested solely for the purpose of keep her in remand custody from a lengthy period of time. According to the Petitioner the Suspect is a divorcee and engage in several businesses including sales of drinking water and CCTV systems.

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

1. The Suspect is the sole breadwinner of the family and she looks after the Petitioner-father who is 72 years old.

2. Due to his incarceration of the Suspect, the effort to find a marriage proposal for the Suspect has hindered.
3. The Suspect had been in remand for little more than15 months.
4. She is business woman by profession.

The Learned State Counsel opposing for bail, 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.

The suspect is in remand nearly 15 months. According to the Government Analyst Report, the pure quantity of Methamphetamine detected from the possession of Suspect is 533.4 grams and the pure quantity of Heroin is 2.90 grams.

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

The Counsel for the Petitioner submitted that the police have fabricated a case against the Suspect.

I agree with the learned State Counsel that the factual and evidentiary matters pertain to the investigations can only be tested at the trial upon the witnesses being cross examined and shall not be tested at the time of hearing this bail application considering the nature of this case.

Further, I do not consider the delay nearly 15 months in remand falls into the category of excessive and oppressive delay considering the circumstances of this case. Further, family situation of the Suspect cannot be considered as an exceptional circumstance, as it is the normal day to day life of the people.

The learned State Counsel submits that releasing the Suspect on bail at this juncture, would jeopardise the existing investigations pertaining to exposing drug cartel and money laundering.

The Offence under Section 54A (d) and (b) of the Poisons Opium and Dangerous Drugs Ordinance as amended by the Act No.13 of 1984 is a

serious offence and the seriousness of the offence should be considered when bail is considered.

In this case the pure Methamphetamine detected is 533.4 grams which certainly a commercial quantity. Additionally net quantity of 2.90 grams of Heroin too had been detected. Considering the seriousness of the sentence prescribed under the Poison, Opium and Dangerous Drugs Ordinance, there is a high risk of absconding.

Considering all these factors into account, especially the pure quantity of Methamphetamine detected, and other circumstances of the case, I consider this not an appropriate case to grant bail to the Suspect at this stage.

Hence, the bail application is hereby dismissed.

The Registrar of this Court is directed to send this order to the Magistrate Court of Kegalle, and the Head Quarter Inspector, Police Station, Kegalle.

JUDGE OF THE COURT OF APPEAL

K.M.G.H.Kulatunga, J.

I agree.

JUDGE OF THE COURT OF APPEAL