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 0302/2024

The Officer-in-Charge

Police Station,

Weliweriya.

MC Gampaha

Case No. B 4480/2023

COMPLAINANT

Vs.

Happa Arachchige Samal Yasanga Perera

SUSPECT

AND NOW BETWEEN

Nileththi Suweenitha

No. 23/F, Peramuna Mawatha,

Eldeniya, Kadawatha.

PETITIONER

Vs.

1. The Officer-in-Charge
   Police Station,
   Weliweriya.

2. The Attorney General
   Attorney General's Department,
   Colombo-12.

RESPONDENTS

Happa Arachchige Samal Yasanga Perera.

(Detained in Remand Prison)

SUSPECT-RESPONDENT

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

COUNSEL : **Buddika Thilakarathna for the Petitioner.**
Wishwa Wijesuriya, SC for the Respondents.

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

DECIDED ON : **20/05/2025.**

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ORDER

P.Kumararatnam,J.

The Petitioner is the aunt of the Suspect named in the Magistrate Court of Gampaha bearing case No. B 4480/2023.

According to the B report submitted by the Weliweriya Police, the Suspect was arrested by the officers attached to Gonahena Special Task Force Camp on 27.12.2023. The raid was conducted upon an information received by them. According to the information a Car bearing No. CBC 7742 in which the Suspect came was stopped and checked by the police. Some substance suspected to be Methamphetamine was recovered from the Suspect. He was arrested for possession of gross quantity of 10 grams of Methamphetamine. Upon further investigation a boutique was checked and the officers had recovered 111.490 grams of Methamphetamine from the boutique.

Upon a Court order the total contraband weighing about 121.490 grams had been sent to the Government Analyst Department and according the Government Analyst Report dated 11.01.2024, 84.11 grams of pure Methamphetamine had been detected in parcel sent for analysis.

The Suspect was produced in the Magistrate Court of Gampaha 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 Weliweriya Police 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 16 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 16 months.
4. The medical condition of the Petitioner and the sister of the Suspect.

The State Counsel submits that the dossier of the investigation has not been received by the Attorney General's Department yet.

The Suspect is in remand little over 16 months. According to Government Analyst Report, the pure quantity of Methamphetamine detected from the possession of the Suspect is 84.11 grams.

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 84.11 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 16 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 a similar offence. The case is pending before the Magistrate Court of Mahara. Further he has five previous convictions and four are related to drugs.

A court can consider evidence in a bail inquiry. During a bail hearing, the court typically evaluates various factors to determine whether a Suspect should be granted bail, such as the risk of flight, the likelihood of reoffending, and the safety of the community. The court may also

review evidence related to the Suspect's criminal history, ties to the community, and the specifics of the current charges.

Ultimately, the court's role during a bail inquiry is to weigh the available evidence to decide if the defendant can be trusted to return for trial or if they pose a danger to public safety.

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 84.11 grams. Considering the seriousness of the sentence prescribed under the Poison, Opium and Dangerous Drugs Ordinance, there is a high risk of absconding. Further, the Accused has committed these offences while a similar case is pending before the Magistrate Court of Mahara and has five previous convictions, which is a clear testament of his propensity in committing drug related offences.

Hence, I do not consider the delay little over 16 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 case and the previous convictions 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 Gampaha and Officer-in-Charge of the Police Station, Weliweriya.

JUDGE OF THE COURT OF APPEAL

K.M.S.Dissanayake, J.

I agree.

JUDGE OF THE COURT OF APPEAL