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.

1. The Head Quarter Chief Inspector
   Police Station
   Mannar.
2. The Officer-in-Charge
   Police Narcotics Bureau,
   Colombo-01.

Court of Appeal

Bail Application No: **COMPLAINANTS**

CA Bail 0322/2024 **Vs**

MC Puttalam Case No. Mohammad Abdul Rasheed Mohammad

B/26561/2023 Irshad

3rd SUSPECT

AND NOW BETWEEN

Ishani Rasika Appuhami alias Fathima Sahana,

Aanawasala, Kalpitiya.

PETITIONER

Vs

1. The Head Quarter Chief Inspector
   Police Station
   Mannar.
2. The Officer-in-Charge
   Police Narcotics Bureau,
   Colombo-01.
3. The Attorney General
   Attorney General's Department,
   Colombo-12.

RESPONDENTS

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

COUNSEL : **Nalin Fernando for the Petitioner.**
Jehan Gunasekera, SC for the Respondents.

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

DECIDED ON : **27/03/2025.**

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ORDER

P.Kumararatnam,J.

The Petitioner is the wife of the 3rd Suspect (Hereinafter referred to as the Suspect) named in M.C. Puttalam Case No. B 26561/2023.She had applied for bail for her Suspect-husband.

On 09.12.2023, the Suspect was arrested along with two others who were named as 1st and 2nd Suspects, at the Sea Green Hotel premises Kalpitiya on a tip off received from an officer attached to the Sri Lanka Navy Intelligence Unit. The Suspect along with two others were arrested while they were traveling in a three- wheeler owned by the Suspect. A parcel containing Methamphetamine was recovered from the three-wheeler by the police officers attached to Mannar Police Station.

The Suspect and two others were produced and facts were reported to the Puttalam Magistrate under Section 54A (c), (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 10/12/2023. After analysis, the Government Analyst had forwarded the report to Court on 06/05/2024. According to the Government Analyst, 236.8 grams of Methamphetamine had been detected from the substance sent for the analysis.

According to the Petitioner, the Suspect was arrested without any contraband in his possession. His three-wheeler was hired by the 2nd Suspect and was directed to follow a car in which the 2nd Suspect travelled.

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

1. No illegal substance was recovered from the possession of the Suspect at the time of his arrest.
2. He was going on a hire as requested by the 2nd Suspect.
3. The Suspect is the sole breadwinner of the family. He has three children.
4. The Petitioner had been in remand for little more than15 months.
5. He is a three-wheeler driver 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 little more than 15 months. According to the Government Analyst Report, the pure quantity of Methamphetamine detected from the possession of Suspect is 236.8 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 236.8 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 little more than 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.

The Offence under Section 54A (c) (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 236.8 grams, which certainly a commercial quantity. 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 Puttalam, the Head Quarter Chief Inspector, Police Station, Mannar and Officer-in-Charge of the Police Narcotics Bureau, Colombo-01.

JUDGE OF THE COURT OF APPEAL

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

I agree.

JUDGE OF THE COURT OF APPEAL