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.

The Officer-in-Charge
Police Station,

Kadawatha.

Court of Appeal

Bail Application No:

CA Bail 0334/2024

MC Mahara Case No.

B/523/2023

COMPLAINANT

Vs

Dingirige Roshan Chandrarathna

SUSPECT

AND NOW BETWEEN

Umagiliya Kankanamage Pradeepa

Chithragani

No.527/1/B, Ihala Biyanwila,

Kadawatha.

PETITIONETR

Vs

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

2. The Officer-in Charge,
   Police Station,
   Kadawatha.

RESPONDENTS

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

COUNSEL : **Sanjith Senanayake with Upul Dissanayake for the Petitioner.**
Wishva Wijesuriya, SC for the Respondents.

ARGUED ON : **25/02/2025.**

DECIDED ON : **21/03/2025.**

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ORDER

P.Kumararatnam,J.

The Petitioner is the mother of the Suspect. The Suspect has been named in M.C. Mahara Case No. B 523/2023. She had applied for bail for her son.

On 01.02.2023, the Suspect was arrested at Ihala Biyanwala area by Special Task Force Officers attached to the Gonahena STF Camp upon an allegation relating to possession of 30.870 grams of Methamphetamine (ICE). According to police the contraband was seized from right side pocket of the Suspect at the time of his arrest.

The suspect was produced and facts were reported to the Mahara 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 27/02/2023. After analysis, the Government Analyst had forwarded the report to Court on 24/08/2023. According to the Government Analyst, 24.23 grams of pure Methamphetamine (ICE) had been detected from the substance sent for the analysis.

According the Petitioner, the Suspect was arrested without any contraband in his possession. Having introduced Methamphetamine to him, he had been produced before the Magistrate Court of Mahara on 01.02.2023.

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

1. No drugs were found in his possession of the Suspect and the drugs is introduced by the police officers to him.
2. The Suspect had been in remand over 24 months.
3. The Suspect is the sole breadwinner of the family.
4. The Suspect has a 13-year-old daughter and her mother had deserted her.

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 learned State

Counsel further submits that the Suspect had 04 previous convictions and all are related to drugs.

The suspect is in remand for more than 24 months. According to the Government Analyst Report, the pure quantity of Methamphetamine detected from the possession of Suspect is 24.23 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 24.23 grams. Hence, this court has jurisdiction to consider granting of bail as per the new amendment.

The production was sent to the Government Analyst Department on 27.02.2023 and the report was received by the Magistrate Court of Mahara on 24.08.2023. Although 08 months have passed the prosecution is unable to send out indictment to the High Court.

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.

The Petitioner has not disclosed the previous or pending case/s against the Suspect. The learned State Counsel in his submissions submitted to this Court that the Suspect has four previous convictions and all are related to possession of drugs. This clearly shows his propensity towards committing drug related offences.

Further, I do not consider the delay more than two years in remand falls into the category of excessive and oppressive delay considering the circumstances of this case.

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 Methamphetamine detected is 24.23 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. Hence, it is prudent to indict and conclude the High Court case expeditiously keeping the Suspect in remand.

Considering all these factors into account, especially the pure quantity of Methamphetamine detected, the previous convictions related to drug offences 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 a copy of this order to the Magistrate Court of Mahara and Officer-in-Charge of the Police Station, Kadawatha.

JUDGE OF THE COURT OF APPEAL

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

I agree.

JUDGE OF THE COURT OF APPEAL