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,

Maradana.

Court of Appeal

Bail Application No: **COMPLAINANT**

CA Bail 0349/2024 **Vs**

MC Maligakanda Dissanayakage Danuka Sampath

Case No.B/2565/2024

SUSPECT

AND NOW BETWEEN

Allagoda Gamage Gayathri Madusha

No. J/1/1, Dias Place,

Colombo-12.

PETITIONETR

Vs

1. The Officer-in Charge,
   Police Station,
   Maradana.
2. The Attorney General
   Attorney General's Department,
   Colombo-12.

RESPONDENTS

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

COUNSEL : **Shamindra Rodrigo with Eranga Sinharage for the Petitioner.**
Malik Azeez, 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 wife of the Suspect. The Suspect has been named in M.C. Maligakanda Case No. B 2565/2024. She had applied for bail for her husband.

On 08.01.2024, the Suspect was arrested at Norris Canal Road area by Special Task Force Officers attached to the Jayewardenepura STF Camp upon an allegation relating to possession of 40.350 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 Maligakanda 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 11/01/2024. After analysis, the Government Analyst had forwarded the report to Court on 15/07/2024. According to the Government Analyst, 25.09 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 Maligakanda on 08.01.2024.

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 13 months.
3. The Suspect is the sole breadwinner of the family.
4. The Suspect has three children.

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. At present the dossier of investigations has been received by the Attorney General and the matter is under consideration under AG reference No. CR3/509/2024.

The learned State Counsel further submits that the Suspect has 02 pending cases and are related to drugs.

The suspect is in remand for more than 13 months. According to the Government Analyst Report, the pure quantity of Methamphetamine detected from the possession of Suspect is 25.09 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 25.09 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.

The Petitioner has not disclosed the pending cases against the Suspect. The learned State Counsel in his submissions submitted to this Court that the Suspect has two pending cases and all are related to possession of Methamphetamine. This clearly shows his propensity towards committing drug related offences.

Further, I do not consider the delay more than 13 months 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 pure Methamphetamine detected is 25.09 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 this order to the Magistrate Court of Maligakanda and Officer-in-Charge of the Police Station, Maradana.

JUDGE OF THE COURT OF APPEAL

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

I agree.

JUDGE OF THE COURT OF APPEAL