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

In the matter of an application for bail in terms of Section 83(2) of the Amended Act No.41 of 2022 to the Poisons, Opium and Dangerous Drugs Ordinance No.17 of 1929.

Court of Appeal Bail Application
No.CA Bail/0152/25
MC Maligakanda
Case No. B 21751/2024

The Officer-in-Charge
Police Station
Wolfendale Street.

COMPLAINANT

Arumugam Haridas
No. 47/43, Sumithrarama Road,
Kotahena, Colombo-13
(Presently in remand)

SUSPECT

AND NOW BETWEEN

Dharmalingam Laxmi Indumadi
No. 47/43, Sumithrarama Road,
Kotahena, Colombo-13

PETITIONER

Vs.

1. The Officer-in Charge
   Police Station,
   Wolfendale Street.

COMPLAINANT-RESPONDENT

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

RESPONDENT

Arumugam Haridas

SUSPECT-RESPONDENT

BEFORE : **P. Kumararatnam, J.**
Pradeep Hettiarachchi, J.

COUNSEL : **Tenny Fernando with Pasindu Gamage for the Petitioner.**
Vishwa Wijesuriya, SC for the Respondents.

ARGUED ON : **15/10/2025.**

DECIDED ON : **26/11/2025.**

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ORDER

P.Kumararatnam,J.

The Petitioner filing this Application has invoked the jurisdiction of this Court to grant bail to her husband who is the Suspect in this case upon suitable condition as this Court considers appropriate.

The Suspect was arrested on 06.04.2024 by the Police officers attached to the Wolfendale Police Station. He was produced before the Magistrate of Maligakanda in the case bearing No. B/21751 /2024.

Upon an information, police officers attached to the Wolfendale Police Station had arrested the Suspect at his rented house mentioned in this Petition and recovered 1558 grams of Methamphetamine (Gross) and 372 grams of Heroin (Gross) from the Suspect. The contraband was recovered hidden inside a 'Dolki', a double headed drum with a cylindrical wooden body covered with animal skin on both ends. According to the police the drugs were recovered inside the cylindrical wood body.

The Suspect was produced and facts were reported to the Maligakanda Magistrate under Sections 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 and after analysis, the Government Analyst had forwarded the report to the Maligakanda Magistrate Court. According to the Government Analyst, 497.4 grams of pure Methamphetamine and 65.54 grams of pure Heroin (Diacetylmorphine) had been detected from the substances sent for the analysis.

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

1. The Suspect was arrested without justifiable reasons as nothing recovered from him.
2. The complainant has failed to state the exact place where the illegal substance said to have been found from the Suspect in the initial B Report dated 05.01.2024.
3. The Suspect has been in remand custody little more than 18 months.
4. The Suspect is the sole breadwinner of the family.

The Learned State Counsel 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. According to the State, investigation notes have not been received by the Attorney General's Department up to now.

The suspect is in remand little more than 18 months. The Government Analyst Report is dated 30.09.2024. Although, more than one year has passed, the investigation notes pertaining to this case has not been received by the Attorney General's Department.

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 basis.

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".*

In **CA(PHC)APN 107/2018** decided on 19.03.2019 the court held that remanding for a period of one year and five months without being served with the in indictment was considered inter alia in releasing the suspect

on bail. According to the Petitioner, at present her family is going through untold hardship without proper income and care.

The Section 83 of the Poisons, 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.

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 497.4 grams and 65.54 grams of Heroin. Hence, this court has jurisdiction to consider granting of bail as per the new amendment.

The learned Counsel for the Petitioner contended that in the initial B Report filed by the police it was stated that the contrabands were recovered inside the drum of the Dolki. But according to their investigation notes it was mentioned that when the police arrived at the Suspect's house, he was hurriedly fixing one side of the cylindrical drum.

Further, although, in their notes mentioned of arresting a person called Subramanium Ajithkanth, this was not mentioned in the initial B Report or B Reports filed subsequently to the Court. The learned Counsel for the Petitioner strenuously argued that this omission cast a serious doubt as to whether the Suspect had exclusive possession of the alleged drugs.

On a perusal of the relevant B Report and the investigation noted submitted, there was no plausible material presented before the learned Magistrate to remand the Suspect with regard to the exclusive possession of substance recovered. Hence, the Learned Counsel for the Petitioner urged this Court to consider that detaining a suspect without plausible evidence and any legal action for an extended period of time amounts to a violation of his fundamental rights which can be considered as an exceptional ground.

Further, the investigation notes have not been received by the Attorney General's Department as at today. It is very pertinent to note that the Government Analyst Report pertaining to this case is dated 30.09.2024 but the indictment has not been considered up to now.

The learned State Counsel informs that he is unable to predict the date of receival of IBEs from the Police Narcotics Bureau. As such, it is uncertain as to when the indictment would be forwarded to the relevant High Court.

In **Nasher v. Director of Public Prosecution [2020] VSCA 144** the court held that:

> *"**a combination of delay**, onerous custodial conditions, and the relative weakness of the prosecution case may, when considered with all relevant circumstances, compel the conclusion that exceptional circumstances have been established".* [Emphasis added]

The right to trial without undue delay is found in numerous international and regional human rights instruments; for example, the International Covenant on Civil and Political Rights (Article 14(3)(c), the American

Convention on Human Rights (Article 8(1), the African Charter on Human and People's Rights (Article 7(1)(d), and the European Convention for the Protection of Human Rights and Fundamental Freedoms (Article 6(1).

When a person is kept in remand without considering his or her case for consideration for a considerable period of time, he or she should be released on bail pending trial. Otherwise, this will lead not only to prison overcrowding but also violates his or her fundamental rights which have been guaranteed under the Constitution.

Hence, I consider the delay more than 18 months in remand falls into the category of excessive and oppressive delay considering the circumstances of this case. Hence, considering all the circumstances of this case, the suspect has very good exceptional circumstances to consider this application in his favour. Further, remanding a suspect without taking any legal action will prejudice his or her rights and family as well.

Offences under Section 54A(d) and 54A(b) of the Poisons Opium and Dangerous Drugs Ordinance as amended by the Act No.13 of 1984 is no doubt serious offences but seriousness of the offence alone cannot form a ground to refuse bail. In considering these matters, the court must bear in mind the presumption of innocence.

Further, bail should never be withheld as punishment. Granting of bail is primarily at the discretion of the Court. The discretion should be exercised with due care and caution taking into account the facts and circumstances of each case.

Considering all these factors into account, especially the period in remand, uncertainty of considering the case materials and the circumstances of the case, I consider this is an appropriate case to grant bail to the Suspect. Hence, I order the Suspect be granted bail with following strict conditions.

1. Cash bail of Rs.200,000/=.

2. To provide 03 sureties. They must sign a bond of Rupees one million each. The Petitioner should be one of the sureties.
3. The Suspect and the sureties must reside in the address given until conclusion of his case.
4. Not to approach any prosecution witnesses directly or indirectly or to interfere with.
5. To surrender his passport if any, to court and not to apply for a travel document. The Controller of the Immigration and Emigration is informed of the travel ban on the Suspect.
6. To report to the Wolfendale Police on the 2nd and last Sunday of every month between 9am to 1pm.
7. Any breach of these conditions is likely to result in the cancellation of his bail.

The Bail Application is allowed and the Learned Magistrate of Maligakanda is hereby directed to enlarge the Suspect on bail on the above bail conditions.

The Registrar of this Court is directed to send this bail order to the Magistrate Court of Maligakanda and the Officer-in-Charge, Wolfendale Police Station.

JUDGE OF THE COURT OF APPEAL

Pradeep Hettiarchchi, J.

I agree.

JUDGE OF THE COURT OF APPEAL