IN THE COURT OF APPEAL OF THE DEMOCRATIC SOCIALIST

REPUBLIC OF SRI LANKA

In the matter of an Application for Bail under and in terms of Section 83(2) of the Poisons, Opium and Dangerous Drugs Act as amended by No. 41 of 2022.

Officer in Charge,
Colombo Crime Division,
Dematagoda.

Complainant

Vs

Shivakumar Prasanna

Suspect

Court of Appeal Bail Application:
CA/BAL/16//2025

Magistrate Court of Mountlavinia
Case No B 22535/23

AND NOW BETWEEN

Nadarajah Rathika,
No 136/1/E, Pragnaloka Cross Road,
Dehivala

Petitioner

Vs.

1. Hon Attorney General,
   Attorney Generals' Department
   Colombo 12.
2. Officer in Charge,
   Colombo Crime Division,
   Dematagoda

Respondents.

Before	:	**Hon. P Kumararathnam, J.**
		Hon. Pradeep Hettiarachchi, J.
Counsel	:	Razik Zarook, P.C.with Sanjith Senanayake for the Petitioner.
		Wishwa Wijesuriya, S.C. for the Respondents.
Inquiry on	:	04.06.2025
Decided on	:	20.06.2025

Pradeep Hettiarachchi, J

ORDER

1. The petitioner has filed the present application seeking the release of the suspect, Shivakumar Prasanna, on bail. The suspect was arrested on 27.09.2023 by officers of the Colombo Crime Division at his residence, No. 136/1/E, Pagnyaloka Cross Road, Kawdana. According to the 'B' Report, a bag containing a gross weight of 1.10 kg of methamphetamine was allegedly found in a room designated for religious observances at the same address.

2. The police also recovered Rs. 150,100/-, a mobile phone, and an electronic balance during the search. Subsequently, the suspect was produced before the Magistrate's Court of Mt. Lavinia and was remanded. He has remained in remand since 27.09.2023.

3. The seized substance was later sent to the Government Analyst for examination. According to the Government Analyst's Report, the pure quantity of methamphetamine is 354.3 grams. Accordingly, this Court has jurisdiction to consider the present bail application.

4. In light of the quantity of the pure methamphetamine, the provisions of Section 83 of the Poisons, Opium and Dangerous Drugs Ordinance, as amended by Act No. 41 of 2022, are applicable to this application.

Section 83 of the reads;

> *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 - (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.*
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> *(3) For the purposes of this section "dangerous drug" means Morphine, Cocaine, Heroin and Methamphetamine."*

5. In light of the above section, a person accused or suspected of being in possession of 10 grammes or more, is required to be kept in remand, unless such person satisfies this Court as to the existence of circumstances that are exceptional. So, the burden is on the suspect to establish the existence of exceptional circumstances.

6. It is trite law that for a particular ground to be considered as an exceptional circumstance in a given case, the facts and circumstances of that case are to be taken into account, as the Act does not define what exceptional circumstances are.

7. In the present case, the petitioner has advanced following grounds as exceptional circumstances warranting to grant bail.
    a. Medical condition of the suspect
    b. The alleged amphetamine parcel was not recovered from the exclusive possession of the suspect;
    c. Although the suspect has been in remand for over one year and three months, the indictment has not been served yet, and as such the suspect has been languishing in remand to date from the date of his arrest; and,
    d. The suspect is a father of a young child aged 07 years.

8. Admittedly, the alleged quantity of amphetamine was recovered from a room used as a shrine at the suspect's residence. Whether it was under the control of the suspect or another individual is a matter to be determined at trial, upon evaluation of the evidence. Therefore, at this stage, I am not inclined to consider that as an exceptional ground.

9. Furthermore, the fact that the accused is the father of a young child cannot be regarded as an exceptional ground, as such circumstances are common to many suspects under arrest.

10. However, the suspect's health issues, as outlined in the petition and supported by documentation, warrant the careful attention of this Court. The medical reports submitted indicate that the suspect was diagnosed with chronic calcific pancreatitis at the age of 15 and has been under continuous treatment since then. It is also noted that the suspect has undergone several invasive medical procedures.

11. Furthermore, the suspect is diabetic and insulin-dependent. Medical investigation reports confirm that he requires continuous medical care, diagnostic investigations, and treatment, which must be obtained externally due to the complexity of his health condition.

12. Moreover, the respondents have yet to indict the suspect, despite having received the I.B. Extracts and the Government Analyst's Report on 02.01.2025 and 30.11.2023, respectively. The delay on the part of the respondents in filing the indictment—which has resulted in the suspect being held in remand since the date of his arrest—is also a factor that must be taken into account in considering the present application.

13. In a number of cases, it has been held that the period of remand alone should not be considered a sufficient ground to grant bail to a person suspected or charged with an offence of this nature.

14. However, where the prosecution is unable to provide a reasonable explanation for the delay in proceedings, and there is no likelihood of the trial being concluded without further undue delay, such circumstances may give rise to what can be considered an oppressive delay.

15. It is also noteworthy that any person accused or suspected of a crime is presumed innocent until proven guilty in a court of law. This is a fundamental right recognized globally and enshrined in our Constitution. Therefore, the suspect in the present application remains presumed innocent unless and until the prosecution proves his guilt beyond a reasonable doubt.

16. When the aforesaid circumstances—namely, the suspect's health condition, the delay in forwarding the indictment, and the inability to commence and conclude the trial without undue delay—are considered in their totality, the cumulative effect, in my view, gives rise to exceptional circumstances as required under Section 83 of the Act to justify the grant of bail.

17. Nonetheless, this Court has not lost sight of the two previous convictions recorded against the suspect, as well as the substantial quantity of methamphetamine allegedly recovered from his residence. Accordingly, having taken these factors into account, the following bail conditions are imposed.
    a. Rs 500000/- cash bail with two sureties.
    b. Sureties must enter into a bond for a sum of Rs one million each;
    c. The suspect is required to report to the Colombo Crime Division Dematagoda on the first Sunday of every month between 9.00am to 10.00am;
    d. The suspect shall handover his passport if any to the Magistrate Court of Mt. Lavenia; and,
    e. The Controller of Immigration shall be informed the travel ban imposed on the suspect.

18. A violation of any of the aforementioned bail conditions shall result in the cancellation of bail. This order shall be communicated to the Officer-in-Charge of the Colombo Crime Division, Dematagoda, and to the Magistrate's Court of Mt. Lavinia.

Judge of the Court of Appeal

P.Kumararatnam, J.

I agree.

Judge of the Court of Appeal