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

In the matter of an application for bail in terms of the Section 83 of the Poisons, Opium and Dangerous Drugs Ordinance as amended by the Act No.41 of 2022.

**Court of Appeal**
**Application No.**
**CA Bail 0025/2025**

Marasinghe Pedige Dinusha Hasini
Marasinghe
No. 14/1C, Kirindiwita Rd, Udugampola.

**PETITIONER**

**Vs.**

**High Court of Gampaha**
**Case No: HC 83/2024**

1. The Officer-in-Charge
   Police Narcotics Bureau,
   Colombo-01.
2. The Hon. Attorney General
   Attorney General's Department,
   Colombo-12.

**RESPONDENTS**

Geeth Calvin Mathew Shyalo Direkx
(Currently remanded at Mahara Prison)

**ACCUSED-RESPONDENT**

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

**COUNSEL** : **Punarji D. Karunasekara for the Petitioner.**
**Jehan Gunasekara, SC for the Respondents.**

**ARGUED ON** : **30/04/2025.**

**DECIDED ON** : **04/06/2025.**

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**ORDER**

**P.Kumararatnam,J.**

The Petitioner is the wife of the Accused named in the Gampaha High Court Case No. HC 83/24.

According to the B report submitted by the Police Narcotics Bureau, Cololmbo-1, the Accused was arrested upon an investigation carried out consequent to a tip off received by the officers attached to Police Special Task Force Gonahena Camp. The Accused was arrested for allegedly having in possession of a quantity of 300 grams of Methamphetamine. The contraband was recovered concealing inside a pipe which was found under the bed of the Accused's house.

Upon a Court order, the contraband had been sent to the Government Analyst Department and according the Government Analyst Report dated 12.09.2023, 225.0 grams of pure Methamphetamine had been detected in the parcel.

The Accused was produced in the Magistrate Court of Gampaha and facts were reported under Section 54A (b) and (d) of the Poisons, Opium and Dangerous Drugs Ordinance as amended by the Act No.13 of 1984.

Upon a Court order, the Accused was placed under a detention order to facilitate the Police Narcotics Bureau to conduct further investigation with regard to the detection.

The Petitioner alleges that her Accused-husband was taken into custody on a mere conjecture without any reasonable suspicion. The Petitioner further alleges that no any contraband had been found in the exclusive and conscience possession of the Accused.

The Petitioner submits that the Accused has been in remand nearly 24 months. Indictment had been filed and the case is fixed for pre-trial conference.

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

1. Non-existence of a prima-facie case against the Accused.
2. The Accused has been in remand custody nearly 24 months.
3. Existence of material contradictions in the report filed by the investigation authority.
4. No previous case recorded against the Accused and has no pending cases.
5. The Accused is the sole breadwinner of the family.

The State opposing to bail submitted that the dossier of the investigations has been received by the Attorney General's Department and registered under CR3/37/2024. After the consideration of the same an indictment against the Accused had been filed in the High Court of Gampaha. Hence, Learned State Counsel submitted that the delay is not an exceptional circumstance to be considered to enlarge the Accused on bail. Further, the time spent for preparing the indictment does not constitute an exceptional circumstance.

The Accused has been in remand nearly 24 months. According to the Government Analyst Report, the pure quantity of Methamphetamine detected from the possession of the Accused is 225 grams.

The 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 225 grams. Hence, this court has jurisdiction to consider granting of bail as per the new amendment.

The Counsel for the Petitioner submits that undue and long delay in keeping the Accused in remand custody is a clear violation of his human rights and is against the presumption of innocence guaranteed under the Article 13(5) of the Constitution. The Counsel further alleges that although the indictment is filed in the High Court, the trial date is not determined yet.

The Counsel for the Petitioner submits to this Court that according to the very version of the Respondent, no actual, exclusive and conscience possession could be established against the Accused.

A court can consider evidence in a bail inquiry. During a bail hearing, the court typically evaluates various factors to determine whether a Suspect should be granted bail, such as the risk of flight, the likelihood of reoffending, and the safety of the community. Ultimately, the court's role during a bail inquiry is to weigh the available evidence to decide if the Suspect can be trusted to return for trial or if he poses a danger to public safety.

In this case the Accused alleged to have committed Offences under Section 54A(b) and (d) of the Poisons Opium and Dangerous Drugs Ordinance as amended by the Act No.13 of 1984.The offences are very serious offences and the seriousness of the offence should be considered when bail is considered.

I agree with the learned State Counsel that this is not an appropriate case to consider the factual and evidentiary matters pertain to the investigations at this stage. It can only be tested at the trial upon the witnesses being cross examined and re-examined.

In **Ranil Charuka Kulatunga v. Attorney General CA (PHC) APN 134/2015** the court held that:

> *"The quantity of cocaine involved in this case is 62.847 grams, which is a commercial quantity. If Petitioner is convicted, the punishment is death or life imprisonment. Under these circumstances, it is prudent to conclude the trial early while the Petitioner is kept in* custody*."*

In this case the pure Methamphetamine detected is 225 grams, which certainly a very high 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, I do not consider the delay nearly 24 months in remand falls into the category of excessive and oppressive delay considering the circumstances of this case.

Considering all these factors into account, especially the pure quantity of Methamphetamine detected, the charges framed against the Accused and other and circumstances of the case, I consider this is not an appropriate case to sanction bail to the Accused at this stage. Hence, I refuse to release the Accused on bail.

Hence, this Bail Application is dismissed.

The Registrar of this Court is directed to this Bail Order to the High Court of Gampaha and Officer-in-Charge of the Police Narcotics Bureau, Colombo-01.

**JUDGE OF THE COURT OF APPEAL**

**R.P. Hettiarachchi, J.**

I agree.

**JUDGE OF THE COURT OF APPEAL**