

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

In the matter of an application for Bail as under and in terms of Section 83(2) of the Poisons, Opium and Dangerous Drugs Ordinance of 17 of 1929 as amended by section 04 of the Act No.41 of 2022.

Court of Appeal Bail Application: The Officer-in-Charge

CA Bail/0312/24

Police Station

Wolfendhal Street

Complainant

MC Maligakanda

Vs.

No. B 31689/2023

Ranjan Darwin Akash

Suspect

AND NOW BETWEEN

Ranjan Dilwin Anjalo

No.168/10, Jinthupitiya Street,

Colombo-13.

Petitioner

Vs.

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

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

Respondents

BEFORE : **P. Kumararatnam, J.**
K.M.S.Dissanayake, J.

COUNSEL : **Tenny Fernando for the Petitioner.**
Jehan Gunasekara, SC for the Respondents.

ARGUED ON : **18/03/2025.**

DECIDED ON : **19/05/2025.**

ORDER

P.Kumararatnam,J.

The Petitioner is the brother of the Suspect named in the in-B Report filed in the Magistrate Court of Maligakanda case bearing No. B 31689/2023. The Petitioner has filed this bail application under Section 83(2) of the Poisons, Opium and Dangerous Drugs (Amendment) Act No. 41 of 2022.

According to the B report filed by the police, the Suspect was arrested on 07.08.2023 while on routine patrol duty. According to the police the Suspect was arrested inside his house with a bag holding at the time of his arrest. Upon search of the bag some contraband found inside reacted for Methamphetamine. The substance suspected to be Methamphetamine weighed about 244 grams.

The Suspect was produced in the Magistrate Court of Maligakanda under Sections 54A (b) and (d) of the Poisons, Opium and Dangerous Drugs Ordinance as amended by Act No. 13 of 1984.

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

1. Lack of concrete evidence.
2. Violation of standard procedure.
3. Presumption of innocence.
4. Risk of wrongful incarceration.
5. No application for detention order.
6. Common mode of fabrication.
7. Delay in filing proper charges.

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, indictment has already gone to the High Court of Colombo.

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”.

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 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 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.

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

The Counsel for the Petitioner urged this Court to consider that detaining a suspect without 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.

The Suspect has no previous or pending case in any of the 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 Petitioner states that the Government Analyst Report was received on 19.10.2023 and the indictment was sent to the High Court on 09.10.2024. Even though the indictment filed in the High Court, it takes long time to commence the trial. Further the Petitioner contends that the substances were not recovered from the Suspect.

Offences under Section 54A(b) and 54A(d) 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 Courts. The discretion should be exercised with due care and caution taking into account the facts and circumstances of each case.

The indictment was served on the Suspect on 18.03.2025. It was brought to the notice of the Court that the pre-trial has not commenced. Even though the indictment filed in the High Court, it takes long time to commence the trial. The Suspect is in remand custody for nearly 20 months. The indictment was served after 17 months of his arrest.

Considering all these factors into account, especially the period in remand, the pure quantity Methamphetamine detected and the other circumstances of the case, I consider this 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 02 sureties. They must sign a bond of two million each.
The Petitioner should be the 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 Officer-in-Charge, Police Station, Wolfendhal Street on the second 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 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 order to the Magistrate Court of Maligakanda and the Officer-in-Charge, Police Station, Wolfendhal Street.

JUDGE OF THE COURT OF APPEAL

K.M.S.Dissanayake, J.

I agree.

JUDGE OF THE COURT OF APPEAL