

**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 the Section 83(2) of the Poisons, Opium and Dangerous Drugs Ordinance amended by Act No.41 of 2022.

Court of Appeal

The Officer-in-Charge

Bail Application No:

Police Station

CA Bail 0475/2024

Vavuniya.

COMPLAINANT

Vs

MC Vavuniya

Pushparasa Thangeswaran

Case No. B 376/2024

5th Lane, Santhasolai,

Vavuniya.

(Presently in remand prison, Vavuniya)

SUSPECT

AND NOW

Pushparasa Nagammah

5th Lane, Santhasolai,

Vavuniya.

PETITIONER

Vs

1. The Officer-in-Charge
Police Station
Vavuniya.

COMPLAINANT-RESPONDENT

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

RESPONDENT

Pushparasa Thangeswaran
5th Lane, Santhasolai,
Vavuniya.

(Presently in remand prison, Vavuniya)

SUSPECT

<u>BEFORE</u>	:	P. Kumararatnam, J. K.M.S.Dissanayake, J.
<u>COUNSEL</u>	:	K.Kugaraja for the Petitioner. Tharaka Kodagoda, SC for the Respondents.
<u>ARGUED ON</u>	:	20/03/2025.
<u>DECIDED ON</u>	:	30/04/2025.

ORDER

P.Kumararatnam,J.

The Petitioner who is the mother of the Suspect named in MC Vavuniya Case No. B 376/2024 had applied for bail in terms of Section 83(2) of the Poisons, Opium and Dangerous Drugs Ordinance as amended by the Amendment Act No 41 of 2022.

On 18.02.2024, the Suspect was arrested in Vavuniya by officers attached to the Police Station, Vavuniya. The Suspect was arrested in front of a house. When he was checked a parcel contained some substances which reacted for Methamphetamine was recovered from underneath of his underwear. The substance recovered from the Suspect weighed about 80 grams.

The Suspect was produced and facts were reported to the Vavuniya Magistrate under Section 54A (b) and (d) and of the Poisons, Opium and Dangerous Drugs Ordinance as amended by the Act No.13 of 1984 and a detention order was obtained for further investigations under Section 82(3) of the said Act.

The production had been sent to the Government Analyst Department on 06/03/2024. After analysis, the Government Analyst had forwarded the report to Court on 30/09/2024. According to the Government Analyst, 20.22 grams of pure Methamphetamine had been detected from the substance sent for the analysis.

The Suspect is unmarried and looks after the Petitioner. He has been incarcerated for nearly about 14 months.

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

1. No drugs were found in his possession of the Suspect by the police officers.
2. Although the Government analyst report is received, indictment has not been preferred against the Suspect.
3. The Suspect is languishing in remand without having a prospect of a trial.
4. Presumption of innocence.
5. Sole breadwinner of the family.

The State opposing to bail submitted that when the police checked the Suspect the contraband was recovered by the police from the possession of the Suspect. The Learned State Counsel further submitted that the delay is not an exceptional circumstance to be considered to enlarge the suspect on bail.

The Suspect is in remand for nearly about 14 months. According to Government Analyst Report, the pure quantity of Methamphetamine detected from the possession of the Suspect is 20.22 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 20.22 grams. Hence, this Court has jurisdiction to consider granting of bail as per the new amendment.

The Learned Counsel for the Petitioner submitted that the Suspect vehemently denies all allegations made against him. The Suspect had taken the position that he never involved in drug trafficking or in possession as alleged by the police.

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 Learned 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 Government Analyst Report pertaining to this case has been received by the Magistrate Court of Vavuniya on 30.09.2024. Although 06 months passed after receiving the Government Analyst Report by the Court, the State has failed forward indictment against the Petitioner.

The learned State Counsel informs this Court that the investigation notes pertain to this case has been received by the Attorney General on 16.01.2025. But up to now no indictment has been forwarded to the 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 taking his or her case for trial 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 nearly about 14 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 commencing his or her trial will prejudice his or her rights and family as well.

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.

Considering all these factors into account, especially the pure quantity of Heroin detected, the period in remand and the 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.100,000/=.
2. To provide 02 sureties. They must sign a bond of two million each.
3. The Suspect and the sureties must reside in the address given until conclusion of his case.
4. 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.
5. To report to the Vavuniya Police Station on the last Sunday of every month between 9am to 1pm.
6. 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 Vavuniya is hereby directed to enlarge the Suspect on bail on the above bail conditions.

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

JUDGE OF THE COURT OF APPEAL

K.M.S. Dissanayake, J.

I agree.

JUDGE OF THE COURT OF APPEAL