

IN THE COURT OF APPEAL OF THE DEMOCRATIC SOCIALIST

REPUBLIC OF SRI LANKA

Court of Appeal Bail Application:
CA/BAL/0515/2024

Magistrate Court of Ratnapura:
84716A

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

Sellayya Ishwari ,
No 71/12/C, Reservoir Rd.,
Ratnapura.

Petitioner.

Vs.

1. Officer in Charge,
Police Station, Ratnapura.
2. The Hon Attorney General,
Attorney Generals' Department
Colombo 12.

Respondents.

Siwardhanam Mehan Dilshan

Suspect

Before : P Kumararathnam, J.

: Pradeep Hettiarachchi, J.

Counsel : Gayal Katuwana for the Petitioner
Tharaka Kodagoda, SC for the Respondents.

Inquiry on : 29.04.2025

Decided on : 30.05.2025

PRADEEP HETTIARACHCHI, J.

ORDER

1. This is an application for bail filed on behalf of the suspect named Siriwardhanam Mehan Dilshan (hereinafter referred to as the suspect) under Section 83(2) of the Poisons, Opium and Dangerous Drugs Ordinance.
2. The suspect was arrested on 27.12.2023 by officers of the Ratnapura Police for trafficking and possession of Methamphetamine. He was subsequently produced before the Magistrate Court of Ratnapura and remanded
3. According to the Police, they recovered 41.32g of Methamphetamine from the exclusive possession of the accused, which was later sent to the Government Analyst for examination. The Government Analyst's Report, dated 02.04.2024, indicates that the net quantity of Methamphetamine is 22.32g.
4. The petitioner states that the suspect has been in remand since December 2023, and as no indictment has yet been served, this may be considered an exceptional circumstance warranting the release of the suspect on bail.

5. The provisions of Section 83(2) of the Poisons, Opium and Dangerous Drugs Ordinance as amended by the Act No 41 of 2022, decrees that a person accused or suspected of being in possession of 10 grammes or more of the prescribed drugs, is required to be kept in remand, unless such person satisfies court as to the existence of exceptional circumstances.
6. Section 83 reads:

83(1). Subject to the provisions of section 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 Hogg 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 77; 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.
7. Nevertheless, exceptional circumstances are not defined in the Statute. Therefore, whether the grounds advanced on behalf of the suspect can be considered exceptional circumstances must be determined based on the facts and circumstances of each individual case.
8. As stated in ***Ramu Thamodarampillai vs The Attorney General [2004] 3 Sri. L.R 180***, “the decision must in each case depends on its own particular facts and circumstances.”
9. In an application of this nature, the burden rests on the suspect to establish the existence of exceptional circumstances. The petitioner urged the court to consider the following grounds as exceptional circumstances.

- a. The period of incarceration of the suspect;
 - b. After receiving the Government Analyst Report on 02.04. 2024, no indictment has been served on the suspect yet;
 - c. The discrepancy between the gross weight and pure weight of the substance;
 - d. One seal was partly broken in the sealed envelope containing the alleged Methamphetamine when produced to the Magistrate; and,
 - e. No illegal substances were found in the possession of the suspect, as confirmed by the supporting affidavits annexed to the bail application
10. It is to be noted that delay alone cannot be considered as an exceptional circumstance to grant bail for a suspect, unless it would amount to an oppressive and unexplainable delay.
11. In the present application, the suspect has been in remand since 27.12.2023. The prosecution received the Government Analyst's Report dated 02.04.2024. In the objections filed by the Respondents, no plausible explanation was provided for their failure to file an indictment against the suspect despite being in possession of the report.
12. Furthermore, the Respondents have neither explained the progress of the case nor offered any valid excuse for the delay in preparing the indictment. The learned State Counsel was also unable to inform this Court of the current status of the IB extracts, provide any reason for the delay, or indicate a date—or even a probable time frame—for when charges might be filed.
13. As such, it is the opinion of this Court that the delay of one year and six months, when considered in conjunction with the failure to provide an explanation, may be regarded as exceptional. It is important to emphasize that when a person is deprived of their liberty and held in detention, those responsible for such deprivation must consciously and diligently take the necessary steps to pursue, finalize, and institute legal action. If no reasonable explanation is provided for any delay, such delay will be deemed excessive or oppressive.

14. As held in ***Attorney General v. Ediriweera (S.C. Appeal No. 100/2005)***, “Delay is always a relative term and the question to be considered is not whether there was mere explicable delay, as when there is a backlog of cases, but whether there has been excessive or oppressive delay and this always depends on the facts and circumstances of the case...”.
15. It is common knowledge that the filing of certain cases is delayed due to their complex nature and the lack of adequate officers and resources. This is why delay, by itself, should not be considered an exceptional ground for granting bail in offences of this nature. As previously stated, delay must be assessed in conjunction with the specific facts and circumstances of each case. More importantly, the Court must not lose sight of the objective of the legislature when considering a bail application of this nature. The legislature, in its wisdom, has enacted these stringent laws with the aim of curbing the commission and repetition of such crimes, which have become a menace to society.
16. At the same time, the stringent provisions of a statute should not be used as a tool to deny a person’s liberty, thereby forcing them to live in trepidation without any knowledge of the progress of the investigation or the possible outcome.
17. Our Courts have recognized the prejudice caused to a suspect by lengthy and unjustified delays. To elaborate further, the right to a speedy trial is not only aimed at expediting the administration of justice but also at preventing the oppression of a citizen by keeping a criminal prosecution hanging over them for an indefinite period.
18. Therefore, it is incumbent upon the relevant authorities to act with due diligence to avoid inordinate delays in prosecuting offenders. If the prosecution fails to act with due diligence and cannot explain the inordinate delay on their part, it would, in my opinion, constitute an exceptional circumstance as required by Section 83 of the Act.
19. In the instant application, the Government Analyst Report was ready by 02.04.2024, but for no discernible reasons the Respondents have failed to take further steps to

indict the suspect who has been languishing in remand since 27.12.2023. Thus, the delay of framing charges against the suspect remains unexplained and inexcusable, which would clearly amount to an oppressive delay on the part of the Respondents.

20. In the instant application, the Government Analyst's Report was ready by 02.04.2024, yet for no discernible reason, the Respondents have failed to take further steps to indict the suspect, who has been languishing in remand since 27.12.2023. Therefore, the delay in framing charges against the suspect remains unexplained and inexcusable, which, in my opinion, amounts to an oppressive delay on the part of the Respondents.

21. Based on the above analysis, I am inclined to grant bail to the suspect, subject to the following conditions.

- a. cash bail in a sum of Rs. 100,000.00;
- b. to provide two sureties who should execute bonds to the value of Rs. 500,000.00 each;
- c. the sureties should provide certificates from the Grama Sevaka and police reports from respective residential areas of such sureties;
- d. the suspect shall surrender the passport or any travel document of the suspect, if he has any, to the Registrar of the Magistrate's Court of Ratnapura; and,
- e. The suspect is ordered to report to the Officer-in-Charge of the Ratnapura Police Station on every last Sunday of the month before 12 noon. This Application is accordingly allowed and the Registrar of this Court is directed to transmit a copy of this order to the Registrar of the Magistrate's Court of Ratnapura forthwith.

Judge of the Court of Appeal

P.Kumararatnam, J.

I agree.

Judge of the Court of Appeal