

**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/0351/23** Division Crime Investigation  
Bureau,  
Mount Lavenia.

.

**Complainant**

**MC Mount Lavenia**

**Vs.**

**No. B 13490/2023**

W.H.K. Mangala Silva

(In remand custody)

**Suspect**

**AND NOW BETWEEN**

W.P.Dilki Devindi Fernando  
No. 10/2, Mahindarama Road,  
Ratmalana.

**Petitioner**

**Vs**

1. The Attorney General  
Attorney General's Department  
Colombo-12.
2. The Officer-in-Charge

Division Crime Investigation  
Bureau,  
Mount Lavenia.

**Respondents**

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

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

**ARGUED ON** : **24/03/2025.**

**DECIDED ON** : **29/04/2025.**

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**ORDER**

**P.Kumararatnam,J.**

The Petitioner is the wife of the Suspect (Hereinafter referred to as the Suspect) named in the Magistrate Court of Mount Lavenia case bearing No. B 13490/2023.

According to the B report filed by the police, upon receiving information while on patrol, the officers attached to Division Crime Prevention Unit

had searched the house of the Suspect situated at Mahindarama Road, Ratmalana on 23.03.2023. When the police team entered the house had seen a bunch of keys in the hand of the Suspect. Using a key of the bunch, the police had opened a n almirah in the house. Inside the almirah the officers had found a shopping bag in which 6 cellophane bags contained Methamphetamine. Immediately the Suspect was arrested and the contraband was seized. Thereafter, the contraband was weighed at a Jewellery Shop. The substances in the parcels weighed about 600 grams.

The Suspect was produced in the Court under Section 54A (b) and (d) of the Poisons, Opium and Dangerous Drugs Ordinance as amended by Act No. 13 of 1984. Further, a detention order was obtained from the Mount Lavenia Magistrate Court to detain the Suspect to conduct further investigation.

According to the Petitioner, the Suspect has been in remand little over two years to date.

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

1. The facts reported to Court by the police are proven to be contradictory and rather false when viewing the CCTV footage and there the conduct of the police implicating the Suspect is outrageous and capricious constituting an exceptional ground to consider bail for the Suspect.
2. The Suspect's Attorney-at-law at the very first instance has indicated and informed the learned Magistrate that Suspect was falsely implicated by the police officers and contraband was foisted in his possession has caused an exceptional ground to consider bail for the Suspect.
3. The version of the police is unusual from the face of the record and thereby it is evident that the case against the Suspect was a false one.

4. The Suspect has two children and the sole breadwinner of the family.

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.

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.

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 vehemently denies the allegation and the facts reported by the police and strongly urges the Court to consider the CCTV footage submitted by the way of an affidavit.

In a bail inquiry when the Petitioner brings to the notice of the Court the circumstances which could be capable of shaking the prosecution case, the Court has the discretion to tentatively look to the facts and circumstances of the case to ascertain whether a reasonable ground exists or not either to grant or refuse bail. The Court should not probe into the merits of the case, but restrict itself to the material placed before it. But, even for the purpose of bail any benefit of doubt arising in the case must accrue to the Suspect.

One of the grounds urged by the learned Counsel is that Methamphetamine said to have recovered from the Suspect was an

introduction. Further, the Suspect never possessed any illegal substances and the police never visited her house to arrest the Suspect.

In this case the probability of the happening of the incident as described by the police need to be assessed thoroughly before the court could come to a final decision. This could only be done at a trial. Until such time keeping the Suspect in remand, I consider is not proper under the circumstances of this matter.

Hence, I consider the delay little more than two years in remand falls into the category of excessive and oppressive delay considering the circumstances of this case.

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 period in remand, the circumstances of arrest 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.100,000/=.
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 Mount Lavenia Police Station on the second 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 Mount Lavenia 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 of Mount Lavenia and Officer-in-Charge of the Police Station Mount Lavenia.

**JUDGE OF THE COURT OF APPEAL**

**K.M.S.Dissanayake, J.**

I agree.

**JUDGE OF THE COURT OF APPEAL**