

**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 Section 83(2) of the Poisons, Opium and Dangerous Drugs (Amendment) Act No. 41 of 2022 dated 23.11.2022.

Court of Appeal

Fathima Simma Jaufer

Bail Application No:

No. 111/25, Abdul Hameed Street,

CA Bail 0328/2024

Colombo-12.

High Court Colombo_

PETITIONER

Case No. 4940/2024

Vs.

MC Maligakanda

Case No. B/19030/22

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

COMPLAINANTS-RESPONDENTS

Matarage Hashan Madusanka Perera
(Presently at Colombo Remand Prison)

1st SUSPECT-RESPONDENT

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

COUNSEL : **Kamal Suneth Perera instructed by S.A.**
Fernando for the Petitioner.
Oswald Perera, SC for the 1st and 2nd
Respondents.

ARGUED ON : **19/03/2025.**

DECIDED ON : **08/05/2025.**

ORDER

P.Kumararatnam,J.

The Petitioner is the wife of the 1st Suspect (Hereinafter referred to as the Suspect) named in M.C. Maligakanda Case No. B 19032/2023. She had applied for bail for her husband.

On 29.02.2022, the Suspect was arrested on a tip off received from an officer attached to the Police Narcotics Bureau. The Suspect was arrested along with a car bearing No.WP CBB 3881. When the police team waylaid upon the information had seen the Suspect who came in the car mentioned above and got down with a tulip bag to be given to somebody. Upon establishing his identity through the informant, the Suspect was arrested and recovered the bag. Two parcels were in the bag recovered from the Suspect. The police had noticed some substance in both parcels. The substance in the first parcel was reacted for Heroin and the substance in the 2nd parcel reacted for Methamphetamine. The gross quantity of Heroin was weighed about 101.170 grams and the gross quantity of Methamphetamine weighed about 100.100 grams.

The car was searched thereafter and the salutes had found cash Rs.2481250/- in a tulip bag. The Suspect was arrested for trafficking and possession of Heroin (Diacetylmorphine) and Methamphetamine. A separate investigation is being carried out under the Anti Money Laundering Act against the Suspect.

The Suspect was produced and facts were reported to the Maligakanda Magistrate under Section 54A (b) and (d) of the Poisons, Opium and Dangerous Drugs Ordinance as amended by the Act No.13 of 1984. A detention order was obtained to conduct further investigation.

The production had been sent to the Government Analyst Department on 02/08/2022. After analysis, the Government Analyst had forwarded the report to Court on 30/01/2022. According to the Government Analyst, 50.38 grams of Methamphetamine (Net) and 39.44 grams of Heroin (Net) had been detected from the substance sent for the analysis.

According to the Petitioner, the Suspect was arrested without any contraband in his possession. He was arrested solely for the purpose of keep him in remand custody from a lengthy period of time. The Petitioner

seeks permission of this Court to submit tower report of the Suspect's mobile phone once it is available.

Consequent to further investigation, another person was arrested and produced as 2nd Suspect. He was discharged upon the instructions of the Hon. Attorney General.

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

1. Despite 22 months have gone since the issuance of the Government Analyst Report, the trial against the Suspect has not even started.
2. It will take an indefinite period to have an acquittal or conviction, even if the Suspect is indicted.
3. Elder son of the Suspect is to face the Grade 5 Scholarship examination.
4. The telephone tower report of the Suspect phone number will reveal the untruthfulness of the police version.
5. Suspicion on the inward journey.

The Learned State Counsel opposing for bail, 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. At present indictment against the Suspect has been filed in the High Court of Colombo under case no. HC 4940/2024. Upon conclusion of the pre-trial, the case was fixed for trial on 20.03.2025.

The suspect is in remand nearly two years and 08 months. According to the Government Analyst Report, the pure quantity of Methamphetamine detected from the possession of Suspect is 50.38 grams and the pure quantity of Heroin is 39.44 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 50.38 grams and the pure

quantity of Heroin detected is 39.44 grams. Hence, this court has jurisdiction to consider granting of bail as per the new amendment.

The Counsel for the Petitioner submitted that the police have fabricated a case against the Suspect. The 2nd Suspect was discharged upon the instructions of the Hon. Attorney General.

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.

Further, I do not consider the delay nearly two years and 08 months in remand falls into the category of excessive and oppressive delay considering the circumstances of this case. Further, family situation of the Suspect cannot be considered as an exceptional circumstance, as it is the normal day to day life of the people.

The learned State Counsel submits that the indictment is already filed in the High Court of Colombo.

The Offence under Section 54A (b) and (d) of the Poisons Opium and Dangerous Drugs Ordinance as amended by the Act No.13 of 1984 is a serious offence and the seriousness of the offence should be considered when bail is considered.

In this case the pure Methamphetamine detected is 50.38 grams which certainly a commercial quantity. Additionally net quantity of 39.44 grams of Heroin too had been detected. Considering the seriousness of the sentence prescribed under the Poison, Opium and Dangerous Drugs Ordinance, there is a high risk of absconding.

Considering all these factors into account, especially the pure quantity of Methamphetamine and Heroin detected, and other circumstances of the case, I consider this is not an appropriate case to grant bail to the Suspect at this stage.

Hence, the bail application is hereby dismissed.

The Registrar of this Court is directed to send this order to the High Court of Colombo under case no. 4940/2024, the Magistrate Court of Maligakanda, and the Officer-in-Charge, Police Narcotics Bureau, Colombo-01.

JUDGE OF THE COURT OF APPEAL

K.M.S, Dissanayake J.

I agree.

JUDGE OF THE COURT OF APPEAL