

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

In the matter of an application for Bail in terms of Section 83(2) of the Poisons, Opium and Dangerous Drugs (Amendment)Act No 41 of 2022.

Court of Appeal No: Kadiravel Jagadeeshwari
CA Bail /0211/2024 No.173/46,
Aaduruppu Veediya, Colombo-12.

PETITIONER

Vs.

MC Maligakanda 1. The Officer-in-Charge
Case No. B 29228/2023 Police Station,
Aaduruppu Veediya.

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

RESPONDENTS

Shivanadhan Muralidharan alias
Vignesh

SUSPECT-RESPONDENT

BEFORE : **P. Kumararatnam, J.**
K.M.G.H.Kulatunga, J.

COUNSEL : **Hanshani Ranasinghe for the Petitioner.**
Malik Azees, SC for the Respondent.

ARGUED ON : **06/03/2025.**

DECIDED ON : **02/04/2025.**

ORDER

P.Kumararatnam,J.

The Petitioner is the mother of the Suspect in the Maligakanda Magistrate Court Case No. B 29228/2023.

On 21.07.2023, the Suspect was arrested at Aaduruppu Veediya by officers attached to the Aaduruppu Veediya Police upon an allegation relating to possession of gross quantity of 502 grams of Methamphetamine and possession of gross quantity of 34 grams of Heroin.

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 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 24/07/2023. After analysis, the Government Analyst had forwarded the report to the Maligakanda Magistrate Court. According to the Government Analyst, 265.6 grams of pure Methamphetamine and 2.53 grams of pure Heroin (Diacetylmorphine) had been detected from the substance sent for the analysis.

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

1. The Petitioner is living with the Suspect as the father of the Suspect was passed away.
2. The Suspect is the sole breadwinner of the family.
3. The drugs are introduced to the Suspect by the police.
4. Complaints had been lodged at the Human Rights Commission and the Police Commission.

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.

The suspect is in remand for about 21 months as at today.

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

In this case, as per the submission of the Learned State Counsel, the dossier of investigations has been received by the Attorney General and is under consideration under AG reference No. CR3/377/2024.

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.

In the Petition, the Petitioner had disclosed two previous convictions entered in the High Court of Kalutara and Colombo. Further she had disclosed one pending case before the Maligakanda Magistrate Court. The nature of those cases had not been disclosed by the Petitioner.

In addition to above, learned State Counsel in the objections had disclosed three more previous convictions and all are connected to possession of narcotics. Hence, I do not consider the delay about 21 months in remand falls into the category of excessive and oppressive delay considering the circumstances of this case.

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 **Ranil Charuka Kulatunga v. Attorney General CA (PHC) APN 134/2015** the court held that:

“The quantity of cocaine involved in this case is 62.847 grams, which is a commercial quantity. If Petitioner is convicted, the punishment is death or life imprisonment. Under these circumstances, it is prudent to conclude the trial early while the Petitioner is kept in custody.”

In this case the pure Methamphetamine detected is 265.6 grams, which certainly a very high commercial quantity. 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 detected, previous and pending cases reported against the Suspect and other circumstances of the case, I consider this is not the appropriate time to grant bail to the Suspect.

Hence, this bail application is dismissed.

The Registrar of this Court is directed to send this Order to the Magistrate Court of Maligakanda and Officer-in-Charge of the Aaduruppu Veediya Police Station.

JUDGE OF THE COURT OF APPEAL

K.M.G.H.Kulatunga, J.

I agree.

JUDGE OF THE COURT OF APPEAL