

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

In the matter of an application for bail in terms of the Section 83 of the Poisons, Opium and Dangerous Drugs Ordinance as amended by the Act No.41 of 2022.

Court of Appeal

The Officer-in-Charge

Application No.

Police Station,

CA Bail 0343/2024

Kumbukgate.

MC Kurunegala

COMPLAINANT

Case No: B 4450/2023

Vs.

Herath Mudiyanseelage Harsha

Maduwantha Herath

(Presently in remand prison)

SUSPECT

AND NOW BETWEEN

Gamalath Ralalage Pradeepika

Sanjeevani

No. 799, Thithhawella,

Kumbukwewa.

PETITIONER

Vs.

1. The Officer-in-Charge
Police Station,
Kumbukgate.
2. The Attorney General
Attorney General's Department,
Colombo-12.

RESPONDENTS

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

COUNSEL : **Punarji Karunasekara instructed by**
Isuru Jayawardena for the Petitioner.
Tharaka Kodagoda, SC for the
Respondents.

ARGUED ON : **27/03/2025.**

DECIDED ON : **20/05/2025.**

ORDER**P.Kumararatnam,J.**

The Petitioner is the mother of the Suspect named in the Magistrate Court of Kurunegala bearing case No. B 4450/2023.

According to the B report submitted, the Suspect was arrested upon an investigation carried out consequent to a tip off received by the officers attached to the Special Task Force, Kurunegala Camp. As per the information the officers had gone to a house in the Kumbukwewa area and the Suspect was search inside the house. A parcel with some substance was recovered from the Suspect. As the substance recovered reacted for Methamphetamine, he was arrested and hand over to the Kumbukgate Police for further investigation. The gross quantity of the contraband recovered from the Suspect is weighed about 24.650 grams. Rs.9000/- also recovered from the Suspect.

Upon a Court order the contraband had been sent to the Government Analyst Department and according the Government Analyst Report dated 12.03.2024, 13.80 grams of pure Methamphetamine had been detected in the parcel sent for analysis.

The Suspect was produced in the Magistrate Court of Kurunegala and facts were reported under Section 54A (b) and (d) of the Poisons, Opium and Dangerous Drugs Ordinance as amended by the Act No.13 of 1984.Upon a Court order the Suspect was placed under a detention order to facilitate the Kumbukgate Police to conduct further investigation with regard to the detection.

The Petitioner alleges that the Suspect was taken into custody by the police on a mere conjecture without any reasonable suspicion. The

Petitioner further alleges that no Methamphetamine or any other contraband had been detected from the Suspect.

The Petitioner submit that the Suspect had been in remand for little over 17 months. Indictment has not been filed in the High Court.

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

1. Non-existence of a prima-facie case against the Suspect.
2. The Suspect has been in remand custody for little over 17 months.
3. The Suspect is unmarried and his sister is sitting for the G.C.E. Advance Level Examination at the end of year 2024.

The State Counsel submits that the dossier of the investigation has been received by the Attorney General's Department and registered under AG reference No. CR3/344/2024 and the indictment will be sent to the High Court very soon.

The 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 13.80 grams. Hence, this court has jurisdiction to consider granting of bail as per the new amendment.

The Counsel for the Petitioner submits that undue and long delay in keeping the Suspect in remand custody is a clear violation of his human rights and is against the presumption of innocence guaranteed under the Article 13(5) of the Constitution.

Although 17 months had been passed after her arrest, the trial before the High Court has not been commenced. Expeditious trial is an integral element of a fair trial.

The Suspect had committed similar offences five times before he was arrested for this offence. He has four previous convictions for possession of Cannabis Sativa L. Further he has one previous conviction for

trafficking Methamphetamine. In all the cases he was imposed fined by the Court. He has no pending case in any of the court.

The learned State Counsel very correctly submitted that the Petitioner had not come before this Court with clean hands, as she suppressed the information regarding the previous convictions reported against the Suspect.

In this case the Suspect alleged to have committed Offences under Section 54A(b) and (d) of the Poisons Opium and Dangerous Drugs Ordinance as amended by the Act No.13 of 1984.

I agree with the learned State Counsel that this is not appropriate case to consider the factual and evidentiary matters pertain to the investigations at this stage. It can only be tested at the trial upon the witnesses being cross examined and re-examined.

In this case the pure Methamphetamine detected is 13.80 grams. Considering the seriousness of the sentence prescribed under the Poison, Opium and Dangerous Drugs Ordinance, there is a high risk of absconding. Further, the Suspect has committed these offences when he has five previous convictions related to possession and trafficking of drugs. This is a clear testament of his propensity in committing drug related offences.

Hence, I do not consider the delay little over 17 months in remand falls into the category of excessive and oppressive delay considering the circumstances of this case.

Considering all these factors into account, especially the pure quantity of Methamphetamine detected, the charges going to be framed against the Suspect, the previous convictions reported against him and other circumstances of the case, I consider this is not an appropriate case to sanction bail to the Suspect at this stage. Hence, I refuse to release the Suspect on bail.

Hence, this Bail Application is dismissed.

The Registrar of this Court is directed to this Bail Order to the Magistrate Court of Kurunegala and Officer-in-Charge of the Police Station, Kumbukgate.

JUDGE OF THE COURT OF APPEAL

K.M.S.Dissanayake, J.

I agree.

JUDGE OF THE COURT OF APPEAL