

**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: 1.Officer-in-Charge
CA Bail /0374/2024 Police Narcotics Bureau,
Egoda Uyana.
MC Moratuwa 2.Officer-in-Charge
Case No. 3592/2023 Anti-Vice Striking Unit,
Walana.

COMPLAINANTS

Vs.

Thelege Priyanthi Pieris
(Presently in Remand Prison)

SUSPECT

NOW AND BETWEEN

Sumanaseeli Fernando
48, Sugathadharma Camp,
Egoda Uyana, Moratuwa.

PETITIONER

Vs.

1. The Officer-in-Charge
Police Narcotics Bureau,
Egoda Uyana.

2. Officer-in-Charge
Anti Vice Striking Unit,
Walana.

COMPLAINANT-RESPONDENTS

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

RESPONDENT

Thelge Priyanthi Pieris
(Presently in Remand Prison).

SUSPECT

BEFORE : **P. Kumararatnam, J.**

R.P.Hettiarachchi, J.

COUNSEL : **Vindiya Ekanayake for the Petitioner.**
Jehan Gunasekara, SC for the Respondents.

ARGUED ON : **30/04/2025.**

DECIDED ON : **28/05/2025.**

ORDER

P.Kumararatnam,J.

The Petitioner is the sister of the Suspect in the Moratuwa Magistrate Court Case No. B 3592/2023.

On 29.11.2023, the Suspect was arrested at Moratuwa by officers attached to the Anti-Vice Striking Unit, Walana upon an allegation relating to possession of gross quantity of 46.630 grams of Methamphetamine.

The suspect was produced and facts were reported to the Moratuwa Magistrate under Section 54A (b) and (d) of the Poisons, Opium and Dangerous Drugs Ordinance as amended by the Act No.13 of 1984.

The production had been sent to the Government Analyst Department on 30/11/2023. After analysis, the Government Analyst had forwarded the report to the Moratuwa Magistrate Court. According to the Government Analyst, 18.53 grams of pure Methamphetamine had been detected in the substance.

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

1. The Suspect denies all allegation levelled against her.
2. The Suspect has been in remand custody for more than 9 months now.
3. The Suspect's is a married person with one child.
4. Family members of the Suspect are undergoing many hardships due to the fact that she is in remand custody for a time period.

The learned State Counsel submitted that the delay is not an exceptional circumstance to be considered to enlarge the Suspect on bail. Further, he submits that the time spent for preparing the indictment does not constitute an exceptional circumstance.

The Suspect is in remand custody for about 18 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 18.53 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 was considered under AG reference No. CR3/100/2025. At present, the indictment against the Suspect has been forwarded to the relevant High Court.

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 not disclosed any previous or pending case registered against the Suspect.

The learned State Counsel in his submission had disclosed three previous convictions and two are connected to possession of narcotics were registered against the Suspect. In one matter the Suspect was charged for possession of 1900 milligrams of Heroin and 2400 narcotic tablets. This is a clear testament that the Suspect had been involving in drugs for a long period of time. The drugs pertaining to this application was found hidden in her brassier and this indicates that the Suspect is a drug dealer. Hence, I do not consider the delay about 18 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 this case the pure quantity of Methamphetamine detected is 18.53 grams, which certainly a 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 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 Bail Order to the Magistrate Court of Moratuwa and Officer-in-Charge of the Police Narcotics Bureau, Egoda Uyana and Officer-in-Charge of the Anti-Vice Striking Unit, Walana.

JUDGE OF THE COURT OF APPEAL

R. P. Hettiarachchi, J.

I agree.

JUDGE OF THE COURT OF APPEAL