

**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 Narcotics Bureau,

CA Bail 0480/2024

Colombo-01.

MC Maligakanda

COMPLAINANT

Case No.38618/2024

Vs.

1. Dona Chandima Gammanpilage
2. Gammanpilage Dona Dhanuski

SUSPECTS

AND NOW BETWEEN

Gammanpilage Nirmala

No. 07, Ketharama Temple Road,
Maligawatte, Colombo-10.

PETITIONER

Vs.

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

RESPONDENTS

Dona Chandima Gammanpilage

(Detained in Remand Prison)

1st SUSPECT-RESPONDENT

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

COUNSEL : **Shamindra Rodrigo with Eranda Sinharage for the Petitioner.**
Tharaka Kodagoda, SC for the Respondents.

ARGUED ON : **25/03/2025.**

DECIDED ON : **19/05/2025.**

ORDER**P.Kumararatnam,J.**

The Petitioner is the sister of the 1st Suspect (Hereinafter referred to as the Suspect) named in the Magistrate Court of Maligakanda bearing case No. B 38618/2024.

According to the B report submitted by the Police Narcotics Bureau, Colombo-1, the Suspect and another was arrested upon an investigation carried out consequent to a tip off received by the officers attached to the Police Narcotics Bureau. As per the information when WSI/ Chandima checked the Suspect found a parcel under the right-side armpit of the Suspect. As the parcel contained some substance which reacted for Methamphetamine, the lady officer had arrested the Suspect with the assistance of others. Upon receiving further information another woman also arrested and recovered some substance. Both had been handed over to the Police Narcotics Bureau for further investigation. The gross quantity of the contraband recovered from the Suspect is weighed about 48.900 grams.

Upon a Court order the contraband had been sent to the Government Analyst Department and according the Government Analyst Report dated 29.02.2024, 10.24 grams of pure Methamphetamine had been detected in parcel sent for analysis.

The Suspect was produced along with another in the Magistrate Court of Maligakanda 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 Police Narcotics Bureau to conduct further investigation with regard to the detection.

The Petitioner alleges that the Suspect along with another were 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 19 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. Improbability of the version of the prosecution.
3. The Suspect has been in remand custody for little over 19 months.
4. The Suspect is 51 years old and the sole breadwinner of the family.

At present the members of the family are undergoing untold hardship due to the incarceration of the Suspect.

The State Counsel submits that the dossier of the investigation has not been received by the Attorney General's Department yet.

The Suspect is in remand little over 19 months. According to Government Analyst Report, the pure quantity of Methamphetamine detected from the possession of the Suspect is 10.24 grams.

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 10.24 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 19 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 the offence while she was on bail for a similar offence. An indictment for possession of 41.605 grams of Heroin is pending against the Suspect in the High Court of Colombo. Further she had been sentenced for 01-year rigorous imprisonment suspended for 05 years for the possession of 50 grams of Cannabis Saliva L.

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 pending similar matter before the Colombo High Court and previous conviction of the Suspect.

A court can consider evidence in a bail inquiry. During a bail hearing, the court typically evaluates various factors to determine whether a Suspect should be granted bail, such as the risk of flight, the likelihood of reoffending, and the safety of the community. The court may also review evidence related to the Suspect's criminal history, ties to the community, and the specifics of the current charges.

Ultimately, the court's role during a bail inquiry is to weigh the available evidence to decide if the defendant can be trusted to return for trial or if they pose a danger to public safety.

In this case the Accused 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 **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 Heroin detected is 10.24 grams. Considering the seriousness of the sentence prescribed under the Poisons, Opium and Dangerous Drugs Ordinance, there is a high risk of absconding. Further, the Accused has committed these offences while a similar case is pending

before the High Court of Colombo and a previous conviction, which is a clear testament of her propensity in committing drug related offences.

Hence, I do not consider the delay little over 19 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 Heroin detected, the charges going to be framed against the Suspect, the pending case and previous conviction 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 Maligakanada and Officer-in-Charge of the Police Narcotics Bureau, Colombo-01.

JUDGE OF THE COURT OF APPEAL

K.M.S.Dissanayake, J.

I agree.

JUDGE OF THE COURT OF APPEAL