

**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**

1. The Officer-in-Charge

**Application No.**

Police Station,

**CA Bail 0443/2024**

Kekirawa.

**MC Kekirawa**

2. The Officer-in-Charge

**Case No: B 107/2024**

Central Anti-Vice Striking Unit,

Walana, Panadura.

**COMPLAINANTS**

Mallikage Sachith Eranga

(Presently in remand prison)

**SUSPECT**

**AND NOW BETWEEN**

Mallikage Ubayasiri

No. 530, Thibbatuwewa, Kekirawa.

**PETITIONER**

**Vs.**

1. The Officer-in-Charge  
Police Station,  
Kekirawa.
  
2. The Officer-in-Charge  
Central Anti-Vice Striking Unit,  
Walana, Panadura.
  
3. The Attorney General  
Attorney General's Department,  
Colombo-12.

**RESPONDENTS**

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

**COUNSEL** : **Kasun Sarathchandra for the Petitioner.**  
**Oswald Perera, SC for the Respondents.**

**ARGUED ON** : **01/04/2025.**

**DECIDED ON** : **22/05/2025.**

\*\*\*\*\*

**ORDER**

**P.Kumararatnam,J.**

The Petitioner is the father of the Suspect named in the Magistrate Court of Kekirawa bearing case No. B 107/2024.

According to the B report submitted, on 11.01.2024, the Suspect was arrested upon an investigation carried out consequent to a tip off received by the officers attached to the Police Central Anti-Vice Unit of Walana. As per the information the officers had gone to the Petitioner's given address and arrested the Suspect and recovered a parcel of substance suspected to be Methamphetamine. The gross quantity of the contraband recovered from the Suspect is weighed about 127.5. Upon further investigation the officers had recovered another parcel of Methamphetamine at a boutique owned by the Suspect and the contraband weighed about 10.8 grams. Further, 3 mobile phones, 4 ATM Cards, several money transaction cards and two identity cards had also been 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 31.05.2024, 51.19 grams and 4.56 grams of pure Methamphetamine had been detected in the parcels sent for analysis. The total weight of the Methamphetamine is 55.75 grams.

The Suspect was produced in the Magistrate Court of Kekirawa 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 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 16 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 16 months.
3. The Suspect is a married person and the sole breadwinner of the family. At present the wife of the Suspect is receiving treatment for mental disorder due to the arrest of the Suspect.

The State Counsel submits that the dossier of the investigation has not been received by the Attorney General's Department due to the complex nature of the investigation in this case.

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 55.75 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 16 months had been passed after his arrest, the trial before the High Court has not been commenced. Expeditious trial is an integral element of a fair trial.

No previous or pending case reported against the Suspect.

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 Methamphetamine detected is 55.75 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 police are continuing their investigation with regard to the money and bank transactions of the Suspect using the recovered mobile phones, ATM cards, money transaction cards and the identity cards. As such the investigation is not over yet.

Hence, I do not consider the delay little over 16 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 pending investigation 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 Kekirawa and the Officer-in-Charge, Police Sation, Kekirawa and The Officer-in-Charge, Central Anti-Vice Striking Unit, Walana, Panadura.

**JUDGE OF THE COURT OF APPEAL**

**K.M.S.Dissanayake, J.**

I agree.

**JUDGE OF THE COURT OF APPEAL**