

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.

The Officer-in-Charge

Court of Appeal

Police Narcotics Bureau, Colombo-01

Application No:

COMPLAINANT

CA Bail 0330/2024

Vs.

MC Maligakanda

Ajmaal Khan

Case No: B/10466/2022

SUSPECT

AND NOW BETWEEN

Ajmaal Khan

No.8/66/1, Komet Street,

Vishaka Patnam,

Arsen Andra Pradesh, India.

SUSPECT-PETITIONER

Vs.

1. The Attorney General

Attorney General's Department,

Colombo-12.

2. Th Officer-in-Charge
Police Narcotics Bureau
Colombo-01.

RESPONDENTS

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

COUNSEL : **Tenny Fernando with Laksman Perera**
for the Petitioner.
Wishwa Wijesooriya, SC for the
Respondents.

ARGUED ON : **18/03/2025.**

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

ORDER

P.Kumararatnam,J.

The Petitioner who is the Suspect named in the Magistrate Court of Maligakanda Case No. B 10466/22 had applied for bail for him.

On 07.04.2022, the Petitioner was arrested by the officers attached to Divisional Investigation Unit of North Colombo when he was driving a car bearing No. WP CAW 1611 near a hotel named Vani Villas, Kotahena. At the time of his arrest, the Petitioner was alleged to be in possession of 495 grams of Methamphetamine and 8.583 kilograms of Hashish. The Petitioner is an Indian national holding an Indian Passport bearing

number V5429645 and he was handed over to the Police Narcotics Bureau for further investigation. Further, the Suspect was placed under a detention order.

The Petitioner was produced and facts were reported to the Maligakanda Magistrate under Section 54A (d) and (b) and 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 25/04/2022. After analysis, the Government Analyst had forwarded the report to Court. According to the Government Analyst, pure 395.5 grams of Methamphetamine 8.5066 kilograms of Hashish had been detected from the substance sent for the analysis.

Trail has not been commenced and no indictment filed in Court up to now. He has been in remand for nearly about three years.

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

1. The Petitioner has been in remand custody since 07.04.2022.
2. The Petitioner was subjected to serious assault and pleads that no narcotics substance recovered from him.
3. No proper investigation has been done by the police.
4. He is in remand custody without any legal action.

The State opposing to bail submitted that the indictment pertaining to the offences under the Poisons, Opium and Dangerous Drugs Act will be expeditiously considered upon receiving the IBEs from the Police Narcotic Bureau. Hence, 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 nearly 03 years. According to the Government Analyst Report, the pure quantity of Methamphetamine and

Hashish detected from the possession of the Petitioner is 395.5 grams and 8.5066 Kg respectively.

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 395.5 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 Petitioner 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.

The Offence under Section 54A(d) and (b) 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 is 395.5 grams and certainly very high commercial quantities. Considering the seriousness of the sentence prescribed under the Poison, Opium and Dangerous Drugs Ordinance, there is a high risk of absconding as the Petitioner is a foreign national. Hence, it is prudent to conclude his case expeditiously keeping the Petitioner in remand.

Hence, I do not consider the delay nearly three years 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 and Hashish detected, the charges going to be framed against the Petitioner and other circumstances of the case, I consider this is not an appropriate case to sanction bail to the Petitioner at this stage. Hence, I refuse to release the Petitioner on bail.

Hence, this Bail Application is dismissed.

The Registrar of this Court is directed to send this order to Maligakanda Magistrate Court 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