

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

In the matter of an application for
Bail as under and in terms of
Section 83(2) of the Poisons, Opium
and Dangerous Drugs Ordinance of
17 of 1929 as amended by section
04 of the Act No.41 of 2022.

Court of Appeal Bail Application

No.CA Bail/0417/24

High Court of Negombo

Case No.HC 65/2024

MC Welisara

No. B 1189/2023

The Officer-in-Charge

Police Narcotics Bureau

Colombo-01.

Complainant

Senerath Yapage Madusanka

Pathum Perera

Suspect

AND NOW BETWEEN

Udubada Dewage Kumudini

Malkanathi

No.24/44, Dankanaththa Road,

Wattala.

Petitioner

Vs

1. The Officer-in-Charge
Police Narcotics Bureau
Colombo-1.

Complainant-Respondent

2. Senerath Yapage Madusanka
Pathum Perera

Suspect-Respondent

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

Respondent

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

COUNSEL : **Sandeepani Wijesooriya for the**
Petitioner.
Wishwa Wijesuriya, SC for the 1st and
3rd Respondents.

ARGUED ON : **17/03/2025.**

DECIDED ON : **29/04/2025.**

ORDER

P.Kumararatnam,J.

The Petitioner is the mother of the Accused named in the High Court of Negombo case bearing No. HC 65/2024.

According to the B report filed by the police, upon information the Accused was arrested by officers attached to the Police Narcotics Bureau Colombo-01 on 24.03.2023. The Accused was searched and some substances believed to be Methamphetamine was recovered from his shorts pocket.

The parcel was weighed by an electronic scale and it revealed 113 grams of Methamphetamine in the parcel.

The Accused was produced in the Welisara Magistrate Court under case No. B 1189/2023 and facts were reported under Sections 54A(d) and (b) of the Poisons, Opium and Dangerous Drugs Ordinance as amended by Act No. 13 of 1984.

According to the Petitioner, he has been in remand for more than two years to date. According to the Government Analyst Report, the pure quantity of Methamphetamine is 75.6 grams.

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

1. The Government Analyst Report was received 1 year and 1 month ago and no indictment has been forwarded yet.
2. He is in remand little more than two years to date.
3. The police have fabricated a case against him.
4. The Accused had denied possession of any illegal substances.
5. The Accused is the sole breadwinner of the family.

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 75.6 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 indictment had already been dispatched to the High Court of Negombo and the pre-trial is concluded. Now the case is fixed for trial on 06.02.2025.

Further, the Learned State Counsel brought to the notice of this Court that the Petitioner has not come before this Court with clean hand as she wilfully omitted to mention in the Petition about the previous conviction and the pending case reported against the Accused. The Accused was arrested by Harbour Police for possession of 960 milligrams of Methamphetamine on 09.12.2021. Further, the Special Task Force officers had arrested the Accused for the possession of 42.605 kilograms of cannabis and the matter is pending before the Magistrate Court of Welisara. Both cases are connected to possession of narcotics substances.

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 detected is 75.6 grams, which certainly a commercial quantity.

Considering the seriousness of the sentence prescribed under the Poison, Opium and Dangerous Drugs Ordinance it is prudent to conclude the High Court case expeditiously keeping the Accused in remand.

Hence, I do not consider the delay more than 2 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 detected, the charges in the indictment against the Accused, drug related previous and pending cases and other circumstances of the case, I consider this is not an appropriate case to sanction bail to the Accused at this stage. Hence, I refuse to release the Accused on bail.

Hence, this Bail Application is dismissed.

The Registrar of this Court is directed to send this order to the High Court of Negombo 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