

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

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

Officer in Charge,
Colombo Crimes Division,
Dematagoda.

Court of Appeal Case No.

CA/BAL/0418/2024

Complainant

Magistrate's Court of Maligakanda Vs.

Case No. 23857/23

Mohamed Hanifa Mohamed Siyamdeen.

Suspect

AND NOW BETWEEN

Fathima Safna.

Petitioner

Vs.

1. Officer in Charge,
Colombo Crimes Division,
Dematagoda.

2. Hon. Attorney General,
Attorney General's Department,
Colombo 12.

Respondents

BEFORE : **P. KUMARARATNAM, J.**
 K.M.G.H. KULATUNGA, J.

COUNSEL: Hafeel Fariz with Naveen Maha Arachchige and Shannon Thilakaratne for the Petitioner.
 Oswald Perera, SC for the Respondents.

INQUIRY ON: 11.03.2025

DECIDED ON: 03.04.2025

K.M.G.H. KULATUNGA, J.

ORDER

1. This application is preferred by the petitioner seeking bail for the suspect, Mohamed Hanifa Mohamed Siyamdeen under Section 83(2) of the Poisons, Opium and Dangerous Drugs Ordinance. The suspect is alleged to have been arrested on 19.06.2023 by a group of Police Officers attached to the Colombo Crimes Division, Dematagoda (CCD). According to the B Report dated 20.06.2023, the group of Police Officers acting on information has apprehended the suspect at his house. At the point of the apprehension the suspect was alleged to have had a bag in his hand in which another transparent bag containing 215.1 grammes of methamphetamine was detected.

2. According to the Government Analyst's Report dated 07.11.2023, the pure quantity of the said substance is 33 grammes. The only ground of exceptionality advanced is the delay of one year and eight months without instituting criminal action. The petitioner admits of one previous conviction on 24.09.2019 in which upon pleading guilty the suspect had been imposed with a fine during the inquiry. It was admitted that the said previous conviction was in respect of a small quantity of heroin.

3. According to the State Counsel, the Attorney General had received the IB Extracts on 18.02.2024 and is registered under AG's Reference CR3/295/2024. It was further submitted that the quantity found in the possession is a commercial quantity. The petitioner's ground of exceptionality as aforesaid is primarily the delay of fifteen months. As at the date of inquiry, the suspect had been in remand for almost twenty-one months. Depriving the liberty and living for a period of twenty-one months of any person is substantial and serious. Considering the average lifespan this is a substantial portion of the youthful living of any person. It is in view of this observation that this Court has time and again found that time held in remand, without meaningful action being taken unless reasonably explained, would be considered as excessive, oppressive and undue. Such unexplained delay will necessarily be considered as being an exceptional circumstance within the meaning of Section 83(2) for the purposes of bail.
4. This raid and recovery are clearly straightforward and an uncomplicated. The Government Analyst's Report was available since 07.11.2023 and the IBEs have been forwarded to the Attorney General on 18.02.2024. This is admitted by the learned State Counsel. The indictment has not been dispatched up until the date of inquiry (11.03.2025). The respondents including the Attorney General had notice of this application at least by 10.12.2024 upon the service of notice. It does not appear that the relevant officer responsible has taken any meaningful steps to dispatch the indictment promptly and without delay. The failure to finalize and dispatch indictment even after the lapse of one year clearly demonstrates an extremely lackadaisical approach and being oblivious to or not conscious the suspect is languishing in remand indefinitely. This conduct, in the absence of any plausible reason, should certainly be considered as an exceptional circumstance for the purposes of bail.

5. Accordingly, as we are satisfied that the said circumstances can be considered as being exceptional, the suspect is granted bail subject to the following conditions:

- i. cash bail in a sum of Rs. 50,000.00;
- ii. to provide two sureties who should execute bonds to the value of Rs. 500,000.00 each, and one of the sureties should be a close relative of the suspect;
- iii. sureties are required to provide certificates from the Grama Sevaka of the respective residential areas of such sureties;
- iv. to surrender the Passport or any travel document of the suspect if he has any, to the Registrar of the Magistrate's Court of Maligakanda;
- v. to report to the Officer-in-Charge of the Colombo Crimes Division, Dematagoda on last Sunday of every month before 12 noon; and
- vi. further, a travel ban is imposed until the final determination of this matter and the Registrar is directed to inform the Controller General of Immigration and Emigration of this Order for necessary action.

6. This application is accordingly allowed. The Registrar of this Court is directed to transmit a copy of this Order to the Registrar of the Magistrate's Court of Maligakanda.

JUDGE OF THE COURT OF APPEAL

P. Kumararatnam, J.

I agree.

JUDGE OF THE COURT OF APPEAL