

**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 The Officer-in-Charge
CA Bail/0241/24 Police Station,
Madurankuliya.

Complainant

MC Puttalam **Vs.**
No. B 10958/2023 Junaideen Nasurdeen
(In remand custody)

Suspect

AND NOW BETWEEN

Isadeen Fathima Jaspira
No.30, Sembamaduwa,
Palavi.

Petitioner

Vs
1. Officer-in-Charge
Police Station,
Madurankuliya.

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

Respondents

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

COUNSEL : **Nalin Fernando for the Petitioner.**
Jehan Gunasekara, SC for the Respondents.

ARGUED ON : **24/03/2025.**

DECIDED ON : **07/05/2025.**

ORDER

P.Kumararatnam,J.

The Petitioner is the wife of the Suspect (Hereinafter referred to as the Suspect) named in the Magistrate Court of Puttalam case bearing No. B 10958/2023.

According to the B report filed by the police, on 02.10.2023 when police officers attached to Madurankiliya Police Station were engaged in random vehicle search, searched a vehicle bearing No. NW CAI-6981

the Suspect who was driving the vehicle had given a temporary licence issued by the Puttalam Police. At the same time, the Suspect had given a Bank of Ceylon ATM card to the passenger of the vehicle and directed him to draw Rs. 50,000/- from the ATM and offered Rs.20,000/- to the police. Having felt suspicious conduct of the Suspect when police searched the vehicle found a brown paper bag wrapped in cellophane placed under the rug between the accelerator and the brake pedal of the car. As the parcel contained some substance suspected to be Methamphetamine, the Suspect was arrested with another person and weighed the contraband. It contained 99.46 grams of substance.

The production was sent to the Government Analyst Department and according to the report 76.64 grams of Methamphetamine had been detected from the substance sent for analysis.

The Suspect and the other person were produced in the Magistrate Court of Puttalam under Section 54A (b) and (d) of the Poisons, Opium and Dangerous Drugs Ordinance as amended by Act No. 13 of 1984.

According to the Petitioner, the Suspect has been in remand little over 18 months to date.

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

1. The Suspect is in remand custody nearly 18 months.
2. The Suspect has no previous or pending case.
3. The Suspect has one child and is the sole breadwinner of the family.
4. The Suspect is an old iron scrap collector and he was only a driver of the vehicle.

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".

In **CA(PHC)APN 107/2018** decided on 19.03.2019 the court held that remanding for a period of one year and five months without being served with the indictment was considered inter alia in releasing the suspect on bail. According to the Petitioner, at present her family is going through untold hardship without proper income and care.

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 76.64 grams. Hence, this court has jurisdiction to consider granting of bail as per the new amendment.

The Counsel for the Petitioner urged this Court to consider that detaining a Suspect without any legal action for an extended period of time amounts to a violation of his fundamental rights which can be considered as an exceptional ground.

In **Nasher v. Director of Public Prosecution [2020] VSCA 144** the court held that:

"a combination of delay, onerous custodial conditions, and the relative weakness of the prosecution case may, when considered with all relevant circumstances, compel the conclusion that exceptional circumstances have been established". [Emphasis added]

The Petitioner vehemently denies the allegation and the facts reported by the police.

One of the grounds urged by the learned Counsel is that Methamphetamine said to have recovered from the Suspect was an introduction. Further, the Suspect never possessed any illegal substance.

In this case the probability of the happening of the incident as described by the police need to be assessed thoroughly before the court could come to a final decision. This could only be done at a trial. Until such time keeping the Suspect in remand, I consider is not proper under the circumstances of this matter.

The learned State Counsel submits that the investigation notes pertaining to this case has not been received by the Attorney General

up to now. Hence, I consider the delay little over 18 months in remand falls into the category of excessive and oppressive delay considering the circumstances of this case.

Offences under Section 54A(b) and 54A(d) of the Poisons Opium and Dangerous Drugs Ordinance as amended by the Act No.13 of 1984 is no doubt serious offences but seriousness of the offence alone cannot form a ground to refuse bail. In considering these matters, the court must bear in mind the presumption of innocence.

Further, bail should never be withheld as punishment. Granting of bail is primarily at the discretion of the Courts. The discretion should be exercised with due care and caution taking into account the facts and circumstances of each case.

Considering all these factors into account, especially the period in remand, the circumstances of arrest and the other circumstances of the case, I consider this is an appropriate case to grant bail to the Suspect. Hence, I order the Suspect be granted bail with following strict conditions.

1. Cash bail of Rs.200,000/=.
2. To provide 02 sureties. They must sign a bond of two million each. The Petitioner should be the one of the sureties.
3. The Suspect and the sureties must reside in the address given until conclusion of his case.
4. Not to approach any prosecution witnesses directly or indirectly or to interfere with.
5. To surrender his passport if any, to court and not to apply for a travel document. The Controller of the Immigration and Emigration is informed of the travel ban on the Suspect.
6. To report to the Madurankuliya Police Station on the second and last Sunday of every month between 9am to 1pm.
7. Any breach of these conditions is likely to result in the cancellation of his bail.

The Bail is allowed and the Learned Magistrate of Puttalam is hereby directed to enlarge the Suspect on bail on the above bail conditions.

The Registrar of this Court is directed to send this Bail Order to the Magistrate Court of Puttalam and Officer-in-Charge of the Police Station Madurankuliya.

JUDGE OF THE COURT OF APPEAL

K.M.S.Dissanayake, J.

I agree.

JUDGE OF THE COURT OF APPEAL