

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

In the matter of an application for Bail in terms of Section 83(2) of the Poisons, Opium and Dangerous Drugs (Amendment)Act No 41 of 2022.

Court of Appeal No: Letchumi Munisamy

CA Bail /0411/2024 No.35/1, Danketiya Road,
Tangalle.

PETITIONER

MC Colombo

Case No. B 82604/01/22

Vs.

1. The Officer-in-Charge
Police Narcotics Bureau
Colombo-01.
2. The Attorney General
Attorney General's Department,
Colombo-12.

RESPONDENTS

Gajendra Suresh Kantha
(Presently in remand custody)

5th-SUSPECT

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

COUNSEL : **Dhammadika Jayanetti for the Petitioner.**
Jehan Gunasekara, SC for the Respondent.

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

DECIDED ON : **16/05/2025.**

ORDER

P.Kumararatnam,J.

The Petitioner is the mother of the 5th Suspect (Hereinafter referred to as the Suspect) in the Magistrate Court of Colombo case No. B 82604/01/2022.

The Suspect had joined the 3rd Suspect (Skipper) as a crew member in multi day fishing vessel “IMUL-A-0164 CHW Kanan Du Bashi” which set sailed on a multi-day fishing expedition from the Tangalle Fisheries

Harbour in early November 2022. The said vessel was arrested by Sri Lanka Navy in the deep sea for carrying a cargo of narcotics. The substances recovered from the possession of the Suspect and the others reacted for Methamphetamine and Heroin. The gross quantity Methamphetamine weighed about 128.327 kilograms and the gross quantity Heroin is weighed about 106.474 kilogram. The Suspect and other persons were handed over to the Police Narcotics Bureau Colombo-01 on 18.12.2022.

The Suspect and others were produced and facts were reported to the Colombo Magistrate Court under Section 54A (b) (c) and (d) of the Poisons, Opium and Dangerous Drugs Ordinance as amended by the Act No.13 of 1984 and a detention order was obtained for further investigations under Section 82(3) of the said Act.

The production had been sent to the Government Analyst Department on 10/01/2023. After analysis, the Government Analyst had forwarded the report to the Court on 08/09/2023. According to the Government Analyst, 1.18504 kilograms of pure Heroin (Diacetylmorphine) and 54.9837 kilograms of Methamphetamine had been detected from the substances sent for the analysis.

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

1. The Suspect has been incarcerated for a period of 29 months.
2. Indictment has not gone yet.
3. The Suspect is married and his wife only 22 years.

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.

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 Heroin detected in the production by the Government Analyst is 1.18504 kilograms and the 54.9837 kilograms of Methamphetamine. Hence, this court has jurisdiction to consider granting of bail as per the new amendment.

According to the Learned State Counsel, investigations notes had been received by the Attorney General's Department and registered under AG reference No. CR3/591/2023. Instructions had been given to the 1st Respondent to conduct further investigation considering the pure quantities of drugs detected in this case.

I agree with the learned State Counsel that the factual and evidentiary matters pertain to the investigations can only be tested at the trial upon the witnesses being cross examined and shall not be tested at the time of hearing this bail application considering the nature of this case.

Further, I do not consider the delay about 29 months in remand falls into the category of excessive and oppressive delay considering the circumstances of this case.

The Offence under Section 54A(b) (c) and (d) 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 pure Heroin detected is 1.18504 kilograms and pure Methamphetamine is 54.9837 kilograms. Which are 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.

Considering all these factors into account, especially the pure quantity of Heroin and the Methamphetamine detected, and other circumstances of the case, I consider this is not the appropriate time to grant bail to the Suspect.

Hence, this bail application is dismissed.

The Registrar of this Court is directed to send this Bail Order to the Magistrate Court of Colombo 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