

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

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

Court of Appeal

The Officer-in-Charge

Bail Application No:

Police Station

CA Bail 0463/2024

Mulleriyawa.

COMPLAINANT

Vs

MC Colombo

Mahawaththage Don Bhuddika Jayalath

Case No.B 15947/08/24

(Presently in Colombo Remand Prison)

SUSPECT

AND NOW BETWEEN

Gnanaratne Achini Shamika

No.499/2/8/1,

Sri Parakum Mawatha,

Mulleriyawa.

PETITIONER

ON BEHALF OF

Mahawaththage Don Bhuddika Jayalath

(Presently in Colombo Remand Prison)

Vs

1. The Officer-in- Charge

Police Station,

Mulleriyawa.

COMPLAINANT-RESPONDENT

2. The Attorney General

Attorney General's Department,

Colombo-12.

RESPONDENT

BEFORE

: **P. Kumararatnam, J.
K.M.S.Dissananyake, J.**

COUNSEL

: **Pradeepa Abeyrathna instructed by
Charitha Maduwanthi for the
Petitioner.
Jehan Gunasekara, SC for the
Respondents.**

ARGUED ON

: **19/03/2025.**

DECIDED ON

: **08/05/2025.**

ORDER**P.Kumararatnam,J.**

The Petitioner is the wife of the Suspect named in this application. The Suspect is named as the Suspect in M.C.Colombo Case No. B 15947/08/24. The Petitioner had applied for bail in terms of Section 83(2) of the Poisons, Opium and Dangerous Drugs Ordinance as amended by the Amendment Act No 41 of 2022.

On 19.04.2024, the Suspect was arrested by officers attached to the Mulleriyawa Police Station upon an information. The Suspect was arrested in front of his house and when police checked the Suspect found some substance which reacted for Methamphetamine. The substance recovered from the Suspect weighed about 100 grams.

The suspect was produced and facts were reported to the Colombo Magistrate under Section 54A (b) and (d) and of the Poisons, Opium and Dangerous Drugs Ordinance as amended by the Act No.13 of 1984. Further, 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 22/04/2024. After analysis, the Government Analyst had forwarded the report to Court on 09/10/2024. According to the Government Analyst, 17.86 grams of pure Methamphetamine had been detected from the substance sent for the analysis.

The Suspect is a father of two children. He is the sole breadwinner of the family. The safety of the two children also at a stake without the protection of the Suspect.

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

1. No drugs were found in the possession of the Suspect by the police officers.
2. Absence of any plausible evidence that the Suspect had possessed methamphetamine.
3. The Petitioner had been in remand nearly one year.

The State opposing to bail submitted that the large quantities of dangerous drugs found in the possession of the Suspect indicates that the Suspect is a drug dealer of large scale, dealing in commercial quantities and not use quantities.

The Learned State Counsel further submitted that the delay is not an exceptional circumstance to be considered to enlarge the suspect on bail.

The suspect is in remand for nearly about one year. According to Government Analyst Report, the pure quantity of Methamphetamine detected from the possession of the Suspect is 17.86 grams.

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

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 nearly about one year in remand falls into the category of excessive and oppressive delay considering the circumstances of this case.

The Offence under Section 54A(b) 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 this case the pure Methamphetamine detected is 17.86 grams, which certainly a commercial quantity. Considering the seriousness of the

sentence prescribed under the Poison, Opium and Dangerous Drugs Ordinance, there is a high risk of absconding.

At present the Government Analyst Report is received by the Court and the Hon. Attorney General will call for the investigation notes in due course. Hence, it is prudent to send out the indictment against the Suspect to the High Court without further delay and expedite the trial.

Considering all these factors into account, especially the pure quantity of Heroin detected, the charge going to be against the Suspect, the suspicious conduct of the Suspect and other circumstances of the case, I consider this is not an appropriate case to grant bail to the Suspect at this stage. Hence, I refuse to release the Suspect on bail.

Hence, the bail application is hereby dismissed.

The Registrar of this Court is directed to send this order to the Magistrate Court of Colombo and the Officer-in-Charge, Police Station, Mulleriyawa.

JUDGE OF THE COURT OF APPEAL

K.M.S.Dissanayake, J.

I agree.

JUDGE OF THE COURT OF APPEAL