

IN THE COURT OF APPEAL OF THE DEMOCRATIC SOCIALIST

REPUBLIC OF SRI LANKA

In the matter of an application in terms
of section 83 of Poisons, Opium and
Dangerous Drugs Act as amended by Act
No. 41 of 2022.

Officer-In-Charge,
Police Narcotic Bureau,
Colombo 01.

Complainant

CA Application No:

CA BAL 0483/2024

MC Matara Case No:

B 3521/2020

Vs

1. Rajapakshage Indika Prasanna
2. K.R. Asanka Pradeep
3. K. Wasnatha Kumara
4. Lokugam Hewage Sudath
5. Lokugam Hewage Shirantha
6. N.A.B. Asanka Priyanath
7. B.J.P.Charith Asanka
8. P.G. Kalum Pushpakumara
9. Sarath Kumara
10. N.Thilak
11. K.G.M.D.Sarath Bandara
12. M.W.Ranil Priyantha
13. Dimuthu Daluwatha

Suspects

AND NOW BETWEEN

Rajapakshage Indika Prasanna
No. 371/4, Nagahawela Road,
Kotikawatta, Angoda
(Presently in remand custody)

1st Suspect – Petitioner

Vs

1. Officer-In-Charge,
Police Narcotic Bureau,
Colombo 01.

Complainant – Respondent

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

Respondent

Before : **P. Kumararatnam, J.**

Pradeep Hettiarachchi, J.

Counsel : Shanaka Ranasinghe, PC with Niroshan Mihindukulasooriya,
Anushika Ranasinghe and Dilusha Fernando for the Petitioner
Oswald Perera, SC for the Respondents.

Argued on : 04.08.2025

Decided on : 03.10.2025

Pradeep Hettiarachchi, J

Order

1. This is a bail application filed by the 1st suspect-petitioner Rajapakshage Indika Prasanna, (hereinafter referred to as the 1st suspect), under Section 83(2) of the Poisons, Opium and Dangerous Drugs Ordinance, as amended by Section 4 of Act No. 41 of 2022. The suspect was arrested on 20.11.2020 during a raid conducted by

officers attached to the Special Task Force, Gonahena Camp, on allegations of trafficking and possessing Heroin.

2. The suspect was apprehended while attempting to load a green-colored bag into his vehicle. According to the petition, two other individuals, named as the 2nd and 3rd suspects, were also arrested at the same time on allegations of aiding and abetting the main suspect. It is further alleged that three additional bags were recovered from the same vehicle. The green-colored bag allegedly contained 25 smaller parcels wrapped in polythene, with a gross weight of 27.928 kg.
3. The remaining three parcels were reported to weigh 28.031 kg, 27.682 kg, and 27.807 kg, respectively. The petitioner-suspect, along with the other suspects, was subsequently handed over to the Police Narcotics Bureau for further investigation. On 21.11.2020, they were produced before the Magistrate's Court of Matara and were remanded.
4. As the suspect's bail application has been made under the Poisons, Opium and Dangerous Drugs Ordinance, it is necessary to examine the provisions of the Ordinance and their applicability to the present application.
5. The provisions of Section 83(2) of the Poisons, Opium and Dangerous Drugs Ordinance as amended by the Act No 41 of 2022, decrees that a person accused or suspected of being in possession of 10 grammes or more of the prescribed drugs, is required to be kept in remand, unless such person satisfies the Court as to the existence of exceptional circumstances.
6. Section 83 reads:

83(1). Subject to the provisions of section 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 77; 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.*
7. However, exceptional circumstances are not defined in the Statute. Therefore, whether the grounds advanced on behalf of the Suspect can be considered exceptional circumstances must be determined based on the facts and circumstances of each individual case.
8. As stated in ***Ramu Thamodarampillai vs The Attorney General [2004] 3 Sri. LR 180***, “the decision must in each case depends on its own particular facts and circumstances.”
9. As held in ***Attorney General v. Ediriweera S.C. Appeal No. 100/2005 [2006 BLR 12]***, “Delay is always a relative term and the question to be considered is not whether there was mere explicable delay, as when there is a backlog of cases, but whether there has been excessive or oppressive delay and this always depends on the facts and circumstances of the case...”.
10. In ***Abdul Quideer Aboobucker v. AG [CA/PHC/APN 42/2011 (CAM 31.08.2011)]***, this Court has rejected the application for bail, considering the fact that the alleged quantity of drugs recovered from the suspect is of a commercial nature.
11. In the instant application, the suspect-petitioner mainly averred following grounds as exceptional circumstances.
 - a. The petitioner has been in remand for over four years since his arrest;
 - b. Most of the suspects who were arrested subsequent to the arrest of the 1st suspect have been enlarged on bail and or released on the instructions of the Attorney General;
 - c. The 9th suspect who has been identified as a drug peddler and an underworld figure who has accumulated large amounts of funds and investigated into money laundering and allegedly having direct connections with the absconding 10th

- suspect who is in Italy, has been released on the instructions of the Attorney General;
- d. The presumption of innocence guaranteed by the Constitution of the Republic is in favour of the accused;
 - e. The daughter of the suspect is 17 years of age and she is preparing to face her Ordinary Level Examination and she is facing several hardships due to the accused being held in remand custody; and,
 - f. The accused is the sole breadwinner of the family and his wife is unemployed and has been unsuccessful in securing a suitable employment and as such the family of the accused is facing great financial stress.
12. The remand period of an accused cannot, in isolation, be taken as a ground for the grant of bail. It must be considered in conjunction with other attendant circumstances, particularly in light of the prevailing legislation governing the granting of bail. At the same time, the Court must remain mindful of the presumption of innocence, which is guaranteed to every suspect unless and until he is found guilty by a competent court of law.
13. Therefore, the stringent provisions of law should not be permitted to operate as a tool to deny a person's liberty without just cause. In considering a bail application of this nature, it is incumbent upon the Court to have due regard to the intention of the legislature, the gravity of the offence with which the accused is charged, the severity of the probable punishment, the likelihood of absconding if released on bail, the stage and progress of the investigation and/or trial, as well as the fundamental principles of presumption of innocence and the protection of personal liberty.
14. It is significant to note that where the net weight of the drugs involved is indicative of a commercial quantity, courts have consistently been reluctant to grant bail, as such an order would undermine the very object of Section 83. The legislature, in its wisdom, has enacted stringent provisions to deal with offences relating to dangerous drugs, recognizing that such offences have become a scourge to every nation.
15. These provisions are designed both to prevent the recurrence of such crimes and to deter suspects or accused persons from absconding, particularly in view of the fact that a conviction carries a mandatory sentence of either death or life imprisonment. In

this context, this Court is mindful that the period of remand, *per se*, cannot be regarded as an exceptional circumstance warranting the grant of bail.

16. In the present case, the accused has been in remand since November 2020. The net quantity of heroin alleged to have been recovered from him amounts to 75.377 kg, which is clearly not intended for personal consumption, but rather for commercial distribution.
17. Opposing the application for bail, the respondents filed a statement of objections. In their objections, it is stated that the indictment against the 1st to 3rd suspects has already been dispatched to the High Court of Matara.
18. It appears that it has taken nearly four and a half years to dispatch the indictment against the 1st to 3rd suspects.
19. It is noteworthy that the 1st suspect was arrested on 20.11.2020 and has been in remand custody since then. No plausible explanation has been forthcoming from the respondents regarding the delay in commencing the trial against this suspect and two others who were indicted before the High Court of Matara. The Government Analyst's Report is dated 17.08.2022, yet the indictment was only completed in February 2024.
20. It is also observed that the 4th to 9th , and 11th to 13th suspects were discharged from the case on the instructions of the Attorney General.
21. Interestingly, the report filed against the 9th suspect on 15.04.2021 revealed that he was involved in large-scale international drug trafficking. Similarly, the report filed on 02.12.2021 indicated that investigations uncovered a substantial flow of money through the bank accounts of the 9th suspect and his wife, which was identified as proceeds of drug trafficking. A further report filed on 23.10.2024, also disclosed the extensive involvement of the 9th suspect in drug trafficking. Nevertheless, on the instructions of the Attorney General, the 9th suspect, along with the 4th to 8th and 11th to 13th suspects, was subsequently discharged from the case.
22. It is also significant to note that the 2nd suspect was enlarged on bail on 26.09.2022 by the High Court of Matara. These circumstances, when considered together with the

delay in commencing the trial, would certainly persuade this Court to grant bail to the 1st suspect.

23. According to the objections filed by the respondents, the indictment has already been dispatched to the High Court of Matara, and the investigation materials related to the suspect have been registered at the Attorney General's Department under the reference CR3/12/2022. The documents tendered in this application indicate that the pre-trial hearing is scheduled for 22.08.2025.
24. In view of the above, it is difficult, if not impossible, to reasonably estimate the exact time period within which the trial would be concluded. Clearly, it will take at least several more months, if not years, to bring the trial to an end. If the 1st suspect is required to remain in remand custody indefinitely, with no certainty as to when his trial would be concluded, it would undoubtedly undermine the presumption of innocence enshrined in our Constitution as well as in international conventions.
25. It is also important to emphasize that, whatever the nature of the offence, every person is entitled to a fair trial. If an individual is made to languish in remand custody due to delays on the part of the relevant authorities in taking necessary steps to prosecute him, it would, in my opinion, amount to a denial of justice. There may indeed be instances where, owing to the complex nature of a particular offence, investigations may take longer than reasonably expected, thereby causing some delay in prosecution. However, where no plausible explanation is forthcoming from the prosecution to justify the delay in preparing the indictment and prosecuting the accused, the Court cannot simply turn a blind eye and continue to extend the period of remand, as this would ultimately amount to a form of punishment.
26. Upon consideration of the above, I am inclined to enlarge the 1st suspect on bail, subject to following conditions.
- a. A cash bail of Rs 500000.00.
 - b. There shall be four sureties and each of them shall enter into a bond of Rs. 2000000.00. (two million)
 - c. The 1st suspect is required to report to the Officer in Charge of the Police Narcotics Bureau, Colombo 01 on the 1st and 3rd Sunday of every month.

- d. The 1st suspect shall surrender his Passport if any to the High Court of Matara, and shall not apply for any travel document.
- e. Violation of any of the above bail condition shall result into the cancellation of bail.

27. The Registrar of this Court is directed to communicate this order to the High Court of Matara and the Officer in Charge of Police Narcotics Bureau forthwith.

Judge of the Court of Appeal

P.Kumararatnam, J.

I agree.

Judge of the Court of Appeal