

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 Principal Enactment as amended by the Poisons, Opium and Dangerous Drug (Amendment) Act No: 41 of 2022.

Umeshika Anuradhi Thenuwara,
No.424/D/01,
Sri Wimalaratne Mawatha,
Aruggoda, Alubomulla

Court of Appeal Case No:
CA/Bail/340/2024

Petitioner

Magistrate Court Nugegoda Case No:
B 17029/2023

Vs

1. Officer-in-Charge
Police Station,
Maharagama.
2. Hon. Attorney General,
Attorney General's Department,
Colombo 12.

Respondents

Before : **Hon. P Kumararathnam, J.**

Hon. Pradeep Hettiarachchi, J.

Counsel : Anuja Premarathne, PC with Rashini Balasooriya for the Petitioner.
Oswald Perera, SC for the Respondents

Inquiry on : 2025.06.23

Decided on : 2025.07.08

Pradeep Hettiarachchi, J

Order

1. This is an Application for bail filed on behalf of the suspect named Nawurunna Palliyaguruge Sanka Sanjeeva (hereinafter referred to as “the Suspect”) under Section 83(2) of the Poisons, Opium and Dangerous Drugs Ordinance.
2. The suspect was arrested on 31.05.2023, by the officers of Maharagama Police-Station for alleged possession of two parcels of Heroin, which is an offence punishable under Section 54 A (a) and (d) of the Poisons Opium and Dangerous Drugs Ordinance as amended by the Act No 41 of 2022. He was subsequently produced before the Magistrate Court of Nugegoda and remanded.
3. According to the petition, at the time of the arrest, the accused was allegedly in possession of 103 grams and 750 milligrams of Heroin. The 'B' report filed by the police also states that equipment used for packaging Heroin was recovered
4. According to the Government Analyst's Report, the pure quantities of heroin contained in the two parcels are 11.73 grams and 5.42 grams, respectively.
5. The Petitioner in this application has urged the following grounds to be considered as exceptional circumstances.
 - a. The suspect has been in remand for last 14 months;
 - b. The suspect is father of two years old child, and the sole breadwinner of the family; and,
 - c. The petitioner is unemployed and unable to look after the well-being of the child alone.
6. Opposing the bail application, the respondents filed their objections. In their objections, it is stated that the suspect has two pending cases of a similar nature: one before the Panadura High Court bearing Case No. 4547/24, and the other before the Magistrate's Court of Panadura bearing Case No. 67687/19.
7. Furthermore, the respondents contend that the grounds advanced by the petitioner do not constitute exceptional circumstances warranting the grant of bail. Additionally, the respondents assert that the petitioner has failed to state that the present application was

filed on the instructions of the suspect, and therefore lacks the locus standi to institute and maintain this application. Moreover, it is stated that the application is not supported by an affidavit from the suspect regarding the factual matters relating to his arrest, as pleaded in the petition.

8. The Provisions of section 83 of the Poisons, Opium and Dangerous Drugs Ordinance as amended by the Act number 41/2022 reads;

Section 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 - (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, [sic] shall not be released on bail except by the Court of Appeal in exceptional circumstances.

(3) For the purposes of this section “dangerous drug” means Morphine, Cocaine, Heroin and Methamphetamine.”

9. In light of the above section, a person accused or suspected of being in possession of 10 grammes or more, is required to be kept in remand, unless such person satisfies this Court as to the existence of circumstances that are exceptional. So, the burden is on the petitioner to establish the existence of exceptional circumstances.

10. Nevertheless, exceptional circumstances are not defined in the Statute. Therefore, whether the grounds advanced by a Petitioner when seeking bail can be considered exceptional circumstances must be determined based on the facts and circumstances of each individual case.

11. In *S v Peterson 2008 (2) SACR 355 (C)* Para 55 an attempt to define the word exceptional circumstances was made in the following words:

.... Generally speaking, “exceptional” is indicative of something unusual, extraordinary, remarkable, peculiar or simply different. There are, of course,

varying degrees of exceptionality, unusualness, extraordinariness, remarkableness, peculiarity or difference. This depends on their context and on the particular circumstances of the case under consideration

12. 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.”

13. In ***W.A. Deepa Nandani Vs OIC-Police Station Marawila*** CA-PHC-APN 134-20 Iddawela J. stated *inter alia*;

[t]he threshold of what amounts to ‘exceptional circumstances’ varies with each case. a demarcation of the boundaries of an exceptional circumstance is purely a subjective exercise and as such it cannot be given a rigid interpretation. What is recognized as an exceptional circumstance in one case may not be so in another. As such, the facts of each case must be carefully examined in deciding whether or not the circumstances presented are exceptional.

14. As stated in ***Labukola Ange Gedara Ashani Dhanishika CA (PHC) APN 04/2016***, the intention of the Legislature is to keep in remand any person who is suspected of or accused of possessing or trafficking heroin until the conclusion of the case. The section 83(1) of the Poisons, Opium, and Dangerous Drugs Ordinance expresses the intention of the Legislature. It is enacted by the Parliament that *"No person suspected or accused of an offence under section 54A or section 54B of this Ordinance shall be released on bail, except by the High Court in exceptional circumstances. "*

15. It is pertinent to note that, the suspect has two pending cases before the High Court and the Magistrate’s Court for offences of a similar nature. Furthermore, the fact that the suspect is the father of a two-year-old child and the sole breadwinner of the family cannot be considered an exceptional ground, as such circumstances are common to many cases.

16. The petitioner has also averred that they had a boundary dispute with one Devika, a woman police constable attached to Police Headquarters, who resides adjacent to the petitioner’s residence. Due to this dispute, the petitioner claims they were constantly harassed by the police through various false allegations and repeated arrests on fabricated charges. The petitioner has also cited the case numbers of some of the proceedings allegedly initiated as acts of revenge by the police. Ultimately, the petitioner lodged a complaint with the Human Rights Commission, and as a result, the

police officers responsible for the alleged misconduct were transferred out of Panadura to other divisions.

17. This fact cannot be lightly disregarded, as the respondents have failed to adequately counter it, offering only a bare denial. In my view, this is not a mere general allegation but a very serious claim, with specific accusations levelled against the police. The fact that some police officers were transferred out of Panadura following the complaint made to the Human Rights Commission indicates that the complaint had merit, as it was acted upon by the Commission. In the face of these detailed allegations, the respondents have merely provided a bare denial in paragraph 06 of their objections.
18. If it were merely a general allegation of drugs being introduced to the suspect, a bare denial might have sufficed. However, when a detailed sequence of serious allegations has been specifically set out, it is incumbent upon the respondents to address them adequately, which they have failed to do.
19. This sequence of events alleges the repeated introduction of narcotics, which, to a certain extent, also explains the existence of multiple pending cases against the suspect. Considering the above in its entirety, particularly the respondents' failure to adequately refute the allegations, I find no reasonable basis to disbelieve or reject the petitioner's version as set out in the petition. Consequently, these circumstances cast doubt on the version presented by the respondents, which constitutes an exceptional circumstance in the context of bail applications of this nature.
20. It is also worth noting that although the Government Analyst's Report was ready by 02.10.2023, the respondents have, without providing any plausible explanation, failed to indict the suspect to date. Based on the facts set out in the 'B' Report, this does not appear to be a case of a complex nature that would warrant further investigation. Accordingly, it can be safely inferred that the delay is both inordinate and oppressive in the context of the present case.
21. Upon consideration of the foregoing, I am of the view that the facts urged by the petitioner in the present application constitute exceptional circumstances warranting the grant of bail.

22. Accordingly, I order that the suspect Nawurunna Palliyaguruge Sanka Sanjeewa be enlarged on bail, subject to the satisfaction of the following conditions:

- a. Rs. 200000.00 cash bail with two sureties;
- b. Each of the sureties shall enter into a bond in a sum of Rs. 1,000,000/-.
- c. The suspect is ordered to report to the Officer-in-Charge of the Police Station Maharagama between 9.00am and 10.am on the last Sunday of every month;
- d. The suspect shall surrender his passport if any to the Magistrate Court, Nugegoda.
- e. Any violation of the above bail conditions shall result in the cancellation of bail

23. The Registrar is directed to send a copy of this order to the Magistrate Court of Nugegoda and the Officer-in-Charge of Maharagama Police.

Judge of the Court of Appeal

P. Kumararatnam, J.

I agree,

Judge of the Court of Appeal