

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

Regarding an application for bail in
terms of section 83(2) of the Poisons,
Opium and Dangerous Drugs Ordinance
No. 17 of 1979 (as amended by the Act
No. 41 of 2022)

The Officer-in-Charge
Police Station
Wattala

Complainant

Vs

Ganesh Mahendran
No.180/44
Palliyawatte, Handala
Wattala

Suspect

Court of Appeal Bail Application:

CA/BAL/0107/2025

Magistrate Court of Welisara:

B 5434/2023

NOW BETWEEN

Muththaiya Thangamadhani
Aduruppuweediya
Colombo13

Petitioner

Vs

1. The Officer-in-Charge
Police Station
Wattala

Complainant-Respondent

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

Respondent

3. Ganesh Mahendran
(Now in Mahara Prison)

Suspect-Respondent

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

Counsel : Roshini Ratnayake for the Petitioner
Oswald Perera SC for the Respondents

Inquiry on : 09.07.2025

Decided on : 12.09.2025

Pradeep Hettiarachchi. J.

Order

1. This is an Application for bail filed by the Petitioner named MuththaiyaThangamadhani (hereinafter referred to as “the Petitioner”) on behalf of her son named Ganesh Mahendran (hereinafter referred to as “the Suspect”) under section 83(2) of the Poisons, Opium and Dangerous Drugs Ordinance (hereinafter sometimes referred to as “the Ordinance”).
2. According to the Petition, the Suspect had been arrest by a group of police officers on 17-12-2023 for possession and trafficking of 640 grams of Heroin and 35 kilograms and 522 grams of Cannabis mixed Hashish. Thereafter, the Suspect was produced before the Magistrate Court of Welisara on 18-12-2023. The Suspect has been in remand custody since the date of his arrest, i.e., 17-12-2023.

3. The Respondents have filed their objections dated 26-06-2025. In the statement of objections, it was contended that the quantity of heroin involved in this case constitutes a commercial quantity, and therefore, if convicted, the suspect will be liable to either the death sentence or life imprisonment. Accordingly, it was argued that the risk of absconding is high if bail is granted. It was further stated that the fact that the suspect is the sole breadwinner of the family, and that there is a delay in prosecuting the case, cannot be regarded as exceptional circumstances.
4. As per the Government Analyst Report dated 16-12-2024, the net quantity of Diacetyl Morphine recovered from the Suspect was 66.15 grams. Furthermore, it is important to note that, according to the B-Report, the gross quantity of Hashish recovered from the Suspect is 35 kilograms and 522 grams while the net quantity of Hashish as per the Government Analyst report is 547 grams. Therefore, there is a huge discrepancy between the two quantities stated in the B-Report and the Government Analyst Report.
5. Under section 83(2), this Court can consider bail only if exceptional circumstances are made out. Section 83 as amended by the Poisons, Opium and Dangerous Drugs (Amendment) Act, No. 41 of 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.

6. The provisions of section 83 (2) as amended by Act, No. 41 of 2022, manifest the intention of the legislature, i.e., a person accused or suspected of being in possession of 10 grams or more of the dangerous drugs is required to be kept in remand, unless such person satisfies this Court as to the existence of circumstances that are exceptional. Therefore, the burden is on the Suspect to establish the existence of exceptional circumstances.
7. However, the exceptional circumstances are not defined in the Ordinance. Therefore, whether the grounds advanced by the Petitioner constitute exceptional circumstances must be determined based on the specific facts and circumstances of each case.
8. As stated in ***Ramu Thamodarampillai v The Attorney General*** [2004] 3 Sri. LR 180, “the decision must in each case depend on its own particular facts and circumstances.
9. The following grounds have been urged by the Petitioner as exceptional circumstances warranting consideration for bail:
 - (a) The Suspect has been in remand for more than one year and three months.
 - (b) The Suspect has no pending cases.
 - (c) The Suspect is the sole breadwinner of the family.
10. Accordingly, the main ground advanced by the Petitioner is that the Suspect had been in remand custody for more than one year and three months.
11. However, it is to be noted that delay alone cannot be a ground for granting of bail unless there is oppressive and inordinate delay. As held in ***Attorney General v. Ediriweera*** (S.C. Appeal No. 100/2005), “*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... ”*.
12. It is understood that the filing of certain cases is delayed due to their complex nature and the lack of adequate officers and resources. This is why delay, by itself, should not be considered an exceptional ground for granting bail in offences of this nature. As stated earlier, delay must be assessed in conjunction with the specific facts and circumstances of each case. More importantly, the Court must not lose sight of the objective of the

legislature when considering a bail application of this nature. The legislature, in its wisdom, has enacted these stringent laws with the aim of curbing the commission and repetition of drug-related offences, which have become a menace to society. Regarding bail, section 83 contains specific provisions which decree in the mandatory form that bail should be granted only upon being satisfied of the existence of exceptional circumstances.

13. Considering the legislative intent behind section 83(1) (Prior to the Amendment) of the Ordinance, it was stated in ***Labukola Ange Wisin Gedera Ashani Dhanushshika v. OIC Divisional Crimes Investigation Unit Panadura*** [CA/PHC/APN/04/2016- CAM 06.10.2016] as follows;

“The Petitioner’s first point is that the suspect is in remand nearly for two years. The intention of the Legislature is to keep in remand any person who is suspected of or accused of possessing or trafficking heroine until the conclusion of the case. The Section 83(1) of the Poisons, Opium and Dangerous Drugs Ordinance express 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.”

14. But at the same time this Court is also mindful of the fact that the stringent provisions of a statute should not be used as a tool to deprive a person’s liberty, thereby forcing them to live in trepidation without any knowledge of the progress of the investigation or the possible outcome.
15. Our Courts have recognized the prejudice caused to a suspect by lengthy and inordinate delays. To elaborate further, the right to a speedy trial is not only aimed at expediting the administration of justice but also at preventing the oppression of a citizen by keeping a criminal prosecution hanging over them for an indefinite period.
16. Therefore, it is incumbent upon the relevant authorities to act with due diligence to avoid inordinate delays in prosecuting offenders. If the prosecution fails to act with due diligence and cannot explain the delay on their part, it would, in my opinion, constitute an exceptional circumstance as required by section 83 of the Poisons, Opium and Dangerous Drugs Ordinance.

17. In the present Application, the Suspect has been in remand since 17-12-2023. It was informed to this Court that the IB extracts have been sent to the Police Narcotic Bureau. However, no Indictment has been dispatched yet. The Prosecution has received the Government Analyst's Report dated 16-12-2024. In the objections filed by the Respondents, no plausible explanation was provided for their failure to file an indictment against the Suspect despite being in possession of the Government Analyst Report.
18. Furthermore, the Respondents have not explained their progress from the point of forwarding the IB Extracts to the Police Narcotic Bureau. The learned State Counsel has failed to give a justifiable reason for the delay in indicting the Suspect and nor has he indicated a possible time frame within which the indictment will be filed against the Suspect in future. It is also pertinent to note that the Suspect has no previous convictions.
19. In the aforesaid circumstances, the delay of one year and seven months, when considered together with the failure to provide an explanation for the delay in forwarding the indictment, may properly be regarded as exceptional. It is important to emphasize that when a person is deprived of liberty and held in detention, the authorities responsible for such deprivation are under a duty to act consciously and diligently in pursuing, finalizing, and instituting legal proceedings. In the absence of a reasonable explanation, any delay will be deemed excessive and oppressive.
20. Based on the above analysis, I am inclined to grant bail to the Suspect subject to the following conditions;
- a) Rs 200000/- cash bail;
 - b) to provide two sureties who should execute bonds to the value of Rs. 500,000.00 each;
 - c) the sureties should provide certificates from the Grama Sevaka and police reports from respective residential areas of such sureties;
 - d) the Suspect shall surrender the passport or any travel document of the Suspect, if he has any, to the Registrar of the Magistrate Court of Welisara
 - e) The Suspect is ordered to report to the Officer-in-Charge of the Wattala Police Station on every last Sunday of the month before 12 noon.

21. This Application is accordingly allowed, and the Registrar of this Court is directed to transmit a copy of this Order to the Registrar of the Magistrate Court of Welisara and to the Officer-in-Charge of the Wattala Police Station forthwith.

Judge of the Court of Appeal

P.Kumararatnam, J.

I agree.

Judge of the Court of Appeal