

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

In the matter of an application for Bail as under and in terms of Section 83(2) of the Poisons, Opium and Dangerous Drugs Ordinance as amended by section 04 of the Act No.41 of 2022.

Court of Appeal

Sadurdeen Mohomada Faris Sajiudeen

Application No:

No. N/2/1, Dias Place,

CA Bail/0328/2025

Gunasinghapura, Colombo-12.

(Currently in Remand Prison)

High Court of Colombo

ACCUSED-PETITIONER

No. HC/5305/25

MC Mount Lavana case No.

Vs.

B/28796/2024

The Attorney General

Attorney General's Department

Colombo-12.

RESPONDENT

BEFORE

:

P. Kumararatnam, J.

R. P. Hettiarachchi, J.

COUNSEL : **Saliya Peiris with Lakshitha Edirisinghe instructed by Praveen Premathilaka for the Petitioner. Shezan Mahboob, SC for the Respondent.**

ARGUED ON : **25/01/2026.**

DECIDED ON : **19/02/2026.**

BAIL ORDER

P. Kumararatnam, J.

The Accused-Petitioner (hereinafter referred to as the Petitioner) filing this Application has invoked the jurisdiction of this Court to grant bail to him upon suitable conditions as this Court considers appropriate. This is his second bail application filed in this Court.

On 19.01.2024, the Petitioner was arrested by officers attached to the Wellawatte Police Station on allegation that the Petitioner had 940 of grams (gross) of substances suspected to be Cocaine in his possession.

The Petitioner was produced, and the facts were reported to the Mount Lavana Magistrate under Section 54A(d) and 54A(b) of the Poisons Opium and Dangerous Drugs Ordinance as amended by the Act No.13 of 1984.

The production had been sent to the Government Analyst Department on 25/03/2024. After analysis, the Government Analyst had forwarded the report to Court on 03/07/2024. According to the Government

Analyst Report, 567 grams of pure Cocaine had been detected from the substances sent for the analysis.

Presently, the Petitioner is indicted in the High Court of Colombo under case No. HC 5305/2025 and the matter is fixed for pre-trial conference.

The contention of the prosecution is that the Petitioner was arrested upon an information and the contraband was recovered from his possession at No.28/2/2, Metro Habitation Building, Wellawatte.

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

1. The Petitioner has been in remand custody for over two years.
2. There is a serious doubt of the place of arrest of the Petitioner and the Petitioner submits that he had no possession of any narcotics at the time of his arrest.
3. The Petitioner has very serious medical condition which, if left untreated, has life threatening impact and the prison medical authorities are not equipped to handle the said medical condition. The family life of the Petitioner has also collapsed, and the Petitioner's fiancée is suffering from depression owing to the arrest and detention of the Petitioner.

In **Nasher v. Director of Public Prosecution [2020] VSCA 144** the court held that:

“a combination of delay, onerous custodial conditions, and the relative weakness of the prosecution case may, when considered with all relevant circumstances, compel the conclusion that exceptional circumstances have been established”.

According to the Learned State Counsel, the Petitioner was arrested for possession and trafficking of Cocaine. Steps had already been taken to indict the Petitioner in the High Court of Colombo and the case number is HC 5305/2025. The indictment has been served onto the Petitioner. Hence, the Learned State Counsel submitted that the delay is not an

exceptional circumstance to be considered to enlarge the Petitioner on bail. Further, the time spent for preparing the indictment does not constitute an exceptional circumstance.

The learned President's Counsel for the Petitioner submits that the Petitioner has been in remand for over two years. Considering the facts and the circumstances of this case, the prosecution will not be able to establish a prima facie case against the Petitioner.

Exceptional circumstances are not defined in the statute. Hence, what would constitute *an* exceptional circumstance must be considered on its own facts and circumstances on a case-by-case basis.

In **Ramu Thamothearampillai 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”.

In **CA (PHC) APN 17/12 and CA(PHC) APN 16/12** the court observed the fact that the indictment was not served even after the lapse of one year from the date of producing the Government Analyst's Report, was considered as exceptional circumstances.

In **CA(PHC)APN 107/2018** decided on 19.03.2019, it was held that remanding for a period of one year and five months without being served with the indictment was considered an exceptional circumstance inter alia in releasing the suspect on bail.

According to the Petitioner, he is suffering from Psoriasis, a chronic and inflammatory disease which causes multiplicity of skin cells, and the most commonly observed symptoms are scaly and inflamed skin patches on different parts of the body. For this disease he has been treated for over 10 years with a special hygiene and diet routine to prevent the inflammation and escalation of the condition.

The Learned President's Counsel for the Petitioner submits that the condition of the Petitioner has severely worsened since the time of his arrest owing to the unhygienic conditions of the remand prison and due to the inability of maintain the prescribed diet plan. As such, he is undergoing numerous hardships due to this situation.

The Petitioner has been receiving treatment for his psoriatic condition for a number of years from his family doctor. At the time of his arrest, his medical condition was present, although not severe due to the constant treatment received. Thereafter, his condition has exacerbated to Erythrodermic Psoriasis while in remand custody and the reports have confirmed that local treatments are unavailable at the Prison Hospital and that in any event the Prison Hospital is not equipped to handle a case of worsening Psoriasis. Since treatments were unavailable at the Prison Hospital, the Petitioner was transferred to the National Hospital for treatments by the Consultant Dermatologist, where the reports have indicated the need of constant treatments without default. All medical reports are annexed to this application.

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 Cocaine detected is 567 grams. Hence, this Court has jurisdiction to consider the granting of bail as per the new amendment.

In this case, as per the submission of the Learned State Counsel, the indictment has been dispatched to the High Court of Colombo. The Learned President's Counsel submitted that although the indictment had been forwarded, the trial has not started and the delay of little over two years over therefore falls into the category of excessive and oppressive delay, considering the circumstances of this case.

The learned President's Counsel for the Petitioner urged this Court to consider that detaining an Accused without the trial being commenced for an extended period of time amounts to a violation of his fundamental rights, which can be considered as an exceptional ground.

Offences under Section 54A(d) and 54A(b) of the Poisons, Opium and Dangerous Drugs Ordinance as amended by the Act No.13 of 1984 are undoubtedly serious offences, however, the seriousness of the offence alone cannot form a ground to refuse bail. When considering these matters, the court must bear in mind the presumption of innocence.

Further, the Petitioner has a severe medical condition which need periodical and constant treatment from a specialist doctor.

I consider the medical condition of the Petitioner, the period he was in remand custody and other circumstances of this case to exceptional, and decide that the Petitioner has very good exceptional circumstances to consider this application in his favour.

Considering all these factors into account, I order bail to the Petitioner with the following strict bail conditions.

1. Cash bail of Rs.500,000/=.
2. To provide 03 sureties. They must sign a bond of three million each.
3. The Petitioner and the sureties must reside in the address given until conclusion of his case.
4. Not to approach any prosecution witnesses directly or indirectly or to interfere with them.
5. To surrender his passport, if any, to court and not to apply for a travel document. The Controller of the Immigration and Emigration is informed of the travel ban on the Petitioner.
6. To report to the Officer-in-Charge, Police Station, Wellawatte on the second and last Sundays of the month between 9am to 1pm.
7. Any breach of these conditions is likely to result in the cancellation of his bail.

The Learned High Court Judge of Colombo is hereby directed to enlarge the Petitioner on the above bail conditions.

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

JUDGE OF THE COURT OF APPEAL

R. P. Hettiarachchi, J.

I agree.

JUDGE OF THE COURT OF APPEAL