

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 Poisons, Opium and Dangerous Drugs Act as amended by Act No. 41 of 2022.

Mulekatin Mihindu Prasad,
No. 141/119, Seevali Pura,
Borella.

Petitioner

Court of Appeal Case No:
CA/BAL/55/2025

HC Gampaha Case No:
HC/87/2024

MC Mahara Case No.
B 1722/2023

Vs

1. Hon. Attorney General
Attorney General's Department
Colombo 12.

Complainant- Respondent

2. Officer-in-Charge
Police Narcotics Bureau
Colombo 01.

2nd Respondent

Mulekatin Saliya Chathuranga
No. B/F10/U01
Lakhiru Sewana, Maligawatte
Colombo 10
(Presently in remand custody)

Accused

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

Hon. Pradeep Hettiarachchi, J.

Counsel : Shamindra Rodrigo for the Petitioner.
Oswald Perera, SC for the Respondents.

Inquiry on : 23.06.2025

Decided on : 01.08.2025

Pradeep Hettiarachchi,

ORDER

1. This is an Application for bail filed on behalf of the Accused named Mulekatin Saliya Chathuranga (hereinafter referred to as “the Accused”) by his brother Mulekatin Mihindu Prasad (hereinafter referred to as “the Petitioner”) under section 83(2) of the Poisons, Opium and Dangerous Drugs Ordinance (hereinafter sometimes referred to as “the Ordinance”) seeking to enlarge the Accused who is presently in remand custody on bail.
2. According to the Petition, the Petitioner was arrested by a group of officers attached to the Police Narcotics Bureau on 07-04-2023 and found some illegal substances inside the left side pocket of his trouser. Subsequently, the substances so recovered were sent to the Government Analyst and according to the Government Analyst Report 15.96 grams of Methamphetamine was detected in the substance.
3. The Accused had been indicted before the High Court of Gampaha bearing case no. HC/87/2024 on 22-03-2024.
4. 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.

5. 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 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. Therefore, the burden is on the Suspect to establish the existence of exceptional circumstances.
6. 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.
7. 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.”
8. Following are the exceptional circumstances urged by the Petitioner are as follows:
 - (a) The Accused has been in remand custody since 07-04-2023, but the High Court trial has not commenced yet.
 - (b) The Accused is unmarried and is 29 years old.
 - (c) The Accused was arrested without a justifiable reason and the said arrest solely focused to keep the Accused in remand custody.
 - (d) The Accused denies the allegations leveled against him as no substance was recovered from his possession.
9. Opposing the bail application of the Petitioner, the Respondents filed their Objections. In their Objections, the Respondents averred that none of the grounds advanced by the Petitioner shall be considered as exceptional circumstances.
10. It is further stated that the Accused has three previous convictions for offences of similar nature and more importantly, the present arrest was made while he was serving a suspended sentence.
11. Further it was brought to the notice of this Court that a bail application bearing No. 381/23 was filed earlier in respect of the same offence and was dismissed on 22-10-2024 by this Court.
12. Furthermore, it is stated that the Petitioner has failed to advance any new grounds as exceptional circumstances other than what was pleaded in the earlier bail application.

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13. In the present case, the Petitioner primarily requests this Court to consider the period of remand as an exceptional circumstance warranting the grant of bail to the Accused. However, there are several authorities which support the position that the remand period alone does not constitute exceptional circumstances as required under section 83(2) of the Ordinance.
14. As stated in *Labukola Ange Gedara Ashani Dhanushika* 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. Similarly, in *Cader (on behalf of Rashid Khan) v OIC Narcotic Bureau* [2006] 3 Sri. LR 74 it was held that;

Provision has been made in the Bail Act to release persons on bail if the period of remand extends more than 12 months. No such provision is found in the case of Poison, Opium, and Dangerous Drugs Ordinance. Although bail was granted in some of the cases mentioned above, none of these cases referred to the time period in remand as constituting an exceptional circumstance. Hence, bail cannot be considered on that ground alone. It appears from the cases cited above that there is no guiding principle with regard to the quantity found either.

16. In the same case, while focusing the attention on the nature and gravity of the offences falling under the Act, Eric Basnayake J. further stated as follows:

Heroin has become a menace in our society. It is not easily detectable. Due to the fact alone, the tendency to commit this kind of crime repeatedly has become feasible. The repetitive factor prevalent in this sort of crime and the difficulty of detection are significantly strong reasons for refusing bail in this type of cases.

17. The special bail provisions under Section 83(2) establish a stringent framework for certain types of narcotics offences, primarily to prevent suspects from absconding or re-engaging in similar criminal activities. This is due to the unique nature of drug-related offences, which are often committed in a highly organized and sophisticated manner. Therefore, if Courts grant bail solely on the ground of delay, without giving due consideration to the

surrounding circumstances such as the previous conduct of the Accused and the quantity of the drugs involved, it would, in my view, undermine the very purpose of the Act.

18. In the present case, undoubtedly, the net weight of Methamphetamine involved is indicative of a commercial quantity and not a user quantity. Furthermore, this Court cannot lose the sight of three previous convictions and also the fact that he was arrested for this offence while serving a suspended term.
19. Thus, I am not inclined to consider the remand period alone as an exceptional circumstance because if he is granted bail solely on that reason it would undermine the very purpose of section 83.
20. Therefore, the duration of remand by itself does not constitute an exceptional circumstance warranting the grant of bail. It is also noteworthy that the Government Analyst Report was ready by 12-10-2023 and the Indictment was signed on 22-03-2024. Hence, there is no oppressive or inordinate delay of the Respondents in taking steps to prosecute the Accused.
21. Furthermore, when granting bail the Court must be satisfied that the Suspect will comply with the bail conditions and appear before the Court when required. Similarly, the stringent bail provisions are meant to prevent the reoccurrence of crimes of similar nature. The previous convictions of the Accused evince that he has gradually become a drug trafficker. Needless to say, given the Accused's prior conduct there is a significant risk that he would reoffend if granted bail?
22. Therefore, the period the Accused spent in remand cannot be regarded as an exceptional circumstance in the context of the present case, given his prior conduct and the net quantity of the drugs involved.
23. For the reasons stated above, it is my considered view that none of the grounds advanced by the Petitioner can be considered as exceptional circumstances warranting the grant of bail.
24. On the above premise, I dismiss the bail application.
25. The Registrar of this Court is directed to communicate this Order to the High Court of Gampaha and the Officer-in-Charge of the Police Narcotics Bureau forthwith.

Judge of the Court of Appeal

P.Kumararatnam, J.

I agree.

Judge of the Court of Appeal