

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.

Mudannagoda Kankanange Champika
Priyadarshani Fernando,
No. 18/1, Seevali Mawatha
Willorawaththa, Moratuwa.

Court of Appeal Bail Application:

CA/BAL/0502/2024

Magistrate Court : Moratuwa

B 1234/2024

Petitioner

Vs

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

2. Officer- in –Charge,
Police Station of Moratumulla,
Sri Premaratna Mawatha,
Moratuwa.

Respondents

Suresh Chaminda Fernando,
(Presently in remand custody)

Suspect

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

Pradeep Hettiarachchi, J.

Counsel : Shalani Jayasinghe for the Petitioner.
Tharaka Kodagoda, SC for the Respondents.

Argued on : 27.08.2025

Decided on : 30.09.2025

Pradeep Hettiarachchi,

Order

1. This is an Application for bail filed by the Petitioner named Mudannagoda Kankanange Champika Priyadarshani Fernando (hereinafter referred to as “the Petitioner”) on behalf of her son named Suresh Chaminda Fernando (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 B-Report dated 10-04-2024, the Suspect was taken into custody by a team of police officers attached to the police station of Moratumulla, led by the Inspector of Police K.Chandrasiri on 09-04-2024 for trafficking and keeping in his possession 21 grams and 200 milligrams of Methamphetamine, an offence punishable under sections 54A1(b) and 54A1(d). The Suspect was later produced before the Magistrate Court of Moratuwa on 10-04-2024.
3. However, According to the Government Analyst Report dated 25-08-2024, the net quantity of Methamphetamine recovered from the Suspect was 13.06 grams.
4. The Respondents have filed their Objections dated 23-05-2025 along with the Previous Convictions Report of the Suspect marked P1. It is stated in the Statement of Objections that the Petitioner has failed to establish exceptional circumstances warranting the grant of bail to the Suspect; large quantities of the dangerous drugs found in the possession of the Suspect indicate that the Suspect is a drug dealer of large scale and releasing the Suspect on bail would hinder the investigation process.

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, which 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 was taken to custody on 09-04-2024 and still in remand for nearly 8 months.
 - (b) No indictment was filed even though the Government Analyst Report was available for three and half months.
 - (c) The B-Report filed against the Suspect is inappropriate and incomplete and not in accordance with section 115 (1) and section 115(2) of the Criminal Procedure Code Act No. 15 of 1979.
 - (d) The 2nd Respondent failed to conduct a proper investigation and has not disclosed any important facts regarding the investigations in their further reports produced to the learned Magistrate.
10. Accordingly, the main ground adduced by the Petitioner is the delay in prosecuting the Suspect. According to the Petition, no Indictment has been served on the Suspect, despite the fact that the Government Analyst Report was ready by 25-08-2024.
11. It is important to note that the Suspect has two previous convictions for keeping in his possession dangerous drugs such as Heroine and Methamphetamine during the period of 2021-2022. Furthermore, the case bearing No. MC/78167 had been instituted by the Moratumulla Police against the Suspect for causing grievous hurt on a woman by throwing acid on her on or around 13-12-2018 and the Suspect had been found guilty for the said offence. Also, in the case bearing No. MC/ 04472, the Suspect had been charged for causing grievous hurt on one Dinesh Kalum Fernando on 12-02-2021
12. In addition to the above, there are three pending cases against the Accused. The case bearing No. MC/13883 has been instituted against the Suspect for keeping in his possession 30 intoxicant tablets on 22-12-2022 while the case bearing No. MC/ 96285 has been instituted against the Suspect for trespass and causing criminal intimidation and simple hurt on a person. Also, the case bearing No. MC 84886 has been instituted *inter alia* for causing the death of one Duminda Iroshan, one Chinthaka Sandaruwan and one Ramesh Wijayantha and the Suspect in the present case is also a suspect in the said case

before the Magistrate Court of Moratumulla. Therefore, it appears that the Suspect has committed the present crime while he was on bail for the aforesaid cases.

13. Also, previous convictions and the pending cases against the Suspect suggest that the Suspect has a propensity towards violent behavior and engaging in offences of similar nature. It is also desirable to emphasize that when considering bail for a Suspect of this nature, the Court has to be mindful not only about the Suspect's liberty but also the possible adverse impact on the society at large. Therefore, this Court cannot lightly consider the nature of the pending cases and the previous convictions against the Suspect when determining this bail Application.
14. Furthermore, the Suspect, if found guilty by the High Court, will either be served with death sentence or life imprisonment. Therefore, the risk of absconding of the Suspect is high. These factors have been addressed in various cases, and the Court will not release a suspect on bail where there is a likelihood that the suspect may abscond and there is a possibility that the Suspect will re-engage in criminal activities. Pointers for the court's consideration when granting bail to a suspect include the seriousness of the offence, the probability of a conviction, existence of previous convictions, possible impact that the suspect's release may have on the society at large and the likely nature of the sentence.
15. Furthermore, 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 a sophisticated manner. Therefore, if courts grant bail solely on the ground of delay, without giving due consideration to the surrounding circumstances and the nature of the offences, it would, in my view, undermine the very purpose of the Act.
16. Regarding the time period spent in remand, this Court has previously in a long line of judicial authorities have held that the period spent in remand custody alone does not suffice to grant bail to a suspect or an accused. For instance, in ***Labukola Ange Gedara Ashani Dhanushika*** CA (PHC) APN 04/2016, Dehideniya J stated that the time spent in remand custody alone cannot be considered as an exceptional circumstance warranting

the grant of bail to a suspect when the suspect has been previously convicted for similar offences. He stated;

In the present case he Petitioner has failed to establish any exceptional circumstances warranting this Court to exercise the revisionary jurisdiction. 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 heroin 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." The suspect in the present case has been previously convicted on similar offences. Therefore, remanding itself, of a person of this caliber cannot be an exceptional circumstance to grant bail.

17. 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.

18. Moreover, the learned State Counsel informed this Court that the investigation dossier has been received by the Hon. Attorney General and the Indictment has already been prepared. Hence, it can be inferred that the Suspect will be charged without undue delay and that the trial against the Suspect may commence soon. Accordingly, there is no indication of any undue or oppressive delay on the part of the Respondents in the investigation process. The violent behavior shown by the Suspect in the past and his previous convictions related to offences of similar nature, when considered cumulatively, do not persuade me to grant bail to the Suspect.

19. Accordingly, the bail application of the Petitioner is dismissed. The Registrar of this Court is directed to transmit a copy of this Order to the Registrar of the Magistrate Court of Moratuwa and the Officer-in-Charge of the Moratumulla Police Station.

Judge of the Court of Appeal

P.Kumararatnam, J.

I agree.

Judge of the Court of Appeal