

**IN THE COURT OF APPEAL OF THE DEMOCRATIC SOCIALIST**

**REPUBLIC OF SRI LANKA**

In the matter of an application under the provisions of section 83(2) of the Poisons, Opium and Dangerous Drugs Ordinance as amended by the Act No. 41 of 2022.

Officer-in-Charge  
Police Narcotic Bureau  
Colombo 01.

Court of Appeal Case No:

**CA/BAL/0125/25**

Maligakanda Magistrate Court

Case No: **B 48697/23**

**Complainant**

**Vs**

1. Abdul Aziz Mohamed Ramsin  
No. 77/15, Gnana Wimala Road  
Dematagoda, Colombo 09.
2. Manikku Arachchige Madhushanka  
No. 88A, Poramba  
Ambalangoda
3. Mohamed Rizvi Mohamed Ishak  
No. 765/275, Keththarama  
Maligawatte
4. Thuwan Rahim Amardeen  
No. 75/20, Gnana Wimala Road  
Colombo 09.
5. Mohamed Gani Mohamed Fazil  
No. 39/ 8/ F2  
Gothami Road, Welewatte  
Wellampitiya
6. Mohamed Sahim Mohamed Jakin  
No. 109/16  
Manin Place, Colombo 09  
(Presently kept in Remand Custody)

**Suspects**

**AND NOW**

Senathul Rashmiya  
No. 75/20, Gana Wimala Road  
Colombo 09.

**Petitioner**

**Vs**

Officer-in-Charge  
Police Narcotic Bureau  
Colombo 01.

**Complainant-Respondent**

The Hon. Attorney General  
Attorney General' Department  
Colombo 12.

**2<sup>nd</sup> Respondent**

Thuwan Rahim Amardeen  
No. 75/20, Gana Wimala Road  
Colombo 09.

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

Counsel : Eranda Sinharage for the Petitioner  
Malik Azeez SC with Tharaka Kodagoda SC for the Respondents

Inquiry on : 17.09.2025

Decided on : 31.10.2025

**Pradeep Hettiarachchi,****Order**

1. This is an Application for bail filed by the Petitioner named Senathul Rashmiya (hereinafter referred to as “the Petitioner”) on behalf of her husband named Thuwan Rahim Amardeen (hereinafter referred to as “4<sup>th</sup> 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 22-11-2023, filed by the Complainant, the 4<sup>th</sup> Suspect was arrested by the officers attached to the Police Narcotic Bureau on 21-11-2023. On 20-11-2023, the Narcotic Prevention Unit of the Customs Department has informed the Police Narcotic Bureau that they have found a substance similar to Kush in a parcel (i.e., the parcel bearing No. BL 176-86861176) sent from the United States of America. The parcel was to be delivered to Trico Maritime (Pvt) Ltd, and one Abdul Aziz Mohamed Ramsin (hereinafter referred to as the “1<sup>st</sup> Suspect”) had visited Trico Maritime (Pvt) Ltd with an authorization letter issued by one M.P. P. Sujatha Dias requesting the parcel be released to him.
3. Upon being informed by the Narcotic Prevention Unit of the Customs Department, the officers of the Police Narcotic Bureau had also come to the Customs’ premises and conducted a further search. They have found three small parcels inside the box marked “A” that contained a substance similar to Cocaine. Field tests have been conducted to identify the substances contained in the parcels and thereafter it was confirmed that the substances contained in the parcels were tested positive for Kush and Cocaine. The gross quantity of Kush discovered was 5 kilograms and 161 grams while the gross quantity of Cocaine discovered was 511 grams.
4. Thereafter, on the same day, the 1<sup>st</sup> and 2<sup>nd</sup> Suspects were arrested by the Police Narcotic Bureau for aiding and abetting the import of Kush and Cocaine into Sri Lanka. Based on the information received from the 1<sup>st</sup> and the 2<sup>nd</sup> Suspects, the Police Narcotic Bureau had arrested one Mohamed Rizvi Mohamed Ishak (i.e the 3<sup>rd</sup> Suspect) on 21-11-2023 at 4.00

am for aiding and abetting the import of Kush and Cocaine into Sri Lanka. The 4<sup>th</sup> Suspect had been arrested thereafter, at 4.45 am on the same day. It was alleged that he has aided and abetted the importation of Kush and Cocaine to Sri Lanka. The 5<sup>th</sup> Suspect was also arrested on the same day, at about 2.40 pm.

5. The 1<sup>st</sup> to 5<sup>th</sup> Suspects were produced before the Magistrate Court of Maligakanda on 22-11-2023 and were detained till 27-11-2023 at the Police Narcotic Bureau for further investigations. When the 1<sup>st</sup> to 5<sup>th</sup> Suspects were produced before the Magistrate Court of Maligakanda on 27-11-2023, the learned Magistrate ordered the Suspects to be kept in remand custody. The Suspects have been in remand custody since then. The 6<sup>th</sup> Suspect was arrested subsequently, on 04-07-2024 and produced before the Magistrate Court of Maligakanda on 05-07-2024.
6. Moreover, it is important to note that as per the Government Analyst Report dated 21-11-2024, the net quantity of Cocaine contained in the said parcel was 374.4 grams.
7. It is also stated in the Petition that 4<sup>th</sup> Suspect is a wharf clerk and he had no knowledge whatsoever regarding the illegal substance contained in the said parcel.
8. 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.

9. 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 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.
10. 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.
11. 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.
12. The following grounds have been urged by the Petitioner as exceptional circumstances warranting consideration for bail:
  - (a) That the Complainant arrested the 4<sup>th</sup> Suspect without a justifiable reason and the said arrest was solely focused to keep the Suspect in remand custody for a lengthy period of time.
  - (b) That the 4<sup>th</sup> Suspect denies all the allegations leveled against him as no illegal substance was recovered either from his possession or from his residence.
  - (c) That the 4<sup>th</sup> Suspect has no knowledge with regard to the alleged illegal substances.
  - (d) That the 4<sup>th</sup> Suspect is 50 years of age and married with four children and worked as a wharf clerk and he is the sole bread winner of the family.
  - (e) The family members of the 4<sup>th</sup> Suspect are undergoing many hardships due to the fact that he is languishing in remand custody for a lengthy period of time.
  - (f) The 4<sup>th</sup> Suspect is also badly affected due to the mental agony caused to him as a result of him being kept in remand for a lengthy period of time.

13. The Respondents in their Statement of Objections dated 25-08-2025 have stated that the Petitioner has deliberately refrained from divulging the nature of the previous conduct of the 4<sup>th</sup> Suspect in detail, which according to the material available to the Respondents include an offence committed under the Ordinance in the year 2023 and therefore, the Petitioner has not come to this Court with clean hands; the Petitioner has no *locus standi* to maintain this application as the Petitioner has failed to establish with sufficient proof that the instant application was filed on the instructions of the 4<sup>th</sup> Suspect on his behalf and the Petitioner has failed to establish exceptional circumstances before this Court warranting the grant of bail to the 4<sup>th</sup> Suspect.
14. The main ground advanced by the Petitioner was that the 4<sup>th</sup> Suspect was arrested without a justifiable reason and the said arrest was solely aimed at keeping him in remand custody for a lengthy period of time. Apparently, it has been the position of the 4<sup>th</sup> Suspect in the Magistrate Court that he had no knowledge of the illegal substances recovered from the parcel and that the box containing the aforesaid illegal substances was opened by the officers who conducted the investigation. It was further submitted that the 4<sup>th</sup> Suspect has been operating a company named D.I. Naina (Pvt) Ltd and has been engaged in the clearance process of the said parcel in the ordinary course of his business and he had no knowledge whatsoever regarding the illegal substances contained in the said parcel.
15. As per the B-Reports submitted along with the Petition, the 4<sup>th</sup> Suspect has been involved in obtaining the necessary clearance for the aforesaid parcel. It was submitted that he has agreed to help the 6<sup>th</sup> Suspect to obtain clearance for a sum of Rs. 500,000/=. It was the plan of the Suspect to use the identity card of one of his friends' mother namely M.P.P. Dias in order to get the parcel released. Using the credentials of said Ms. Dias, the 4<sup>th</sup> Suspect has taken the initiative to prepare the false authorization letter, which was later produced to clearance agents by the main Suspect to get the parcel released. It was also stated that the 4<sup>th</sup> Suspect is the brother-in-law of the main Suspect and he acted/ conspired together with the 1<sup>st</sup>, 2<sup>nd</sup> 3<sup>rd</sup> and 6<sup>th</sup> Suspects to get the parcel released.
16. In the B-Reports it is stated that the voice recordings and photographs pertaining to the clearance of the said parcel had been recovered from the mobile phone of the 4<sup>th</sup> Suspect. It is also pertinent to note that upon analysis of the 4<sup>th</sup> Suspect's call records, it was found that there had been 61 calls with the 1<sup>st</sup> Suspect and 244 calls with the 6<sup>th</sup> Suspect during the period of 15-11-2023 to 20-11-2023. Moreover, about 20 calls have been exchanged

between the said Suspects on the day of the arrest, i.e. 21-11-2023. Also, 213 calls have been exchanged with the 2<sup>nd</sup> Suspect during the aforesaid period when the Suspects were concocting to get the parcel released. It was also stated that the 4<sup>th</sup> Suspect has had 200 calls with one Pedige Dhammika Yohan Rupasinghe, i.e. the friend who gave his mother's identity card to be used for the clearance of the parcel.

17. However, no explanation is forthcoming from the Petitioner regarding the aforesaid facts submitted by the police pertaining to the alleged involvement of the 4<sup>th</sup> Suspect to the importation of drugs into Sri Lanka in the manner described above.
18. Furthermore, the 4<sup>th</sup> Suspect had been arrested by Wellawatte Police on 04-03-2023, about eight months prior to the present incident for keeping in his possession 400 mgs of Methamphetamine. The Mt. Lavinia Magistrate Court Case bearing No. 12803/2023 had been instituted against him and a fine of Rs. 3000/= had been imposed upon him following the conviction.
19. This was not disclosed in detail at the time of tendering the Petition which further shows the lack of *uberrimae fides* on the part of the Petitioner. Also, the 4<sup>th</sup> Suspect's previous conduct is suggestive of the fact that the 4<sup>th</sup> Suspect who was previously dealing with user quantities has now gradually evolved to be a part of a larger drug trafficking network and that there is a possibility of re-offending if he is granted bail.
20. Another ground adduced by the Petitioner is that the 4<sup>th</sup> Suspect has been kept in detention/remand since the date of his arrest, i.e. 21-11-2023.
21. 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...".
22. Moreover, it has been submitted that the 4<sup>th</sup> Suspect is the sole breadwinner of the family and is married with four children and the 4<sup>th</sup> Suspect's family is facing serious hardships due to the his prolonged detention in the remand prison. It is important to note that, in majority of cases, this is often the situation when the sole bread winner of the family is in remand. It has also been submitted that the 4<sup>th</sup> Suspect is also badly affected due to the mental agony caused to him as result of him being kept in remand for a lengthy period of

time. These factors, cannot, in my view, be considered as an exceptional circumstance warranting his release on bail especially when there is overwhelming evidence that he has been involved in the importation of aforesaid illegal substances into Sri Lanka.

23. More importantly, exceptional circumstances cannot be considered in isolation; they must always be assessed in conjunction with the other surrounding circumstances. Pointers for the Court's consideration include the seriousness of the offence, the probability of a conviction, previous convictions of the suspect and the likely nature of the sentence.
24. Also, when deciding whether to grant bail or not to a suspect, the Court has to be mindful of the legislative intention behind the special bail provisions under section 83(2) of the Ordinance.
25. 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 (Decided on 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.” 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.*

26. 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.*

27. In the same case, while focusing the attention on the nature and gravity of the offences falling under the Ordinance, 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.*

28. 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 the 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 manner in which the offence was committed it would, in my view, undermine the very purpose of the Act.

29. It is true that the 4<sup>th</sup> Suspect has been in jail without being indicted for nearly 2 years since the date of his arrest. Also, it is stated in the Statement of Objections that the dossier of investigations are being prepared to be forwarded to the 2<sup>nd</sup> Respondent to consider criminal action against the Suspects.

30. The fact that there is evidence indicating the 4<sup>th</sup> Suspect's involvement in the alleged offence, coupled with his previous conviction for a drug-related offence, when considered cumulatively, does not persuade this Court to grant bail. More importantly, the extent of the 4<sup>th</sup> Suspect's involvement and the manner in which he had acted to facilitate the clearance of the parcel from Customs certainly dissuade this Court from considering bail in his favour.

31. Furthermore, given the complex nature of the ongoing investigation and the inability to rule out the possibility of external assistance in the importation of the drugs, I am not inclined to treat the period of remand as an exceptional circumstance warranting the grant of bail.

32. 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 Maligakanda and the Officer-in-Charge of the Police Narcotic Bureau forthwith.

**Judge of the Court of Appeal**

**P. Kumararatnam, J**

I agree,

**Judge of the Court of Appeal**