

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

In the matter of a bail appeal under Section 11 of Provincial High Courts (Special Provisions) Act No. 19 of 1990 and to be read with Section 5 of the Poisons, Opium and Dangerous Drugs (Amendment) Act No. 41 of 2022.

Officer-in-Charge of Police Narcotic Bureau,
Colombo 01.

Complainant

Vs

Court of Appeal Bail Application:
CA/BAL/39/2025

High Court of Colombo:
3477/22 HC

1. Jayaweera Mudiyanselage Dushan,
No.25/2/A, Weralugahawatta,
Naramminiya, Kelaniya.
2. Hettiarachchige Sithum Kavishka,
No.25/18, Weralugahawatta,
Naramminiya, Kelaniya.

Accused

Now

Athukoralage Kanthi Ariyalatha,
No.25/3/A, Weralugahawatta,
Naramminiya, Kelaniya.

Petitioner

Vs

1. Officer-in-Charge of Police Narcotic Bureau,
Colombo 01.
2. Attorney General,
Attorney General's Department,
Colombo 12.

Respondents

1. Jayaweera Mudiyanselage Dushan,
No.25/2/A, Weralugahawatta,
Naramminiya, Kelaniya.

1st Accused-Respondent

Before : **Hon. P Kumararathnam, J.**
Hon. Pradeep Hettiarachchi, J.

Counsel : Nuwan Kodikara for the Petitioner.
Oswald Perera, S.C for the Respondents.

Inquiry on : 14.05.2025

Decided on : 02.07.2025

Pradeep Hettiarachchi, J

ORDER

1. This is an application for bail filed by the petitioner on behalf of the 1st suspect named Jayaweera Mudiyanselage Dushan under Section 83(2) of the Poisons, Opium and Dangerous Drugs Ordinance. The petitioner is the mother of the 1st suspect.
2. The 1st suspect was arrested by the officers of the Police Narcotic Bureau on 28.02.2020 for possession and trafficking of 752.8 grams of Heroin. The 2nd suspect was also arrested on the same day for possession and trafficking of 5.64 grams of Heroin. Nevertheless, the 2nd suspect was subsequently released on bail by the High Court.
3. Thereafter, both of them were indicted in the High Court for possession and trafficking Heroin. Although an application for bail for the 1st accused was made to the High Court, it was refused due to want of jurisdiction, as the net quantity of the heroin involved in the case is 752.8 grams.
4. The grounds urged by the petitioner in support of the bail application are as follows:
 - a. The accused has a school going child of 10 years old;
 - b. The petitioner's husband is paralyzed, confined to bed and under constant medical treatments;
 - c. The petitioner has to face immense hardships while attending the needs of the accused's child and her bed-ridden husband;

- d. The accused has no previous convictions or pending cases; and
- e. The accused has been in remand for last five years.

5. It is Section 83 of the Poisons, Opium and Dangerous Drugs Ordinance, as amended by Act No. 41 of 2022, that governs the granting of bail for persons accused or suspected of committing offences of this nature.

Section 83 reads:

83(1). Subject to the provisions of section 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 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 77; 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.

6. Nonetheless, exceptional circumstances are not defined in the Statute. Therefore, whether the grounds advanced by a Petitioner, when seeking bail can be considered exceptional circumstances must be determined based on the facts and circumstances of each individual case.

7. As stated in ***Ramu Thamodarampillai vs The Attorney General*** [2004] 3 Sri. LR 180, “*the decision must in each case depends on its own particular facts and circumstances.*”

8. In ***W.A.Deepa Nandani Vs OIC-Police Station Marawila*** CA-PHC-APN 134-20 Iddawela J. stated *inter alia*;

[t]he threshold of what amounts to ‘exceptional circumstances’ varies with each case. a demarcation of the boundaries of an exceptional circumstance is purely a subjective exercise and as such it cannot be given a rigid interpretation. What is recognized as an exceptional circumstance in one case may not be so in

another. As such, the facts of each case must be carefully examined in deciding whether or not the circumstances presented are exceptional.

9. In the present application, the accused has been in remand for the past five years. The net quantity of heroin recovered from the accused is 752.8 grams, which clearly constitutes a commercial quantity. The indictment was served on the accused in 2022. The trial has already commenced, and Prosecution Witness 1 is currently giving evidence.
10. Of the grounds advanced by the petitioner, the only one that warrants consideration is the duration the accused has spent in remand. The accused was arrested on 28.02.2020 and has remained in remand custody since that date.
11. It is also worth noting that delay is a relative concept, which must be assessed in the context of the specific circumstances of each case. There are several authorities which support the position that the remand period alone does not constitute exceptional circumstances as required under Section 83 of the Poisons, Opium and Dangerous Drugs Ordinance, as amended by Act No. 41 of 2022.
12. More importantly, when the net weight of drugs involved is indicative of a commercial quantity, courts are generally hesitant to grant bail, as doing so would undermine the very purpose of Section 83. The legislature, in its wisdom, has enacted such stringent provisions with the aim of preventing the recurrence of crimes of this nature and to deter suspects or accused persons from absconding, given that a conviction carries a mandatory sentence of either death or life imprisonment. Accordingly, the duration of remand, by itself, does not constitute an exceptional circumstance warranting the grant of bail.
13. For the period of remand or the delay in concluding the trial to amount to an exceptional circumstance, such delay must be both inordinate and incapable of reasonable explanation. Only then can it be considered an exceptional ground justifying the grant of bail.
14. In determining whether the delay is oppressive, the Court must take into account various factors, including the complexity of the investigation, the net quantity of the drugs alleged to have been recovered from the accused, practical difficulties faced by the prosecutors for want of resources, the volume of cases handled by the

particular court in which the accused has been indicted, the conduct of the accused and the parties contribution to the delay in conducting the proceedings.

15. More importantly, the Court must remain mindful of the legislative intent when considering a bail application of this nature. The legislature, in its wisdom, has enacted these stringent provisions with the objective of curbing the commission and recurrence of such offences, which have become a serious menace to society
16. At the same time, the stringent provisions of a statute should not be used as a tool to deny a person's liberty, thereby forcing them to live in trepidation without any knowledge of the progress of the investigation or the possible outcome.
17. Our Courts have recognized the prejudice caused to a suspect by lengthy and unjustified 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.
18. 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 inordinate 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.
19. In the present application, the Accused has been in remand custody for a period of five years. The Indictment was served on the Accused in 2022; however, the trial has not yet been concluded. As previously noted, the examination of the prosecution's first witness is still in progress. The Accused has already spent over five years in remand custody, which, in the absence of any plausible explanation from the respondents, cannot be justified.
20. Furthermore, the respondents have not indicated any practical difficulties encountered that would necessitate further investigation. Thus, the prosecution has failed to provide any justifiable explanation for this delay.
21. As previously stated, the period of remand alone does not constitute an exceptional circumstance warranting the grant of bail. However, where the respondents have failed to provide any valid justification for the delay in concluding the trial, and

the accused is compelled to remain in remand for an indefinite period, such a situation cannot be lightly disregarded—particularly in light of the presumption of innocence guaranteed under the Constitution.

22. Therefore, the cumulative effect of all the aforementioned factors constitutes exceptional circumstances that warrant the grant of bail to the Accused. It is also pertinent to note that the accused has no previous convictions.
23. Based on the above analysis, I am inclined to grant bail to the Suspect, subject to the following conditions.
 - a. Rupees 5,00,000.00 cash bail with two sureties;
 - b. Sureties must enter into a bond of Rs two million each;
 - c. Sureties must submit a Grama Sevaka report to prove their permanent residence;
 - d. The accused is ordered to report to the Officer in Charge of the Police Narcotic Bureau on the 1st Sunday of every month between 9.00 am and 10. Am.
 - e. The accuse must surrender his passport if any to the High Court of Colombo; and
 - f. The Controller of Immigration and Emigration shall be informed of the travel ban.
24. Violation of any of the abovementioned bail condition will result in the cancellation of bail. The Registrar of this court is directed to communicate this bail order to the High Court of Colombo 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