

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

In the matter of an application for bail  
under Section 83 (2) of the Poison,  
Opium and Dangerous Drugs Ordinance  
No. 27 of 1929 as amended.

The Officer in Charge,  
Police Narcotic Bureau,  
Colombo 01.

CA Case No: **CA/BAL/0520/2023**

High Court of Colombo **HC 4413/23**

Magistrate Court Case No: **B 69191/02/2022**

**Complainant**

**Vs**

Beragama Arachchige Pradeep Thushara  
(Currently held in Remand Custody)

**Suspect**

**AND NOW BETWEEN**

Beragama Arachchige Pradeep Thushara  
(Currently held in Remand Custody)

**Suspect – Petitioner**

**Vs**

1. The Office in Charge,  
Police Narcotic Bureau,  
Colombo 01.
2. The Hon. Attorney General,  
Attorney General's Department,  
Colombo 12.

**Respondents**

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

Counsel : Hafeel Farisz with Shannon Tillekeratne for the Petitioner.  
Wishwa Wijesooriya, S.C. for the Respondents.

Inquiry on : 04.09.2025

Decided on : 24.10.2025

**Pradeep Hettiarachchi, J**

### **Order**

1. This is an Application for bail filed by the Petitioner named Beragama Arachchige Pradeep Thushara (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”).
2. According to the Petition, the Petitioner has been arrested by the officers of the Police Narcotic Bureau consequent to a raid conducted by them on 21-04-2022 at 8.30 pm near the parking lot of the Wellampitiya Food City for allegedly having in his possession and trafficking 48 grams and 100 mgs of Heroin.
3. It is further stated that, upon searching the Petitioner’s house, the police has found and taken into their custody a sum of Rs. 1,200,300/=. Thereafter, on 22-04-2022, the Petitioner was produced before the Magistrate Court of Colombo. The Petitioner has been in remand custody since the date of his arrest.
4. However, as per the Government Analyst Report dated 31-05-2022, the net quantity of Heroin allegedly recovered from the possession of the Petitioner is 29.33 grams.

5. However, the Petitioner vehemently denies the aforementioned facts. The Petitioner's position is that both the Heroin and the monies that were said to have been recovered from his house have been introduced to him by the Police Narcotics Bureau.
6. The Respondents have filed their Objections dated 06-12-2023. In the Statement of Objections it is stated that upon the dossier of investigation material being referred to the 2<sup>nd</sup> Respondent under the reference No. CR3/ 131/ 2023, the 2<sup>nd</sup> Respondent being satisfied of the material therein, forwarded the Indictment to the High Court of Colombo against the Petitioner which is now registered under the Case No. 4413/2023 and the said High Court case is fixed for pre-trial on 04-12-2023. It is also stated that the Petitioner has failed to establish exceptional circumstances and has suppressed and/or failed to divulge in his Petition that he has, at least one previous conviction and one pending case for offences of similar nature and therefore, the Petitioner has not come to Courts with clean hands.
7. 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.*

8. 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 accused to establish the existence of exceptional circumstances.
9. 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.
10. 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.
11. The following grounds have been urged by the Petitioner as exceptional circumstances warranting consideration for bail:
  - (a) The Petitioner has been in remand custody for over one year and three months and;
  - (b) The Petitioner has no ongoing cases against him.
12. Accordingly, the main ground advanced by the Petitioner is the period spent in the remand custody. In other words, the delay in prosecuting the Petitioner.
13. 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 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.*

14. 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.*

15. While it is true that the period spent in remand alone cannot be considered an exceptional ground for granting bail when a person is accused or suspected of being in possession of 10 grammes or more of a prescribed drug under Section 82(3) of the Ordinance, these stringent bail provisions should not be used to keep a person in remand for an indefinite period without taking the necessary steps to prosecute him, as it would amount to a denial of liberty due to no fault of his own.
16. In the present case, the Petitioner had been arrested on 21-04-2022. The Government Analyst Report had been issued on 31-05-2022. The Indictment was filed on 06-01-2023 and served on the Petitioner on 23-10-2023. Thereafter, the pre-trial conference was scheduled to be held on 04-12-2023. On 04-12-2023, due to the unavailability of productions, the pre-trial conference has been postponed to 03-01-2024. Subsequently, the case had been postponed at least on three occasions due to no fault of the Petitioner (*Vide* the proceedings of HC/4413/23 dated 26-03-2024, 12-06-2024 and 25-06-2024).

17. Upon perusal of the journal entries of the High Court Case bearing No. HC/ 4413/23, it is clear that the evidence of PW1, PW7 and PW8 has been concluded and the PW9 is yet to be testified. However, the learned State Counsel has not been able to indicate this Court on a possible time frame within which the trial against the Petitioner can be concluded. Moreover, no reason is forthcoming from the prosecution that justifies the delay in prosecuting the Petitioner.
18. When deciding this bail application, this Court has not lost the sight of the fact that the Petitioner has deliberately tried to suppress that he has at least one previous conviction and one pending case for offences of similar nature. It is important to note that, the Petitioner has stated in the Petition that “the Petitioner has no ongoing cases against him”. However, in the Statement of Objections it is stated that the Petitioner had been previously convicted for keeping in his possession 2100 milligrams of Heroin (Net quantity as per the Government Analyst Report was 183mg) and imposed a fine of 5000/- on 30-01-2019 by the learned Magistrate of Kaduwela in the case bearing No. 16968/2018. Furthermore, the Petitioner has a pending case in the Magistrate Court of Mahara under the case bearing No. B 2769/2013 for keeping in his possession 3000mg of Heroin on 29-05-2013.
19. Nevertheless, the delay of more than three years, when considered in conjunction with the failure to provide a justifiable reason for the delay in prosecuting the Petitioner, may be regarded as exceptional. It is important to emphasize that when a person is deprived of their liberty and held in detention; those responsible for such deprivation must consciously and diligently take the necessary steps to conclude legal action. If no reasonable explanation is provided for any delay, such delay will be deemed excessive or oppressive.
20. Accordingly, I enlarge the Petitioner on bail subject to the following conditions:
- a. Rupees two hundred thousand cash bail with three sureties;
  - b. The sureties must enter into a bond amounting to Rupees one million each;
  - c. The Petitioner shall report to the Officer-in Charge of the Police Narcotic Bureau, Colombo on the 1<sup>st</sup> Sunday of every month between 9.00 am and 10.00 am; and,
  - d. The Petitioner shall surrender his passport, if any, to the High Court of Colombo.

21. The Registrar of this Court is directed to communicate this bail Order to the High Court and the Magistrate Court of Colombo, and the Officer-in Charge of the Police Narcotic Bureau, Colombo 01 forthwith.

**Judge of the Court of Appeal**

**P.Kumararatnam, J.**

I agree.

**Judge of the Court of Appeal**