

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 Ordinance No. 17 of 1929 as amended by Poisons, Opium and Dangerous Drugs (Amendment) Act No 41 of 2022.

Democratic Socialist Republic of Sri Lanka.

Complainant

Vs

Court of Appeal Case No:

CA/BAL/0223/2025

High Court of Homagama Case No:

HC-0041/21

Chaminda Sembapperuma Arachchi *alias*
Sembapperuma Arachchilage Chaminda

1st Accused

(presently in remand custody)

AND NOW BETWEEN

Chaminda Sembapperuma Arachchi *alias*
Sembapperuma Arachchilage Chaminda

1st Accused-Petitioner

Vs

1. Officer in Charge
Police Narcotic Bureau
Colombo 01
2. Hon Attorney General,
Attorney Generals' Department,
Colombo.

Respondents

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

Counsel : Sanjeewa Kodituwakku for the petitioner.
Sheran Mahbooh S.C. for the Respondent

Inquiry on : 05.12.2025

Decided on : 27.02.2026

Pradeep Hettiarachchi, J

Order

1. This is an Application for bail filed on behalf of the 1st accused named Chaminda Sembapperuma Arachchi alias Sembapperuma Arachchilage Chaminda (hereinafter referred to as the Accused) under Section 83(2) of the Poisons, Opium and Dangerous Drugs Ordinance.
2. The 1st accused was arrested on 26.09.2019 by the officers of Police Narcotic Bureau for alleged possession of Heroin, which is an offence punishable under Section 54 A (a) and (d) of the Poisons Opium and Dangerous Drugs Ordinance as amended by the Act No 41 of 2022. He was subsequently produced before the Magistrate Court of Kesbewa and remanded.
3. According to the petition, at the time of the arrest, it is alleged that the 1st accused was in possession of a quantity of white powder suspected to be of Heroin. Along with this 1st accused, the driver of the car (the 2nd accused) used by the 1st accused was also arrested for aiding and abetting the 1st accused. Subsequently, both of them were taken to the accused's temporary residence where another two parcels suspected to be of Heroin were found. The 2nd accused was subsequently, released on bail by the High

Court of Homagama but the 1st accused has been in remand since the date of arrest. Both the accused were indicted and the trial commenced before the High Court of Homagama on 27th June 2023.

4. The 1st accused in this application has urged following grounds to be considered as exceptional circumstances.
 - The Accused has been in remand for nearly six years;
 - Although the indictment was received by the High Court of Homagama on 31.03.2021, the trial commenced only on 27.06.2023. The trial was postponed on several occasions as the PW1 had failed to appear before court.
 - The evidence of PW1 is flawed and the prosecution case is prima facie weak.
5. Upon receiving notices, the Respondents filed their objections. In their objections they mainly averred that the accused has failed to establish any acceptable exceptional circumstances to invoke jurisdiction of this court as warranted by Section 83 of the Poisons Opium and Dangerous Drugs Act No 41 of 2022.
6. It is also stated in the objections that the quantity of drugs allegedly recovered from the accused is significantly higher, and if he is convicted, the punishment would be either death or life imprisonment. Therefore, there is a high risk of absconding if bail is granted.
7. According to the Government Analyst Report dated 04.02.2020, the net quantity of the substance (Heroin) is 1.345 Kg, and therefore this court has jurisdiction to deal with this bail application.
8. The Provisions of section 83 of the Poisons, Opium and Dangerous Drugs Ordinance as amended by the Act number 41/2022 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. In light of the above section, 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. So, the burden is on the accused to establish the existence of exceptional circumstances.
10. However, exceptional circumstances are not defined in the Statute. Therefore, whether the grounds advanced on behalf of the Suspect can be considered exceptional circumstances must be determined based on the facts and circumstances of each individual case.
11. 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.”
12. In *S v Peterson 2008 (2) SACR (C) 355* the Court held that ‘Generally speaking “exceptional” is indicative of something unusual, extraordinary, remarkable, peculiar or simply different but that because of varying degrees, it will therefore depend on the context and on the particular circumstances of the case under consideration.
13. Although the 1st accused has urged several grounds as exceptional circumstances in support of the bail application, I shall only consider whether the delay in prosecuting him could be treated as an exceptional ground to grant bail.
14. The Government Analyst’s Report had been made available by 04.02.2020. However, it had taken more than one year from the date of the said report to prepare and file the

indictment. No valid explanation was forthcoming from the Respondents to justify this delay in instituting proceedings.

15. It is further observed that although the indictment bears the date 23.03.2021, it had been served on the accused only on 13.10.2021. As revealed from the proceedings of the High Court, the trial commenced only on 27.06.2023, nearly two years after the date of the indictment. A perusal of the High Court proceedings further indicates that the trial had been postponed on 21 occasions due to the non-availability of PW1. This circumstance, in itself, constitutes an inordinate and oppressive delay attributable to the prosecution.
16. What can be gleaned from the aforementioned sequence of events is that the delay in prosecuting the accused is inordinate and oppressive, given the nature of the case against him. The objective of Section 83 of the Ordinance is to keep a person suspected or accused of committing an offence under this Act in remand custody until the conclusion of the trial. At the same time, the legislature does not intend to keep a suspect or an accused in remand for an indefinite period due to shortcomings in investigations or prosecutions, as it would deny the individual's freedom guaranteed by the Constitution.
17. In the present case, the accused has been languishing in remand since 2019, and the trial against him has postponed on several occasions due to reasons beyond his control. The delay in dispatching the indictment, the non-availability of the relevant documents, and in particular the non-availability of PW1 have contributed to the delay.
18. It is true that the net quantity of narcotics involved in the present case is relatively high and amounts to a commercial quantity. At the same time, the Court must remain mindful of the fundamental principle that an accused person is presumed innocent until and unless he is found guilty by a competent court of law.
19. Furthermore, this Court has not lost sight of several previously decided cases which have observed that delay alone does not give rise to exceptional circumstances warranting the grant of bail in an application of this nature. However, in the present

case, the trial was delayed primarily due to the non-availability of Prosecution Witness No. 1, which, in any event, cannot be attributed to the accused.

20. When the trial has been postponed on 21 occasions owing to the absence of the most vital official witness, thereby compelling the accused to live in a state of trepidation without any indication as to when the trial against him would conclude, such delay cannot be lightly disregarded by this Court, as it would clearly undermine the presumption of innocence. More importantly, no plausible explanation has been forthcoming from the respondents to justify the delay, which is of an inordinate nature.
21. As held in *Attorney General v. Ediriweera S.C. Appeal No. 100/2005 [2006 BLR 12]*, “*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. Upon consideration of the above, the delay observable in the present case cannot be justified and amounts to an oppressive and inordinate delay, which constitutes exceptional circumstances that persuade this Court to grant bail to the accused.
23. For the reasons stated above, I order to enlarge the accused on bail subject to following conditions:
- a. Rs. 400000.00 cash bail.
 - b. to provide four sureties who should execute bonds to the value of Rs. 2 million each;
 - c. the sureties should provide certificates from the Grama Sevaka and police reports from respective residential areas of such sureties;
 - d. the accused shall surrender the passport or any travel document, if he has any, to the Registrar of the High Court of Homagama;
 - e. The accused is ordered to report to the Officer-in-Charge of the Police Narcotic Bureau every last Sunday of the month before 12 noon.

24. This bail application is accordingly allowed and the Registrar of this Court is directed to transmit a copy of this Order to the Registrar of the High Court of Homagama and the Officer in Charge of Police Narcotic Bureau Colombo forthwith.

Judge of the Court of Appeal

P.Kumararatnam, J.

I agree.

Judge of the Court of Appeal