

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.

Bulathsinghalage Rajitha Nilantha
Coorey.

(presently incarcerated at the Colombo Magazine prison)

Court of Appeal Bail Application:
CA/BAL/0208/2025

Homagama High Court

Case No HC-129-2020.

Accused - Petitioner

VS

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

2. The Hon Attorney General,
Attorney Generals' Department
Colombo 12.

Respondents

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

Pradeep Hettiarachchi, J.

Counsel : K.A.D. K Jayalath for the Petitioner.

Malik Azeez SC for the Respondents.

Inquiry on : 28.01.2026

Decided on : 20.02.2026

Pradeep Hettiarachchi, J

Order

1. This is a bail application filed by the accused-petitioner, Bulathsinghalage Rajitha Nishantha Coorey, under Section 83(2) of the Poisons, Opium and Dangerous Drugs Ordinance, as amended by Section 4 of Act No. 41 of 2022. The accused was arrested on 16.01.2019, by the during a raid conducted by officers attached to the Police Narcotic Bureau, on allegations of trafficking and possessing heroin. The net quantity of Heroin detected from the Accused is 4.047 Kg.
2. The accused has been in remand since then. The trial against the Accused commenced in the High Court of Homagama and the evidence of PW1 was concluded.
3. As the suspect's bail application has been made under the Poisons, Opium and Dangerous Drugs Ordinance, it is necessary to examine the provisions of the Ordinance and their applicability to the present application.
4. The provisions of Section 83(2) of the Poisons, Opium and Dangerous Drugs Ordinance as amended by the Act No 41 of 2022, decrees that a person accused or suspected of being in possession of 10 grammes or more of the prescribed drugs, is required to be kept in remand, unless such person satisfies the Court as to the existence of exceptional circumstances.
5. 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

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 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. 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.
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. 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...”.
9. In ***Abdul Quideer Aboobucker v. AG [CA/PHC/APN 42/2011 (CAM 31.08.2011)]***, this Court has rejected the application for bail, considering the fact that the alleged quantity of drugs recovered from the suspect is of a commercial nature.
10. In the instant application, the suspect-petitioner mainly averred following grounds as exceptional circumstances.
 - a. The petitioner has been in remand custody for over 6 years and 6 months;
 - b. The prosecution case is prima facie weak;
 - c. The petitioner has no previous convictions nor has any ongoing cases other than the instant case;

- d. The accused has suffered a stroke on or around 16th April 2025 and subsequently admitted to the National Hospital of Sri Lanka (NHSL) and is presently paralyzed and unable to move properly; and the accused has been continuously taking treatments from the NHSL and from the Prison Hospital.
11. At the inquiry before this court, it was submitted that the accused is presently suffering from tuberculosis also and is receiving treatments.
12. The period of remand undergone by an accused cannot, by itself, constitute a sufficient ground for the grant of bail. It must be assessed together with all relevant surrounding circumstances, particularly in the context of the applicable statutory framework governing the grant of bail. At the same time, the Court must remain cognizant of the presumption of innocence, which continues to operate in favour of every suspect unless and until guilt is established by a court of competent jurisdiction.
13. Accordingly, stringent statutory provisions should not be allowed to function as an instrument for the unjustified deprivation of personal liberty. When determining an application of this nature, the Court is obliged to give due consideration to the legislative intent, the seriousness of the offence alleged, the severity of the likely sentence upon conviction, the risk of the accused absconding if released, the stage and progress of the investigation and/or trial, together with the overarching principles of the presumption of innocence and the protection of individual liberty.
14. It is pertinent to observe that, where the net weight of the drugs involved discloses a commercial quantity, courts have consistently shown reluctance to grant bail, since doing so would defeat the very purpose and object of Section 83. The legislature, in its wisdom, has introduced stringent provisions to address offences relating to dangerous drugs, acknowledging that such offences have assumed the proportions of a serious social menace affecting every nation.
15. These provisions are intended not only to prevent the recurrence of such crimes but also to deter suspects or accused persons from absconding, particularly in circumstances where a conviction entails the imposition of a mandatory sentence of either death or life imprisonment.

16. Against this backdrop, this Court remains mindful that the mere period of remand undergone by an accused, in itself, cannot be treated as an exceptional circumstance justifying the grant of bail.
17. In the present case, the accused has been in remand custody since January 2019, that is, for a period exceeding seven years. The net quantity of heroin allegedly recovered from him is 4.047 kilograms, which is manifestly not for personal consumption but indicative of possession for the purpose of commercial distribution.
18. Opposing the application for bail, the respondents filed a statement of objections. In their objections, it is contended that the circumstances pleaded on behalf of the accused do not constitute exceptional circumstances warranting the grant of bail. It is further submitted that, having regard to the net quantity of heroin allegedly detected in the possession of the accused, the period of remand undergone by him cannot be treated as an exceptional circumstance.
19. Furthermore, the respondents submit that the accused has already been indicted before the High Court of Homagama, and hence, that the grounds advanced on his behalf cannot, in any event, be regarded as exceptional circumstances warranting the grant of bail.
20. It is to be noted that the accused was indicted on 07.09.2020; however, the trial commenced only on 08.11.2022. The evidence of PW1 was concluded on 03.09.2024. A perusal of the journal entries of the High Court reveals that the evidence of PW4 has not yet been concluded. In these circumstances, it is difficult to estimate the approximate time frame within which the trial against the accused would be concluded.
21. Moreover, the medical records submitted on behalf of the accused substantiate his deteriorating health condition, which cannot be lightly disregarded by this Court, particularly in view of the fact that he had contracted tuberculosis while in prison. It is also pertinent to note that the accused is presently 59 years of age and has no previous convictions, nor are there any pending cases against him other than the instant matter.
22. Having regard to the prolonged period of incarceration of the accused, the uncertainty as to the conclusion of the trial within a reasonable time frame, his present age, the

absence of previous convictions, and the medical condition substantiated by the records placed before this Court, I am of the view that the cumulative effect of all these established exceptional circumstances warrants the grant of bail to the accused.

23. Accordingly, the accused is ordered to be enlarged on bail subject to the following conditions:

- i. Rs 200000.00 cash bail.
- ii. There shall be four sureties, each of whom must enter into a bond of Rs. 1,000,000.00.
- iii. The accused shall report to the Police Narcotics Bureau on the first Sunday of every month between 10.00 a.m. and 12.00 noon.
- iv. The accused shall surrender his passport, if any, to the High Court of Homagama.

24. Subject to the above conditions, the application for bail is allowed. The Controller of Immigration shall be informed of the travel ban imposed on the accused. The Registrar of this Court is directed to communicate this bail order to the High Court of Homagama and to the Officer-in-Charge of the Police Narcotics Bureau forthwith.

Judge of the Court of Appeal

P. Kumararatnam,J

I agree,

Judge of the Court of Appeal