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 Poison, Opium and Dangerous Drugs Act as amended by Act No. 41 of 2022.

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

Complainant

Vs

Court of Appeal Bail Application:
CA/BAL/0083/2025

Magistrate Court: Colombo
Case No: **B 92309/01/23**

Hettiarachchige Rumesh Maduranga Hettiarachchi
(Presently in Remand Custody)

8th Suspect

AND NOW BETWEEN

Kariyawasam Liyanage Chandralatha,
Arasanwewa, Andigams, Anamaduwa

Petitioner

Vs

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

Complainant – Respondent.

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

2nd Respondent

Hettiarachchige Rumesh Maduranga Hettiarachchi
(Presently in Remand Custody)

8th Suspect

Before	:	**P. Kumararatnam, J.**
		Pradeep Hettiarachchi, J.
Counsel	:	Inoka Senevirathne for the Petitioner Tharaka Kodagoda, S.C. for the State.
Inquiry on	:	31.07.2025
Decided on	:	24.10.2025

Pradeep Hettiarachchi, J

Order

Background to the Case

1. This is an Application for bail filed by the Petitioner named Kariyawasam Liyanage Chandralatha (hereinafter referred to as "the Petitioner") on behalf of her son named Hettiarachchige Rumesh Maduranga Hettiarachchi (hereinafter referred to as " the Suspect") 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 Suspect in the instant bail application is the 8th Suspect in the Magistrate Court Case bearing No. B 92309/01/23. The Suspect had been arrested for

aiding and abetting Heroin importation to Sri Lanka, as well as trafficking and keeping in his possession 111.606 Kilograms of Heroin and 10.254 Kilograms of Hashish, in violation of section 54A (1) (c), (b) and (d) of the Ordinance.

3. As per the 'B' Report marked P2, a navy patrol vessel belonging to Rangala Camp of the Sri Lanka Navy Western Naval Command has received some information from the Navy Intelligence Unit indicating that a Sri Lankan multi-day fishing vessel painted in blue, light blue and white is being used for importation of narcotics into Sri Lanka. On 18-05-2023, the Sri Lankan Navy's Western Navy Command has inspected the said vessel named Akindu Putha-3 bearing the registration no. IMUL-A- 0626. Upon such inspection, navy personnel have found five polysack bags suspected to be containing Heroin and arrested the six fishermen who were on board the said vessel at the time. The gross quantity of Heroin and Hashish recovered from the said vessel was 111.606 Kilograms and 10.254 Kilograms respectively. However, as per the Government Analyst Report dated 25-06-2024, the net quantity of Heroin recovered from the police was 50. 3492 Kilograms.

4. Thereafter, on 24-05-2023, the police filed a further B-Report (the document marked P3 to the Petition). In the said B-Report it was mentioned that, upon further investigations, the police has identified another individual named Hettiarachchige Rumesh Maduranga Hettiarachchi (i.e. the Suspect in the present bail application) who coordinated the drug trafficking operation within the country and facilitated communications with the Dubai-based drug trafficker named Waruna. According to the Petitioner, this was the first time that the police made such a revelation regarding the alleged involvement of the Suspect in a drug trafficking network.

5. It is also mentioned in the Petition that, after the initial reference made to the Suspect in the B-Report filed on 24-05-2023, the police did not mention about the Suspect in relation to the case up until 27-08-2023.

6. Subsequently, after the lapse of more than one year since the first B-Report was filed, the police filed another B-Report dated 08-06-2024, indicating that the Suspect had been arrested on the allegation of aiding and abetting to commit the offences mentioned above.

7. Furthermore, as per the B-Reports filed by the police, the Suspect had been maintaining a friendship with the 3rd Suspect and had been well aware of the drug trafficking operation mentioned above. They have also engaged in telephone communications on 217 occasions during the period of 22-02-2023 – 24-02-2023.

8. The Petitioner has also stated that, according to the B-Report submitted on 23-09-2024, as the SIM card used by the Suspect was registered under his mother's name but remained in the Suspect's possession and use, the police have come into the conclusion that the Suspect engaged in telephone conversations with the third Suspect.

Relevant Law

9. 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.

10. 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 Suspect to establish the existence of exceptional circumstances.

11. 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.

12. 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.

Exceptional Circumstances Adduced by the Petitioner

13. The following grounds have been urged by the Petitioner as exceptional circumstances warranting consideration for bail:

    (a) The Complainant arrested the Suspect without a justifiable reason and the said arrest is solely focused to keep the Suspect in remand custody for a lengthy period of time.

    (b) No illegal substance was found from the possession of the Suspect.

    (c) The Complainant has acted in bad faith, concealing the truth and the Suspect has been falsely framed to a case that he has no connection at all.

    (d) The Suspect is twenty-nine years old and married with a child and he has to take care of his elderly mother.

    (e) The family members of the Suspect's family are facing severe hardships due to his prolonged detention. As the Suspect is the sole bread winner of the family, his wife, the child and his elderly mother are in a vulnerable position as they are unable to fend for themselves.

    (f) The Suspect has been in remand custody for nearly nine months since the date of his arrest.

14. The Respondents have filed their Objections dated 02-06-2025. The Respondents have taken up two preliminary objections, i.e. the Petitioner has not come before the Court in

clean hands as the Petitioner has not disclosed the pending cases and the previous convictions of the Suspect and that the Petitioner has failed to establish any acceptable circumstances warranting the grant of bail to the Suspect.

<u>Consideration of the Exceptional Circumstances</u>

15. The main ground advanced by the Suspect is that the Suspect has been arrested one year after the incident without any justifiable reason and the said arrest is solely focused to keep the Suspect in remand custody for a lengthy period of time. It is mentioned in the Petition that the Complainant has failed to establish any connection between the Suspect and his connection to the alleged drug trafficking incident.

16. However, whether the Suspect has aided and abetted to commit the offences mentioned above, is an issue for the trial court to decide. Unless there is a glaring contradictory position or a inherent improbability in the prosecution's version of events regarding the alleged incident, this Court is not bound consider trial issues in an application of this nature. I see no inherent improbability in the prosecution's version of events from the material available before this Court. What can be noticed is that there are two competing versions, i. e. prosecution's version being the Suspect has aided and abetted in committing the offences mentioned above while the Suspect has totally denied his involvement in the same.

17. The Petitioner has also stated that the Suspect never had any intention to abscond but was willing to fully cooperate with the ongoing investigations. Even if the police have reported that the Suspect absconded during the investigation and that his mobile phone was destroyed, the Petitioner states that the Suspect was using the same mobile phone number since the commencement of the investigation until it was taken into custody by the police. It is the Petitioner's version that the Suspect had been residing at the same location since 2023 until the date of his arrest and has been using his real name instead of a different name to hide his identity.

18. In this regard, it is important to note that, the Suspect had been arrested for aiding and abetting to commit the offences mentioned above, while there was an open warrant issued on him by the Magistrate Court of Marawila on 01-07-2024 in the case bearing

No. මාරවිල ම/ උ 27614/ ඊ/ **2022** for keeping in his possession 10 grams of Heroin (Net quantity of which is 92 milligrams). Therefore, the Suspect's attendance at the trial proceedings, if granted bail, is in doubt and there is a possibility that the Suspect may abscond and try to evade trial.

19. Furthermore, as per the previous conviction report marked P1, the Suspect has three previous convictions for keeping in his possession user quantities of Heroin. However, this was not disclosed at the time of tendering the Petition which further shows the lack of *uberrimae fides* on the part of the Petitioner. Also, the Suspect's previous conduct is suggestive of the fact that the 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 the Suspect re-offending if granted bail.

20. Another ground adduced by the Petitioner is that the Suspect has been in remand custody for nearly nine months since the date of his arrest. Therefore, there is a delay in prosecuting the Suspect.

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, the fact that the Suspect is the sole breadwinner of the family and is married with a child and the Suspect's family is facing serious economic hardships due to the Suspect's prolonged detention in the remand prison, cannot, in my view, be considered as an exceptional circumstance warranting his release on bail. In the majority of cases, this is often the situation when the sole bread winner of the family is in remand.

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 and the nature of the offences, it would, in my view, undermine the very purpose of the Act.

29. The fact that the Suspect had been issued an open warrant for an offence of similar nature and his previous convictions pertaining to drug related offences, when considered cumulatively, do not persuade me to grant bail to the Suspect.

30. 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 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