

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 Poisons, Opium and Dangerous Drugs Ordinance (Amendment) Act No. 41 of 2022.

Court of Appeal

The Democratic Socialist Republic of Sri

Application No:

Lanka

CA/Bail 0305/25

High Court Chilaw

Complainant

Case No.65/22

MC Marawila case No.

Vs.

B/1832/2020

Nishsanka Bamunu Arachchilage
Dhanushka Sampath Bandara alias
Nishshanka Bamunuarachchilage
Dhanushka Sampath Bandara

(Presently in remand custody)

3rd-Accused

NOW BETWEEN

Nishsanka Bamunu Arachchilage
Dhanushka Sampath Bandara alias
Nishshanka Bamunuarachchilage
Dhanushka Sampath Bandara

(Presently in remand custody)

3rd-Accused-Petitioner

Vs.

1. The Officer-in-Charge
Police Narcotics Bureau,
Colombo-01.
2. Hon. Attorney General
Attorney General's Department
Colombo-12.

Respondents

BEFORE : **P. Kumararatnam, J.**
R.P.Hettiarachchi, J.

COUNSEL **Malshike Jayalath for the Petitioner.**
Malik Azees, SC for the Respondents.

ARGUED ON : **18/11/2025.**

DECIDED ON : **27/01/2026.**

ORDER

P.Kumararatnam,J.

The Petitioner who is the 3rd Accused in the High Court of Chillaw Case bearing No. HC 65/2022, filing this Application has invoked the jurisdiction of this Court to grant bail to him upon suitable condition as this Court considers appropriate.

The Petitioner was arrested on 02/10/2020 for possession of 2.232 Kilograms of substances suspected to be Heroin in the Marawila Police area by officers from the Police Narcotics Bureau, Colombo-01 and produced under case bearing No. B 1832/20 to the Magistrate Court of Marawila. The Petitioner was arrested on a suspicion. After his arrest,

he was placed under a detention order issued by the Learned Magistrate of Marawila.

According to the B report filed, the Petitioner was produced under Section 54(b) and (d) of the Poisons, Opium and Dangerous Drugs Act No. 13 of 1984 as amended.

The production had been sent to the Government Analyst Department and after analysis, the Government Analyst had forwarded the report to Court. According to the Government Analyst, 1.2936 kilograms of pure Heroin (Diacetylmorphine) had been detected from the substance sent for the analysis.

The contention of the Petitioner is that he was not arrested as stated by the police. The Accused is remand for five years and 03 months as at today.

The Petitioner has pleaded following exceptional circumstances in support of the Suspect's Bail Application.

1. The Petitioner is in remand for about five years and 03 months.
2. The Petitioner is married and has one child.
3. The wellbeing of the child is interrupted by the irrational and illegal assertion of the police.
4. He is looking after his mother after the demise of his father in the year 2019.
5. No previous or pending case reported against the Petitioner.

The Counsel for the Petitioner submits that the Petitioner is in remand about five years and three months. Considering the facts and the circumstances of this case, that the prosecution will not be able to establish a prima facie case against the Petitioner.

The State Counsel submits that the indictment has already been dispatched to the High Court of Negombo and the indictment was served on the Petitioner and the trial has commenced. According to the

State Counsel the prosecution witness number 01 has been concluded and the trial will resume on 27.11.2025.

The Section 83 of the Poisons, Opium and Dangerous Drugs Act which was amended by Act No. 41 of 2022 states:

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 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 77A; 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.

(3) For the purpose of this section “dangerous drug” means Morphine, Cocaine, Heroin and Methamphetamine.

In this case, the pure quantity of Heroin detected in the production by the Government Analyst is 1.2936 kilograms. Hence, this court has jurisdiction to consider granting of bail as per the new amendment.

Exceptional circumstances are not defined in the statute. Hence, what is exceptional circumstances must be considered on its own facts and circumstances on a case by case.

In **Ramu Thamodarampillai v. The Attorney General** [2004] 3 SLR 180 the court held that:

“the decision must in each case depend on its own peculiar facts and circumstances”.

In **Labyndarage Nishanthi v. Attorney General** CA (PHC) APN 48/2014 the court held that:

“It is trite law that any accused or suspect having charged under the above act will be admitted to bail only in terms of section 83(1) of the said Act and it is only on exceptional circumstances. Nevertheless, it is intensely relevant to note, the term ‘Exceptional circumstances’ has not been explained or defined in any of the Statutes. Judges are given a wide discretion in deciding in what creates a circumstance which is exceptional in nature.

There is plethora of cases in the legal parlor which had identified what creates an ‘exceptional circumstances’ in relation to granting bail...”

The Learned Counsel for the Petitioner contended that the Petitioner has been in remand for about five years and three months. Up to now only evidence of first witness is concluded. Therefore, his detention detained to date is clearly a violation of established legal principles and violation of fundamental rights which enshrined in the Constitution. He further argues that undue and long delay in keeping the Petitioner in remand custody is a clear violation of his human rights and is against the presumption of innocence guaranteed under the Article 13(5) of the Constitution.

Although 5 years and three months passed after his arrest, the trial before the High Court of Negombo has not been concluded. Expeditious trial is an integral element of a fair trial.

Indictment was served on the Petitioner on 27.10.2022. Due to various reasons the trial was postponed. The Petitioner has no previous or pending case in any of the court in Sri Lanka.

A court can consider evidence in a bail inquiry. During a bail hearing, the court typically evaluates various factors to determine whether a Suspect should be granted bail, such as the risk of flight, the likelihood of reoffending, and the safety of the community. The court may also review evidence related to the Suspect's criminal history, ties to the community, and the specifics of the current charges. Ultimately, the court's role during a bail inquiry is to weigh the available evidence to decide if the defendant can be trusted to return for trial or if they pose a danger to public safety.

In this case the Petitioner alleged to have conspired along with 1st Accused and 2nd Accused named in the indictment to commit Offences under Section 54A(b) and (d) of the Poisons Opium and Dangerous Drugs Ordinance as amended by the Act No.13 of 1984. Additionally, he had been charged for aiding and abetting the 2nd Accused for trafficking of pure Heroin mentioned above. Above cited offences are no doubt serious offences but seriousness of the offence alone cannot form a ground to refuse bail. In considering these matters, the court must bear in mind the presumption of innocence.

Further, bail should never be withheld as a punishment. Granting of bail is primarily at the discretion of the Court. The discretion should be exercised with due care and caution taking into account the facts and circumstances of each case separately.

Considering all these factors into account, especially the period in remand, the uncertainty of conclusion of trial in the High Court, the charges levelled against him, the circumstances of his arrest and other circumstances of the case, I consider this is an appropriate case to grant bail to the Petitioner. Hence, I order the Petitioner be granted bail with following strict conditions.

1. Cash bail of Rs.200,000/=.
2. To provide 03 sureties. They must sign a bond of two million each.
3. The Petitioner and the sureties must reside in the address given until conclusion of his case.
4. Not to approach any prosecution witnesses directly or indirectly or to interfere with.
5. To surrender his passport if any, to court and not to apply for a travel document. The Controller of the Immigration and Emigration is informed of the travel ban on the Petitioner.
6. To report to the Officer-in-Charge, Police Station Marawila on the 2nd and last Sunday of every month between 9am to 1pm.
7. Any breach of these conditions is likely to result in the cancellation of his bail.

The Bail is allowed and the Learned High Court Judge of Chilaw is hereby directed to enlarge the Petitioner on bail on the above bail conditions.

The Registrar of this Court is directed to send this Bail Order to the High Court of Chilaw, Officer-in-Charge of the Polce Narcotics Bureau, Cololmbo-01 and the Officer-in-Charge, Police Station, Marawila.

JUDGE OF THE COURT OF APPEAL

R.P.Hettiarachchi, J.

I agree.

JUDGE OF THE COURT OF APPEAL