

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.

The Officer-in-Charge
Police Special Task Force
Gonahena Division,
Colombo.

Court of Appeal

Complainant

Application No:

Vs

CA/Bail 0021/26

Mohamed Mubarak Mohamed alias

HC Negombo case No.

Mohamed Mubarak Insaf Mohamed

HC 13/2023

Insaf

(In remand prison)

Suspect

AND NOW BETWEEN

Mohamed Mubarak Mohamed Usuf
No. 312, 314, Leyads Broadway,
Colombo-13

Petitioner

1. The Officer-in-Charge

Police Special Task Force

Gonahena Division,

Colombo.

Complainant-Respondent

2. The Attorney General

Attorney General's Department

Colombo-12.

Respondent

BEFORE

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

COUNSEL

: **S.T.De Zoysa for the Petitioner.
Tharaka Kodagoda, SC for the
Respondent.**

ARGUED ON

: **06/07/2026.**

DECIDED ON

: **18/09/2026.**

BAIL ORDER**P. Kumararatnam,J.**

The Petitioner is the father of the Accused named in the indictment filed in the High Court of Negombo in the case bearing No. HC 13/2023. The Petitioner filing this Application has invoked the jurisdiction of this Court to grant bail to the Accused upon suitable conditions as this Court considers appropriate.

According to the Petitioner, the Accused was arrested in Hunupitiya on 18.06.2021 by the Chief Inspector Deshapriya of the Special Task Force, Gonahena Camp. The Accused was arrested at his residence upon an information received by the STF. The substance was recovered from his right-side pocket of his shorts. As the substance reacted for Heroin (Diacetylmorphine) he was arrested and the Heroin was weighed thereafter. The gross quantity of Heroin recorded 153.98 grams.

The recovered substances were sent to the Government Analysts and the Report confirmed the presence of 92.17 grams of pure Heroin in the substance. According to Government Analyst Report the pure Heroin was noted as 92.17 grams.

The Hon. Attorney General has indicted the Accused in the High Court of Negombo on the allegation that on 18.06.2021 at Wattala, the Accused committed the offence of possession and, trafficking of dangerous drug as set out in Section 54A (d) and 54A (b) of the Poisons, Opium and Dangerous Drugs Act as amended by Act No. 13 of 1984.

The Accused vehemently denies the charges levelled against him in the indictment. The Accused takes up the position that this is a fabricated case against him by the police.

The Petitioner has pleaded the following exceptional circumstances in support of this Bail Application.

1. The Accused has been in remanded since 18.06.2021. Now he has completed little over 5 years in remand prison.
2. The prosecution had failed to adduce plausible evidence against the Accused.
3. The Petitioner is a heart patient and his wife work as a domestic aid.
4. The wife of the Accused had deserted him and his child who is five years old.
5. The Accused is the sole breadwinner of the family.

According to Section 83 of the Poison, 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.

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 basis.

On the same subject, the Supreme Court in **Ramu Thamodarampillai v. The Attorney General [2004] 3 SLR 180** held that:

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

Further, 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 prison for little over 5 years and, invites this Court to consider this as an exceptional circumstance.

Learned State Counsel contends that the period in remand custody cannot be considered as an exceptional circumstance in all cases. It has to be decided on a case-by-case basis, whether the remand period already spent could be considered as an exceptional circumstance.

Considering the facts and the circumstances of this case, the learned Counsel further states that the prosecution will not be able to establish a prima facie case against the Accused. The trial has not commenced up to now.

I agree with the Learned State Counsel that the factual and evidentiary matters pertaining to the investigation can only be tested at the trial upon the witnesses being cross examined and shall not be tested at the time of hearing this bail application considering the nature of this case.

According to the Petitioner, although the case was called numerous times in open court, the trial has not commenced yet. The Accused has one previous conviction for the possession of meagre quantity of drugs, but he has no pending matters reported any court of Sri Lanka.

Under the subject of delay, In the case of **Alexopoulos** unreported 23.02.1998 Hampel, J. in the Supreme Court of Victoria, held that:

“ In my opinion when exceptional circumstances which substantially depend on delay are raised, they cannot be measured simply by what is the normal and usual delay at any particular period of time.....I think there must be some objective criteria which does not depend purely on what the position is at the particular time because of the delays in the system or lack of resources. It must be objective criteria based on the concept that we are a humanitarian society which respects the presumption of innocence and finds abhorrent the idea that people are kept in custody for undue time without trial”.

Further, in **Nasher v. Director of Public Prosecution [2020] VSCA 144** the court held that:

“a combination of delay, onerous custodial conditions, and the relative weakness of the prosecution case may, when considered with all relevant circumstances, compel the conclusion that exceptional circumstances have been established”. [Emphasis added]

Also, in **CA/0484/2024** order dated 20.05.2025 His Lordship Kulatunga, J. held that:

*“The starting point is that a person being in remand for eleven and half years is extremely serious and significant. Twelve years of a person’s life and living is a considerable portion of the lifespan of any average man. As held in the Indian case **Hussain v The State** (NCT of Delhi) 28.03.2023, the right to a speedy trial of offenders facing criminal charges is implicit in the broad sweep and content of Article 21 of the Indian Penal Code corresponds to Article 13(4) of our Constitution which specifically provides that no person shall be punished with death or imprisonment except by order of a competent Court made in accordance with the procedure established by law. No doubt, the detention or remand pending trial does not constitute punishment as provided for by the said Article. The sum total and the relevance are that depriving the person of liberty cannot be reasonable, fair or just unless the procedure ensures a speedy trial for the determination of a guilt of such person. No procedure does not ensure a reasonably quick trial can be regarded as reasonable fair or just.”*

Additionally, in **Hussain v The State** the Supreme Court of India in case No. 915 of 2023 judgment dated 28.03.2023 held that:

“Now obviously procedure prescribed by law for depriving a person of liberty cannot be ‘reasonable, fair or just’ unless that procedure ensures a speedy trial for determination of the guilty of such person. No procedure which does not ensure a reasonably quick trial can be regarded as ‘reasonable, fair or just’ and it would fall foul of Article 21. There can, therefore, be no doubt that speedy trial, is an integral and essential part of the fundamental right to life and liberty enshrined in

Article 21. The question which would, however, arise is as to what would be the consequence if a person accused of an offence is denied speedy trial and is sought to be deprived of his liberty by imprisonment as a result of a long delayed trial in violation of his fundamental right under Article 21”.

When a person is kept in remand without taking up his or her case for trial for a considerable period of time, he or she should be released on bail pending trial. Otherwise, this will not only violate his or her fundamental rights under the Constitution as afore-mentioned but will result in the overcrowding of prisons and eventually would lead to the deprivation of basic human rights for prisoners as well.

In this case the total quantity of pure Heroin detected in the production by the Government Analyst is 92.17grams.

Under these circumstances, the delay of little over 5 years in remand custody definitely falls into the category of excessive and oppressive delay considering the circumstances of this case. Whatever offences committed under the Poisons Opium and Dangerous Drugs Ordinance as amended by the Act No.13 of 1984, the delay is significant and cannot be considered usual in a case of this nature.

Considering all the materials placed before this court, the Accused has exceptional ground/s to be released on bail. Hence, he is granted bail on the following conditions;

1. Cash bail of Rs.100,000/=.
2. To provide 03 sureties. They must sign a bond of one million each.
3. The Accused and the sureties must reside and not vacate the local address given until the conclusion of his case.
4. Not to approach or interfere with any prosecution witnesses directly or indirectly.

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 Accused.
6. To report to the Police Narcotics Bureau, Colombo-01 on every Wednesday and Sunday of the month between 9am to 1pm.
7. Any breach of these conditions is likely to result in the cancellation of his bail.

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

The Registrar of this Court is directed to send this Bail Order to the High Court of Negombo and the officer-in-Charge of the Police Narcotics Bureau in Colombo-01.

JUDGE OF THE COURT OF APPEAL

R. P. Hettiarachchi, J.

I agree.

JUDGE OF THE COURT OF APPEAL