

**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

Head Quarters Inspector

Application No:

Head Quarters Police Station,

CA/Bail 0046/26

Mount Lavinia.

Complainant

MC Mount Lavinia case No.

B/52164/2024

Vs.

Modarage Niresh Nuwan Matis

(Presently in remand custody)

Suspect

AND NOW BETWEEN

Modarage Niresh Nuwan Matis

37/7/A, Henapara,

Mount Lavinia

Suspect-Petitioner

Vs.

1. Head Quarters Inspector
Head Quarters Police Station,
Mount Lavinia.
2. Hon. Attorney General
Attorney General's Department
Colombo-12.

Respondents

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

COUNSEL **Lakmal Deegalla with S.A.Samantha**
for the Petitioner.
Jacky Ismail, SC for the Respondents.

ARGUED ON : **21/07/2026.**

DECIDED ON : **14/09/2026.**

ORDER

P.Kumararatnam,J.

The Suspect-Petitioner Hereinafter referred to as the Petitioner) 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 20/12/2024 for possession of one kilogram of substances suspected to be Methamphetamine and 106 grams of substances suspected to be Heroin at Mount Lavinia by officers from the Mount Lavinia Police Station and produced under case bearing No. BR 52164/24 to the Magistrate Court of Mount Lavinia. The Petitioner was arrested upon information received from an informant. After his arrest, he was placed under a detention order issued by the Learned Magistrate of Mount Lavinia.

According to the B report filed, the Accused was produced under Section 54(d) and (b) 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, 597.7 grams of pure Methamphetamine and 23.1 grams of pure Heroin (Diacetylmorphine) had been detected from the substances sent for the analysis.

The contention of the Petitioner is that he was not arrested as stated by the police. The Petitioner is in remand for nearly 21 months.

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

1. The Petitioner is in remand for nearly 21 months.
2. No previous or pending case reported against the Petitioner.
3. His arrest is a fabrication.

Considering the facts and the circumstances of this case, that the prosecution will not be able to establish a prima facie case against the Accused.

The State Counsel submits that the investigation notes pertaining to this case has not been received by the Attorney General's Department. Hence, sending out indictment will not be happened in near future.

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.

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 **Labynidarage 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 parlour 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 21 months. No indictment has sent out against him. 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 without filing charges is a clear violation of his human rights and is against the presumption of innocence guaranteed under the Article 13(5) of the Constitution.

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 committed Offences under Section 54A(d) and (b) of the Poisons Opium and Dangerous Drugs Ordinance as amended by the Act No.13 of 1984. 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 sending out indictment to the High Court, no previous or pending matters, and other circumstances of the case, I consider this is an appropriate case to grant bail to the Petitioner. The learned State Counsel left the matter to be decided by this Court. Hence, I order the Petitioner be granted bail with following strict conditions.

1. Cash bail of Rs.100,000/=.
2. To provide 02 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 Head Quarters Inspector, Head Quarters Police Station, Mount Lavinia on the 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 Magistrate of Mount Lavinia 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 Magistrate Court of Mount Lavinia, and Head Quarters Inspector, Head Quarters Police Station, Mount Lavinia.

JUDGE OF THE COURT OF APPEAL

R.P.Hettiarachchi, J.

I agree.

JUDGE OF THE COURT OF APPEAL