

**IN THE COURT OF APPEAL OF THE DEMOCRATIC SOCIALIST
REPUBLIC OF SRI LANKA**

In the matter of an application for Bail as under and in terms of Section 83(2) of the Poisons, Opium and Dangerous Drugs Ordinance as amended by section 04 of the Act No.41 of 2022.

Court of Appeal

The Attorney General

Application No:

Attorney General's Department

CA Bail/0069/2026

Colombo-12.

High Court of Balapitiya

COMPLAINANT

No. CRI/2992/23

Vs.

Induwadura Nuwan Chamara De Silva

ACCUSED

AND NOW

Weligodage Nadeeka De Silva

No. 573/B, Welikanda,

Ahungalla.

PETITIONER

Vs.

1. Officer-in-Charge

Police Narcotics Bureau

Colombo-01.

2. The Attorney General

Attorney General's Department

Colombo-12.

RESPONDENTS

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

COUNSEL : **Sarath Jayammane, PC with Prasan**
Wickramaratne instructed by Shehan
Rajapaksha for the Petitioner.
Wishwa Wijesuriya, SC for the
Respondents.

ARGUED ON : **16/07/2026.**

DECIDED ON : **31/07/2026.**

BAIL ORDER

P. Kumararatnam, J.

The Petitioner filing this Application has invoked the jurisdiction of this Court to grant bail to her husband upon suitable conditions as this Court considers appropriate.

On 11.09.2021, the Accused was arrested by officers attached to the Police Narcotics Bureau, Colombo-01 who alleged that the Accused had 205.6 grams of Heroin (Diacetylmorphine) in his possession. Additionally, the police had recovered Rs. 500,000/- from the Accused said to be the proceeds derived from trafficking of Narcotics. The Accused was arrested at his resident upon an information.

The Accused was indicted in the High Court of Balapitiya under Section 54A(d) and 54A(b) of the Poisons Opium and Dangerous Drugs Ordinance as amended by the Act No.13 of 1984 and under Section 3(1) of the Money Laundering Act No. 40 of 2011 as amended. Trial commenced in the High Court of Balapitiya under Case No. CRI/2992/2023.

The contention of the prosecution is that the Accused was arrested upon an information and the contraband was recovered from a bag he was carrying at the time of his arrest.

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

1. The Petitioner has been in remand custody for nearly five years to date.
2. The Petitioner is the sole breadwinner of the family and the family is going through untold hardships due to his prolonged incarceration.
3. His eldest daughter has fallen sick after his arrest and is currently receiving treatment for severe depression.

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”.

According to the Learned State Counsel, the Accused was arrested for possession of 205.6 grams of Heroin. Steps had already been taken to indict the Petitioner in the High Court of Balapitiya and the case number is CRI 2992/2023. At present the trial has commenced not over.

The Counsel for the Petitioner submits that the Accused has been in remand for nearly five years. Considering the facts and the circumstances of this case, the prosecution will not be able to establish a prima facie case against the Accused.

Exceptional circumstances are not defined in the statute. Hence, what would constitute *an* exceptional circumstance must be considered on its own facts and circumstances on a case-by-case basis.

In **Ramu Thamothearampillai 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 **CA (PHC) APN 17/12 and CA(PHC) APN 16/12** the court observed the fact that the indictment was not served even after the lapse of one year from the date of producing the Government Analyst’s Report, was considered as exceptional circumstances.

In **CA(PHC)APN 107/2018** decided on 19.03.2019, it was held that remanding for a period of one year and five months without being served with the indictment was considered an exceptional circumstance inter alia in releasing the suspect on bail.

According to the Petitioner, at present her family is going through untold hardships without proper income and care. Although the indictment was filed in the High Court, trial has not concluded.

The Petitioner further submits that her eldest daughter who is 18 years of age, is suffering from severe depression due to the arrest of the

Accused. She is due to sit for the Advanced Level Examination in August, this year.

Due to the mental distress suffered by the eldest child, she has ceased attending school for a prolonged period of time. In this regard, the principal of the school, by a letter dated 08.07.2025 addressed to the Petitioner, raised concerns regarding the poor school attendance of the petitioner's eldest child. Thereafter, the Petitioner sought medical attention for her eldest daughter from Dr. Nilmini Narangammana, Consultant Psychiatrist, Base Hospital, Balapitiya, who, by letter dated 18.08.2025, stated that the child was exhibiting signs of depression. Subsequently, Dr. Nilmini Narangammana issued medical prescriptions dated 18.08.2025 and 13.09.2025.

Thereafter, the Petitioner truly believed that the condition of her eldest child would improve with the said medication. However, due to the gradual worsening of the child's mental condition over time, the Petitioner, through her Counsel, made a formal request to Dr. C.T.K. Fernando, Consultant Forensic Psychiatrist, for a psychiatric evaluation in order to obtain appropriate and effective treatment. By his report dated 18.01.2026, Dr. C.T.K. Fernando stated that the Petitioner's eldest child is suffering from depression and advised the Petitioner to remain vigilant regarding the risk of self-harm associated with ongoing depression and stressors. It was further revealed therein that the said depression was primarily attributable to the prolonged incarceration of her father, namely the Accused.

The letter issued by the school principal and the medical reports issued by the relevant doctors are annexed to the petition.

The 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.

In this case the pure quantity Heroin detected in the production by the Government Analyst is 205.6 grams. Hence, this Court has jurisdiction to consider the granting of bail as per the new amendment.

In this case, as per the submission of the Learned State Counsel, the indictment has been dispatched to the High Court of Balapitiya and trial has been started but not over. The delay of nearly five years therefore falls into the category of excessive and oppressive delay, considering the circumstances of this case.

The learned President's Counsel for the Petitioner urged this Court to consider that detaining an Accused without the trial being concluded for an extended period of time amounts to a violation of his/her fundamental rights, which can be considered as an exceptional ground. The learned President's Counsel drew our attention to Article 3(1) of the Convention of the Right of the Child (Hereinafter referred to as the 'CRC') and the Section 5 (2) of the International Covenant on Civil and Political Rights (ICCPR) Act No. 56 of 2007.

Article 3(1) of the CRC states:

“In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be primary consideration”.

Section 5(2) of the ICCPR Act No. 56 of 2007 states:

“In all matters concerning children, whether undertaken by public or private social welfare institutions, courts, administrative authorities or legislative bodies, the best interest of the child shall be of paramount importance”.

Offences under Section 54A(d) and 54A(b) of the Poisons, Opium and Dangerous Drugs Ordinance as amended by the Act No.13 of 1984 are undoubtedly serious offences, however, the seriousness of the offence alone cannot form a ground to refuse bail. When considering these matters, the court must bear in mind the presumption of innocence.

Further, the elder daughter of the Accused has been under severe depression due to the incarceration of the Accused. She is currently undergoing medical treatment.

Children of incarcerated parents indeed face a multitude of challenges that can impact their overall well-being. Children may experience feelings of abandonment, anxiety, and depression due to the absence of a parent. Further, this may develop into long-term mental health issues, such as anxiety, depression, or post-traumatic stress disorder (PTSD).

Generally, courts are of the view that being an incarcerated parent or sole breadwinner cannot automatically be considered an “exceptional circumstance” which could be used to guarantee bail. Bail decisions would be ascertained based on established legal principles, where the best interests of the child would be a primary consideration in matters which concern children.

In **Attorney General v Ediriweera** (SC) 2006 BLR 12

"It is trite law that family circumstances are not considered to be exceptional but circumstances which are general and operative in almost all the cases. The facts and circumstances of the case must take it out of the ordinary, creating circumstances that are sufficiently exceptional to merit the grant of bail ...".

I consider the medical condition of the eldest daughter of the Accused, the period the Appellant has been in remand custody and other circumstances of this case to exceptional, and decide that the Accused has very good exceptional circumstances to consider this application in his favour.

Considering all these factors into account, I order bail to the Accused with the following strict bail conditions.

1. Cash bail of Rs.250,000/=.
2. To provide 03 sureties. They must sign a bond of one million each. The Petitioner should be one of the sureties.
3. The Accused 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 them.
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 Officer-in-Charge, Police Narcotics Bureau, Colombo-01 on the second and last 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 Learned High Court Judge of Balapitiya is hereby directed to enlarge the Accused on the above bail conditions.

The Registrar of this Court is directed to send this bail order to the High Court of Balapitiya and the Officer-in-Charge, Police Narcotics Bureau, Colombo-01.

JUDGE OF THE COURT OF APPEAL

R. P. Hettiarachchi, J.

I agree.

JUDGE OF THE COURT OF APPEAL