

**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

Application No:

CA/Bail 0135/25

High Court Gampaha

Case No.100/25

MC Mahara case No.

B/1480/2024

The Officer-in-Charge

Crime Division Western Province-North

Range,

Peliyagoda.

Complainant

Vs.

Kotteduwa Kamkanamge Thushan

Dilruksha

No. 175/5, Pamunuwila, Gonawala,

Kelaniya.

(Presently in remand custody)

Accused

NOW BETWEEN

Kotteduwa Kamkanamge Thushan

Dilruksha

No. 175/5, Pamunuwila, Gonawala,

Kelaniya.

Accused-Petitioner

Vs.

1. The Officer-in-Charge
Crime Division Western Province-North
Range,
Peliyagoda.
2. Hon. Attorney General
Attorney General's Department
Colombo-12.

Respondents

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

COUNSEL **Naveen Maha Arachchi for the**
Petitioner.
Tharaka Kodagoda, SC for the
Respondents.

ARGUED ON : **22/09/2026.**

DECIDED ON : **19/10/2026.**

ORDER**P.Kumararatnam,J.**

The Petitioner who is the Accused in this case filing this Application has invoked the jurisdiction of this Court to grant bail to him upon suitable condition as this Court considers appropriate.

The Accused was arrested on 04/04/2024 for possession of 1.08 Kilograms of substances suspected to be Heroin. A group of police officers headed by IP/ Jayasekara from the Crime Division, Western Province-North Range, Peliyagoda had conducted a raid upon receiving an information. As per the information they had gone to the Accused's house and directed the inmates to open the door. A lady opened the door. At the same time a person carrying a parcel had put the same in to a speaker box. When the police recovered the parcel and checked the same, it revealed some substances similar to Heroin was in it. The Accused was thereafter, produced under case bearing No. B 1480/24 to the Magistrate Court of Mahara. He was placed under a detention order issued by the Learned Magistrate of Mahara.

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, 162.1 grams of pure Heroin (Diacetylmorphine) had been detected from the substance sent for the analysis.

The contention of the Petitioner is that the he was not arrested as stated by the police. According to him the said drugs was introduced to him by the police. The Accused is remand for nearly 30 months.

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

1. The Accused is in remand for nearly 30 months.
2. The Heroin was not recovered from him.

The Counsel for the Petitioner submits that the Accused is in remand for nearly 30 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 Accused.

The State Counsel submits that the indictment has already dispatched to the High Court of Gampaha and the indictment under case No. HC 100/25 was served on the Accused on 18.02.2026 and the trial is not started yet.

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 162.1 grams. 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 Accused has been in remand for about 30 months. 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 Accused 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.

Indictment was served on the Accused on 18.02.2026. Trial will be commenced in due course.

A court can consider evidence in a bail inquiry. During a bail hearing, the court typically evaluates various factors to determine whether a Accused 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 Accused 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.

According to the State Counsel the Accused has one previous conviction. For which he was given a 02 years sentence suspended for 14 years by the High Court of Colombo. The Accused has committed this offence which he was on suspended sentence issued by a High Court. This clearly shows his antecedence of committing similar offence after sentencing.

I agree with the learned State Counsel that this is not appropriate case to consider the factual and evidentiary matters pertain to the investigations at this stage. It can only be tested at the trial upon the witnesses being cross examined and re-examined.

In **Ranil Charuka Kulatunga v. Attorney General CA (PHC) APN 134/2015** the court held that:

“The quantity of cocaine involved in this case is 62.847 grams, which is a commercial quantity. If Petitioner is convicted, the punishment is death or life imprisonment. Under these circumstances, it is prudent to conclude the trial early while the Petitioner is kept in custody.”

In **Carder (On behalf of Rashid Kahan) v Officer-in-Charge Narcotics Bureau** [2006] 3 SLR 74 the Court held that:

“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.”

In this case the pure Heroin detected is 162.1 grams, which certainly a very high commercial quantity. Considering the seriousness of the sentence prescribed under the Poison, Opium and Dangerous Drugs Ordinance, there is a high risk of absconding.

Hence, I do not consider the delay nearly 30 in remand falls into the category of excessive and oppressive delay considering the circumstances of this case.

Considering all these factors into account, especially the pure quantity of Heroin detected, the charges framed against the Accused, committing

a similar offence while suspended sentence in another case is in operation and other circumstances of the case, I consider this is not an appropriate case to sanction bail to the Accused at this stage. Hence, I refuse to release the Accused on bail.

The Registrar of this Court is directed to send this Bail Order to the High Court of Gampaha, and Officer-in-Charge Crime Division Western Province-North Range, Peliyagoda.

JUDGE OF THE COURT OF APPEAL

R.P.Hettiarachchi, J.

I agree.

JUDGE OF THE COURT OF APPEAL