

**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/0278/2025

Colombo-12.

High Court of Negombo

COMPLAINANT

No. CRI/066/26

Vs.

MC Negombo case No.

B/10340/2024

Gamage Gamini Jayadeva
Wickremanayake

ACCUSED

AND NOW

Kiriwaththuduwage Dona
Kumuduni Geetha Prasdhi

Sri Saranathissa Mawatha,
Kubuka Batahira,
Gonapola Handiya.

PETITIONER

Vs.

1. Officer-in-Charge
Police Narcotics Bureau
Colombo-01.

COMPLAINANT-RESPONDENT

2. The Attorney General
Attorney General's Department
Colombo-12.

2nd-RESPONDENT

BEFORE

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

COUNSEL : **Neranjana Jayasinghe with Randunu
Hellage and Pravindika Kularathne for
the Petitioner.
Tharaka Kodagoda, SC for the
Respondents.**

ARGUED ON : **12/06/2026.**

DECIDED ON : **07/08/2026.**

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 03.07.2024, the Accused was arrested by officers attached to the Police Narcotics Bureau, Colombo-01 who alleged that the Accused had 286 grams of substances suspected to be Cocaine in his possession.

The Accused was produced, and the facts were reported to the Negombo Magistrate under Section 54A (c), (d) and 54A(b) of the Poisons Opium and Dangerous Drugs Ordinance as amended by the Act No.13 of 1984.

The production had been sent to the Government Analyst Department on 28/03/2025. After analysis, the Government Analyst had forwarded

the report to Court on 24/11/2025. According to the Government Analyst Report, 102.2 grams of pure Cocaine had been detected from the substances sent for the analysis.

Presently, the Accused is indicted in the High Court of Negombo under case No. CRI/06/2026 and the case was due to be called for the service.

The contention of the prosecution is that the Accused was arrested within the premises of Colombo Cargo Express, Negombo Road, Seeduwa with the contraband.

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

1. The Petitioner has been in remand custody for nearly 24 months to date.
2. The Accused is the sole breadwinner of the family and the family is going through untold hardships due to his prolonged incarceration.
3. The Accused is a well-known Ayurvedic Doctor.

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 Petitioner was arrested for possession and trafficking of 102.2 grams of Cocaine. Steps had already been taken to indict the Petitioner in the High Court of Negombo and the case number is CRI/066/2026. The indictment has not been served onto the Accused. Hence, the Learned State Counsel submitted that the delay is not an exceptional circumstance to be considered to enlarge the

Accused on bail. Further, the time spent for preparing the indictment does not constitute an exceptional circumstance.

The Counsel for the Petitioner submits that the Accused has been in remand for nearly 24 months. 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, up to now the trial has not commenced in the High Court of Negombo.

The Petitioner submits that the Accused has a history of epilepsy and currently receiving treatment. MRI Scan done and the report has confirmed that he has lost a volume of the right cerebral hemisphere of the brain (brain damage). The Petitioner further states that the Accused

is under medical observation regarding neurological damage to the spinal code. Therefore, the Petitioner states that as per medical advice, the Accused needs to be further investigated as to this regard and require rehabilitation with physiotherapy. The Medical diagnosis card issued by the District General Hospital, Negombo and a copy of the MRI Scan Report issued by the Nawaloka Hospitals PLC 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 of Cocaine detected in the production by the Government Analyst is 102.2 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 Negombo. Although the indictment had been forwarded, the trial has not started

and the delay of nearly 24 months therefore falls into the category of excessive and oppressive delay, considering the circumstances of this case.

The Counsel for the Petitioner urged this Court to consider that detaining an Accused without the trial being commenced for an extended period of time amounts to a violation of his fundamental rights, which can be considered as an exceptional ground.

Offences under Section 54A (c), (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.

I consider the medical condition of the Accused, the period he is in remand custody and other circumstances of this case to be 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.100,000/=.
2. To provide 03 sureties. They must sign a bond of three 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 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 Negombo 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 Negombo 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