

**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 Officer-in-Charge

Application No:

Police Station

CA Bail/0350/2025

Katana

Vs.

MC Negombo case No.

B/68274/2023

Hapuarachchige Rukshan Nilanka

SUSPECT

AND NOW

Hapuarachchige Rukshan Nilanka

No. 593, Daluwakotuwa,

Kochchikade.

SUSPECT-PETITIONER

Vs.

1. Officer-in-Charge
Police Station,
Katana.

COMPLAINANT-RESPONDENT

2. The Attorney General

Attorney General's Department

Colombo-12.

2ND-RESPONDENT

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

COUNSEL : **Shamindra Rodrigo with Janith Perera**
for the Petitioner.
Malik Azeez, SC for the Respondents.

ARGUED ON : **04/03/2026.**

DECIDED ON : **25/05/2026.**

BAIL ORDER

P. Kumararatnam, J.

The Suspect-Petitioner (hereinafter referred to as the Petitioner) filing this bail application has invoked the jurisdiction of this Court to grant bail to him upon suitable conditions as this Court considers appropriate.

On 22.05.2023, the Petitioner was arrested by officers attached to the Katana Police Station who alleged that the Petitioner had 70.920 grams of substances suspected to be Heroin (Diacetylmorphine) in his possession.

The Petitioner was produced, and the facts were reported to the Negombo Magistrate under Section 54A(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 23/05/2023. After analysis, the Government Analyst had forwarded the report to Court on 07/11/2023. According to the Government Analyst Report, 26.91 grams of pure Heroin (Diacetylmorphine) had been detected from the substances sent for the analysis.

The contention of the prosecution is that the Suspect was arrested upon an information and the contraband was recovered from his trouser pocket.

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

1. The Petitioner has been in remand custody nearly three 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 child has fallen sick after his arrest.

According to the Learned State Counsel, the Petitioner was arrested for possession and trafficking of 26.91 grams of Heroin.

The Counsel for the Petitioner submits that the Petitioner has been in remand nearly three 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 Thamothersampillai 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 this case, the pure quantity of 26.91 grams of Heroin has been detected in the production. Hence, this court has jurisdiction to consider granting of bail as per the new amendment.

The Counsel for the Petitioner submits that undue and long delay in keeping the Petitioner 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.

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 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. The offences are very serious offences and the seriousness of the offence should be considered when bail is considered.

I agree with the learned State Counsel that this is not an 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.

The Petitioner had committed this offence while he was on bail for two similar offences. The Petitioner has two pending matters before the High Court for possession and trafficking drugs.

Hence, I do not consider the delay nearly three years 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 drugs detected, the two pending matters and circumstances of the case, I consider this is not an appropriate case to sanction bail to the Petitioner at this stage. Hence, I refuse to release the Petitioner on bail.

Hence, this Bail Application is dismissed.

The Registrar of this Court is directed to send this bail order to the Magistrate Court of Negombo and the Officer-in-Charge, Police Station, Katana.

JUDGE OF THE COURT OF APPEAL

R. P. Hettiarachchi, J.

I agree.

JUDGE OF THE COURT OF APPEAL