

**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 Narcotics Bureau,

CA Bail/0379/2025

Colombo-01.

Vs.

MC Homagama case No.

Eliyadurage Wasana Samantha alias

B/74765/2024

Eliyadurage Wasana Samantha

Fernando

(In prison)

1ST-SUSPECT

AND NOW BETWEEN

Eliyadurage Wasana Samantha

Eliyadurage Wasana Samantha

Fernando

1ST SUSPECT-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 : **Mohan Seneviratne with Wasantha Pitigala for the Petitioner.**
Shezan Mahboob, SC for the Respondents.

ARGUED ON : **02/04/2026.**

DECIDED ON : **14/05/2026.**

BAIL ORDER**P. Kumararatnam, J.**

The 1st 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 conditions as this Court considers appropriate.

On 01.05.2024, the Petitioner was arrested by officers attached to the Police Narcotics Bureau, Colombo-01 and a parcel suspected to be Heroin was recovered in his possession. Thereafter, he was taken to his warehouse and found a travelling bag which contained several parcels of different kind of drugs. Upon examination, 12 parcels suspected to be Heroin, some white powder suspected to be Cocaine and small quantity of Hashish were recovered by the police. After that, he was taken to the Police Narcotics Bureau by the police. At the police Narcotics Bureau Petitioner had seen his wife who too was arrested in this regard. But his wife was discharged by the learned Magistrate subsequently.

The Petitioner was produced, and the facts were reported to the Homagama 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 06/05/2024. After analysis, the Government Analyst had forwarded the report to Court on 16/06/202. According to the Government Analyst Report, the Parcel marked "A" contained 36.18 grams of pure Heroin (Diacetylmorphine). Parcel No.2 to 13 contained 430.42 grams of Heroin. The white coloured powder contained in the Parcel "C" contained 183.5 grams of Cocaine.

The contention of the prosecution is that the Petitioner was arrested upon an information and except parcel “A” the other parcels were recovered from a bag found in the warehouse.

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

1. The Petitioner has been in remand custody for nearly two years.
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 son 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”.

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

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 Thamotheerampillai 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 his family is going through untold hardships without proper income and care.

The Petitioner further submits that his son who is 17 years of age, is suffering from severe depression due to the arrest of the Petitioner. The Medical diagnosis card issued by the Senior Professor in Psychiatry of Kotelawala Defence University is 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.

The Counsel for the Petitioner urged this Court to consider that detaining a Suspect 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(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 son of the Petitioner has been under severe depression due to the incarceration of the Petitioner. He 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 son of the Petitioner, the period the Petitioner was in remand custody and other circumstances of this case to be exceptional, and decide that the Petitioner has very good exceptional circumstances to consider this application in his favour.

At this stage, the learned State Counsel in keeping with the highest tradition of the Attorney General's Department not objecting for bail considering the fact that only the parcel "A" was recovered from the possession of the Petitioner and the pure quantity of Heroin detected is 36.18 grams of Heroin. The rest of the drugs were recovered from the warehouse when he did not have the possession of the key.

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

1. Cash bail of Rs.100,000/=.
2. To provide 03 sureties. They must sign a bond of one 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 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 Petitioner.
6. To report to the Officer-in-Charge, Police Narcotics Bureau, Colombo-01 on the second and last Sundays 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 Magistrate of Homagama is hereby directed to enlarge the Petitioner on the above bail conditions.

The Registrar of this Court is directed to send this bail order to the Magistrate Court of Homagama 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