

**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/0394/2025

Kegalle.

Vs.

MC Kegalle case No.

Dasanayake Mudiyanseelage Amitha

B/6813/PE/2023

Bandara Chandrasekara

(In remand prison)

SUSPECT

AND NOW BETWEEN

Hetti Arachchilage Ruwantha Kasun

Ranaweera

No. 71, Pelengasthuduwa Road,

Borella, Colombo-08.

PETITIONER

Vs.

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

COMPLAINANT-RESPONDENT

2. The Attorney General

Attorney General's Department

Colombo-12.

RESPONDENT

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

COUNSEL : **Vindya Ekanayake for the Petitioner.**
Tharaka Kodagoda, SC for the
Respondents.

ARGUED ON : **23/07/2026.**

DECIDED ON : **25/09/2026.**

BAIL ORDER

P. Kumararatnam, J.

The Petitioner filing this Application has invoked the jurisdiction of this Court to grant bail to his brother-in-law upon suitable conditions as this Court considers appropriate.

On 19.12.2023, the Suspect was arrested by officers attached to the Police Station, Kegalle and a parcel suspected to be of Heroin (Diacetylmorphine) was recovered from the Cabi hole of the car in which the Suspect was driving. The gross quantity of the substance weighed about 778.260 grams.

The Suspect was produced, and the facts were reported to the Kegalle 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.

Further, the Suspect was placed under a detention order issued by the learned Magistrate of Kegalle for further investigations.

The production had been sent to the Government Analyst Department on 22/01/2024. After analysis, the Government Analyst had forwarded the report to Court on 28/03/2024. According to the Government Analyst Report, 199.8 grams of pure Heroin (Diacetylmorphine) has been detected in the parcel.

The contention of the prosecution is that the Suspect was arrested upon an information that he involved in drugs distribution in the Polgahawela area.

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

1. The Suspect has been in remand custody for nearly two years and eight months.
2. The Suspect is the sole breadwinner of the family and the family is going through untold hardships due to his prolonged incarceration.
3. The Respondents have failed to indict him even after receiving the Government Analyst Report.

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 Suspect has been in remand for nearly two years and eight months. 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 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 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 the Suspect’s family is going through untold hardships without proper income and care.

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.

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 ...".

The Learned State Counsel submitted that the indictment is filed in the High Court of Kegalle and it was served on the Suspect on 28.10.2025. The pre-trial is over. Hence, she submits that the delay is not an

exceptional circumstance to be considered to enlarge the Suspect on bail. Further, the time spent for preparing the indictment does not constitute an exceptional circumstance.

Considering the fact that there has been a delay of 02 years and 08 months since in the remand custody, it falls into the category of excessive and oppressive delay taking into account the circumstances of this case. Further, trial has not commenced in the High Court of Kegalle. Hence, this court has come to the conclusion that the Suspect has established exceptional grounds for the granting of bail. The previous bail application filed by the Suspect was dismissed by this Court.

The Offences under Section 54A(b) and (d) of the Poisons, Opium and Dangerous Drugs Ordinance as amended by the Act No.13 of 1984 are no doubt serious offences but seriousness of the offences alone cannot form a ground to refuse bail. In considering these matters, the court must bear in mind the presumption of innocence. Further, according to the police, no previous or pending case/s reported against the Accused.

Taking all these into account, especially the pure quantity of Heroin detected, the period in remand, non-commencement of the trial and other circumstances of the case, I consider this is an appropriate case to grant bail to the Suspect pending trial. Hence, I order the Suspect be granted bail with following strict conditions.

1. Cash bail of Rs.100,000/=.
2. To provide 03 sureties. They must sign a bond of one million each. The Petitioner should be one of the sureties.
3. The Suspect and the sureties must reside in the address given until the 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 Suspect.

6. To report to the Officer-in-Charge, Police Station, Kegalle 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 Magistrate of Kegalle is hereby directed to enlarge the Suspect on the above bail conditions.

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

JUDGE OF THE COURT OF APPEAL

R. P. Hettiarachchi, J.

I agree.

JUDGE OF THE COURT OF APPEAL