

**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.

Democratic Socialist Republic of Sri Lanka

Court of Appeal

Complainant

Application No:

Vs.

CA/Bail 0422/25

Sundarage Sumudu Tharanga Fernando

HC Negombo case No.

(Presently in remand prison)

CRI 494/2019

16th Accused

AND NOW BETWEEN

Ukwaththa Liyanage Thusari Anulika Perera

No.14/3A, Madangasthuduwa,

Dungalpitiya, Thalahena,

Negombo.

Petitioner

The Attorney General

Attorney General's Department

Colombo-12.

Complainant-Respondent

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

COUNSEL : **Asela Serasinghe for the Petitioner.**
Malik Azeez, SC for the Respondent.

ARGUED ON : **27/01/2026.**

DECIDED ON : **28/04/2026.**

BAIL ORDER

P. Kumararatnam, J.

The Petitioner is the wife of the 16th Accused, (hereinafter referred to as the Accused) named in the indictment filed in the High Court of Negombo in the case bearing No. HC 494/2019. The Petitioner filing this Application has invoked the jurisdiction of this Court to grant bail to the Accused upon suitable conditions as this Court considers appropriate.

According to the objections filed by the Respondent, the Petitioner was arrested by officers of the Police Narcotics Bureau on 01.04.2016 upon the allegation that he had coordinated with some others to traffic 111.82 Kilogram of Heroin (Gross) to Sri Lanka.

The detection pertaining to this case is a joint operation carried out by the Police Narcotics Bureau and the Sri Lanka Navy upon an information received from PW01 named in the indictment. This joint operation had resulted the police officers arresting 17 persons including the Accused for offences committed under the Poisons, Opium and Dangerous Drugs Act No.13 of 1984.

The recovered substances were sent to the Government Analysts and the Report confirmed the presence of 48 kilograms, 588 grams and 146 milligrams of pure Heroin in the substances.

The Hon. Attorney General has indicted the Accused in the High Court of Negombo on the allegation that between 01.01.2016 and 31.03.2016 at Negombo, Galle, Colombo and other places unknown to the prosecution that the Petitioner committed the offence of conspiracy, with others, by trafficking, or abetting to traffic a dangerous drug as set out in Section 54A (d) of the Poisons, Opium and Dangerous Drugs Act as amended by Act No. 13 of 1984, to traffic 48 Kilograms 588 grams and 146 milligrams of Heroin punishable under Section 54A (b) the said Ordinance read with sections 113a and 102 of the Penal Code.

It was further alleged that the Accused abetted the 14th Accused named in the indictment to traffic 48 kilograms 588 grams and 146 milligrams of Heroin and thereby committed an offence liable to the penalty set out in the indictment.

The Accused vehemently denies the charges levelled against him in the indictment. The Accused takes up the position that this is a fabricated case against him by the police.

The Accused is the owner of the business named “Isabella Sea Foods” which is a single person proprietorship and had been in the business of supplying sea food including crabs to Singapore and other countries for over decade until he was arrested by the Police Narcotics Bureau.

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

1. The Accused has been in remanded since 04.04.2016. Now he has completed 10 years in remand prison.
2. The prosecution had failed to adduce plausible evidence against the Accused.
3. The Accused is married and have two daughters. The family is without any income due to the incarceration of the Accused.

According to 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.

(3) For the purpose of this section “dangerous drug” means Morphine, Cocaine, Heroin and Methamphetamine.

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 basis.

On the same subject, the Supreme Court in **Ramu Thamodarampillai v. The Attorney General [2004] 3 SLR 180** held that:

“the decision must in each case depend on its own peculiar facts and circumstances”.

Further, 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 Petitioner has been in remand prison for 10 years and, invites this Court to consider this as an exceptional circumstance.

Learned State Counsel contends that the period in remand custody cannot be considered as an exceptional circumstance in all cases. It has

to be decided on a case-by-case basis, whether the remand period already spent could be considered as an exceptional circumstance.

Considering the facts and the circumstances of this case, the Counsel further states that the prosecution will not be able to establish a prima facie case against the Accused as he is only charged for conspiracy and aiding and abetting the 14th Accused to commit the offence mentioned in the indictment.

Further, the learned Counsel for the Petitioner contended that the prosecution will not succeed in securing a conviction against the Petitioner due to the presentation of inadmissible evidence against him. Hence, he strenuously argued that the Accused should be released on bail.

I agree with the Learned State Counsel that the factual and evidentiary matters pertaining to the investigation can only be tested at the trial upon the witnesses being cross examined and shall not be tested at the time of hearing this bail application considering the nature of this case.

According to the Petitioner, although the case was called numerous times in open court, the trial finally commenced on 22.11.2022. Further, the examination-in-chief of PW1 has been completed on 10.06.2024. Cross examination on behalf of the Petitioner was commenced on the same day. According to the Counsel of the Petitioner, the cross examination is not concluded to date. Hence, the Learned Counsel for the Petitioner as stated above, invites this court to consider the prolonged delay in the conclusion of the trial as an exceptional circumstance.

The learned State Counsel vehemently objected for granting bail to the Accused. According to him the trial is now proceeding and all necessary steps have been taken to conclude the trial as quickly as possible. The last date of the trial was 24.03.2026.

Considering the present situation of the case and other circumstances of this case, I refuse bail to the Accused. Therefore, this bail application is dismissed.

The Registrar of this Court is directed to send this Bail Order to the High Court of Negombo and the officer-in-Charge of the Police Narcotics Bureau in Colombo-01.

JUDGE OF THE COURT OF APPEAL

R. P. Hettiarachchi, J.

I agree.

JUDGE OF THE COURT OF APPEAL