

**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.

The Democratic Socialist Republic of
Sri Lanka

Court of Appeal

Application No:

CA/Bail 0450/24

HC Galle case No.

5877/2023

Vs

Albadura Kumara alias Albadura

Susantha Kumara

(Currently in the Remand Prison of Galle)

Complainant

Accused

NOW AND BETWEEN

Gamachari Witharanage Janaki

Midagala,

Kadurupe,

Bussa.

Petitioner

Vs.

The Attorney General

Attorney General's Department

Colombo-12.

Respondent

Albadura Kumara alias Albadura

Susantha Kumara

(Currently in the Remand Prison of Galle)

Accused-Respondent

BEFORE

**: P. Kumararatnam, J.
P. K.M.G.H. Kulatunga, J.**

COUNSEL

**: Shanaka Ranasinghe with Yasas
Wijesinghe for the Petitioner.
Oswald Perera, SC for the Respondent.**

ARGUED ON

: 12/03/2025.

DECIDED ON

: 04/04/2025.

ORDER**P.Kumararatnam,J.**

The Petitioner is the wife of the Accused named in the Petition. The Petitioner filing this Application has invoked the jurisdiction of this Court to grant bail to the Accused upon suitable condition as this Court considers appropriate.

The Accused is the Suspect in the case bearing No. B/37740/21 of the Magistrate Court of Galle.

According to the B report filed in the Magistrate Court of Galle, the Accused in this case was arrested by the police officers attached to Galle Police Station on 09.04.2021 on the allegation of possession and trafficking of 23.960 grams of Heroin (Diacetylmorphine). At the time of arrest the Accused was riding a motor bike bearing No.SP XT 1555.

The substances recovered from the Accused had been sent to Government Analyst Department. According to Government Analyst Report, 11.213 grams of pure Heroin detected in the parcel recovered from the Accused.

According to the Petitioner, the Accused vehemently denies the charges levelled against him. The Accused takes up the position that this a fabricated case against him by the police.

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

1. The Accused has been held in remand custody since his arrest on 09.04.2021.
2. Although the indictment served on the Accused on 31.10.2023, the trial has not been commenced yet.

3. The trial has been set for 22.05.2025 after 19 months after the date of serving the indictment.
4. The inordinate delay between the first date fixed for trial to present which is exceptional in nature.
5. There is no likelihood of taking the matter for trial on day-to-day basis, and thereby the conclusion of the case will take long time.
6. The presumption of innocence is ensured by the Constitution of the Republic in favour of the Accused.

The Counsel for the Petitioner submits that the Accused is in remand nearly for 04 years. Considering the facts and the circumstances of this case, the Petitioner states that the prosecution will not be able to establish a prima facie case against the Accused.

According to the Learned State Counsel, the Accused had been indicted in the High Court of Galle and the trial is fixed for 22.05.2025.

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.

(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.

In this case, the pure quantity of Heroin detected in the production by the Government Analyst is 11.213grams. Hence, this court has jurisdiction to consider granting of bail as per the new amendment.

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 Suspect has been in remand nearly for 4 years. Hence, invite this Court to consider this as an exceptional circumstance.

Period in remand custody cannot be considered as an exceptional circumstance in all case. It must be decided on a case-by-case basis to consider whether the remand period already spent could be considered as an exceptional circumstance.

In **Ashani Dhanushshika v. Attorney General [CA (PHC) APN 04/2016]** the court held that:

“ In the present case the petitioner failed to establish any exceptional circumstances warranting this court to exercise the revisionary jurisdiction. The petitioner’s first point is that the suspect is in remand nearly for two years. The intention of the legislature is to keep in remand any person who is suspected or accused of possessing or trafficking heroin until the conclusion of the case. The Section 83(1) of the Act expresses the intention of the legislature...”

In **Carder v. Officer-in-Charge, Narcotics Bureau (2006) 3 SLR 74** the court held that:

“ ...Provision has been made in the Bail Act to release persons on bail if the period of remand extends more than 12 months. No such provision is found in the case of Poison, Opium and Dangerous Drugs Ordinance. Although bail was granted in some of the cases mentioned above, none of these cases refer to the time period in remand as constituting an exceptional circumstance. Hence bail cannot be considered on that ground alone.

According to the decisions cited above, the period spent in the remand custody cannot be considered as an exceptional circumstance in this case.

Further, facts of this case do not constitute exceptional circumstances. Issues pertaining to the case should only be considered at the trial stage. A suspect can only be released on bail under the Poisons, Opium and Dangerous Drugs Act as amended upon successful demonstration of that he has exceptional circumstances to be released on bail.

In this case the pure quantity of the Heroin detected in the production by the Government Analyst is 11.213 grams.

Further, the delay more than 3 years and six months in remand does not fall into the category of excessive and oppressive delay considering the circumstances of this case as the offences committed under Sections 54A(d) and 54A(b) of the Poisons Opium and Dangerous Drugs Ordinance as amended by the Act No.13 of 1984 and Act No. 41 of 2022.

The Suspect has 13 previous convictions. Out of that five cases are related to the possession of Heroin and rest are for the possession of illicit liquor and committing robbery by using a firearm. Further he has a one pending case for committing robbery of a gold chain by using a firearm.

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 Accused can be trusted to return for trial or if he poses 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.

Considering all the materials placed before this court, the Petitioner has failed to adduce that the Accused has exceptional circumstances to free the him on bail. Hence, this bail application is refused.

The Registrar of this Court is directed to send this order to the High Court of Galle and the officer-in-Charge of the Police Station (Vice Division) Galle.

JUDGE OF THE COURT OF APPEAL

K.M.G.H.Kulatunga, J.

I agree.

JUDGE OF THE COURT OF APPEAL