

**IN THE COURT OF APPEAL OF THE DEMOCRATIC SOCIALIST  
REPUBLIC OF SRI LANKA**

In the matter of an application for bail in terms of the Section 83 of the Poisons, Opium and Dangerous Drugs Ordinance as amended by the Act No.41 of 2022.

The Democratic Socialist Republic of Sri Lanka

**Court of Appeal**

**Application No:**

**COMPLAINANT**

**CA Bail 0064/2025**

**Vs.**

**High Court of Chilaw**

Ambagahawaththage Saman Sanjeewa

**Case No. HC 65/22**

alias Ambagahage Saman Sanjeewa

**2<sup>nd</sup> ACCUSED**

**AND NOW IN BETWEEN**

Ambagahawaththage Saman Sanjeewa

alias Ambagahage Saman Sanjeewa

Fernando

No. 162, Kirimatiyana Watta, Lunuwila.

(Presently in remand)

**2<sup>nd</sup> ACCUSED-PETITIONER**

**Vs.**

1. The Officer-in-Charge  
Police Narcotics Bureau,  
Colombo-01.
2. The Attorney General  
Attorney General's Department,  
Colombo-12.

**RESPONDENTS**

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

**COUNSEL** : **Malshike Jayalath for the Petitioner.**  
**Malik Azzez, SC for the Respondent.**

**ARGUED ON** : **12/02/2026.**

**DECIDED ON** : **15/05/2026.**

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**ORDER**

**P.Kumararatnam,J.**

The Petitioner is the 2<sup>nd</sup> Accused named in the High Court of Chilaw Case No. HC 65/22. He had applied for bail and hereinafter referred to him as the Petitioner.

On 03.10.2020, the Accused was arrested along with 3<sup>rd</sup> Accused named in the indictment at Chliaw by officers attached to the Police Narcotics Bureau, Colombo upon an allegation relating to possession of Heroin grossly weighed about 2.2320 Kilograms. At the time of his arrest, he was travelling as the pillion rider with the 3<sup>rd</sup> Accused who was the rider of a motor bike bearing No. NW BHR 2293.

The Petitioner and the 3<sup>rd</sup> Accused were produced and facts were reported to the Marawila Magistrate under Section 54A (d) and (b) and of the Poisons, Opium and Dangerous Drugs Ordinance as amended by the Act No.13 of 1984 and a detention order was obtained for further investigations under Section 82(3) of the said Act.

The production had been sent to the Government Analyst Department on 05/10/2020. After analysis, the Government Analyst had forwarded the report to Court on 28/04/2021. According to the Government Analyst, 1.2936 Kilograms of pure Heroin (Diacetylmorphine) had been detected from the substance sent for the analysis.

The Accused is married and a father of three children. He is the sole breadwinner of the family.

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

1. The Accused has been in remand custody nearly five and half years.
2. The trial has commended and only evidence of PW1 is concluded.
3. No reasonable prospect that the trial could be concluded within reasonable period of time.

The State opposing to bail submitted that the indictment pertaining to the offences under the Poisons, Opium and Dangerous Drugs Act is already being sent to the High Court of Chilaw on 28.03.2022. Hence, Learned State Counsel submitted that the delay is not an exceptional circumstance to be considered to enlarge the Petitioner on bail. Further,

the time spent for preparing the indictment does not constitute an exceptional circumstance.

The Petitioner is in remand nearly five and half years. According to Government Analyst Report, the pure quantity of Heroin detected from the possession of the Petitioner is 1.2936 Kilograms.

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.

**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.

In this case, the pure quantity of Heroin detected in the production by the Government Analyst is 1.2936 Kilograms. Hence, this court has jurisdiction to consider granting of bail as per the new amendment.

In this case, as per the submission of the Learned State Counsel, the indictment had already been dispatched to the High Court of Chilaw and the trial is already commenced. The recording of evidence of PW1 is over. Summons issued to other witnesses to continue the trial.

The Counsel for the Petitioner further 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.

The Offence under Section 54A(b) and (d) of the Poisons Opium and Dangerous Drugs Ordinance as amended by the Act No.13 of 1984 is a serious offence and the seriousness of the offence should be considered when bail is considered.

In **Ranil Charuka Kulatunga v. Attorney General CA (PHC) APN 134/2015** the court held that:

*“The quantity of cocaine involved in this case is 62.847 grams, which is a commercial quantity. If Petitioner is convicted, the punishment is death or life imprisonment. Under these circumstances, it is prudent to conclude the trial early while the Petitioner is kept in custody.”*

In this case the pure Heroin detected is 1.2936 Kilograms, which certainly a commercial quantity. Considering the seriousness of the sentence prescribed under the Poison, Opium and Dangerous Drugs Ordinance, there is a high risk of absconding.

Considering the seriousness of the sentence prescribed under the Poison, Opium and Dangerous Drugs Ordinance, there is a high risk of absconding. Hence, it is prudent to conclude the High Court case expeditiously keeping the Petitioner in remand.

Hence, I do not consider the delay nearly five and half 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 Heroin detected, other 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 High Court of Chilaw, and Officer-in-Charge of the Police Narcotics Bureau, Colombo-01.

**JUDGE OF THE COURT OF APPEAL**

**R.P.Hettiarachchi, J.**

I agree.

**JUDGE OF THE COURT OF APPEAL**