

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.

Court of Appeal

Pitiduwa Hewage Lasantha

Application No.

Fernando

CA Bail 0263/2025

No.20/20,

High Court of Matara No.

William Gopallawa Mawatha,

HC/254/22

Suduhumpola, Kandy.

PETITIONER

Vs.

1. The Officer-in-Charge

Police Station

Deiyandara.

2. The Attorney General

Attorney General's Department

Colombo-12.

RESPONDENTS

Kodithuwakku Arachchilage
Lasanthika Hemamali alias
Dilani.

2ND ACCUSED-RESPONDENT

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

COUNSEL : **A.Ihalawithana for the Petitioner.**
Shezan Mahboob, SC for the
Respondents.

ARGUED ON : **03/06/2026.**

DECIDED ON : **05/08/2026.**

ORDER

P.Kumararatnam,J.

The Petitioner is the husband of the 2nd Accused-Respondent (Hereinafter referred to as the 2nd Accused) named in the Magistrate Court of Deiyandara under case No. BR 101/21.

According to the B Report filed by CI/J.A.Saman of Deiyandara Police Station, the 2nd Accused along with another person were arrested upon

an investigation carried out consequent to a tip off received by them. Acting on that information, when police checked a car bearing No.WP KY 1278 found a bag containing drugs inside the boot of the car. The 2nd Accused was seated in the rear seat while the other person was seated in the front seat. The police had recovered substances believed to be Heroin (Diacetylmorphine). Total 9.99 kilograms of substance recovered from the car. Additionally, from the road side three more parcels had been recovered by the police upon interrogation of the 2nd Accused and the other person.

Upon a Court order, the contraband in five parcels had been sent to the Government Analyst's Department and according to the Government Analyst Report dated 17.06.2021, 47.3021 Kilograms of pure Heroin (Diacetylmorphine) had been detected in the five parcels. The net quantity said to have recovered from the 2nd accused and the other person, weighed about 6.8487 Kilograms and for which the 2nd Accused and other person have been indicted in the High Court of Matara under case No. HC 254/2022.

The Accused were produced and facts were reported to the Deiyandara Magistrate under Section 54A (b) and (d) of the Poisons, Opium and Dangerous Drugs Ordinance as amended by the Act No.13 of 1984.

Upon a Court order, the 2nd Accused and other person were placed under a detention order to facilitate the Deiyandara Police to conduct further investigation with regard to the detection.

The Petitioner alleges that the police led by CI/Saman of Deiyandara Police had introduced Heroin to the 2nd Accused and other person and fabricated notes accordingly.

The Petitioner submit that the 2nd Accused had been in remand over five years. No previous or pending case recorded against the 2nd Accused.

The State opposing to bail submitted that the dossier of the investigations has been received by the Attorney General's Department and registered

under CR3/29/2024. After the consideration, an indictment against Accused had been filed in the High Court of Matara under case No. HC/254/2022. At present indictment has been served on the Accused and trial date is fixed. Hence, Learned State Counsel submitted that the delay is not an exceptional circumstance to be considered to enlarge the 2nd Accused on bail. Further, the time spent for preparing the indictment does not constitute an exceptional circumstance.

The Accused have been in remand over five years. According to Government Analyst Report, the pure quantity of Heroin detected from the possession of the 2nd Accused and the other person is 6.8487 Kilograms.

The 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 **Ramu Thamodarampillai 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”.

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 6.8487 Kilograms. Hence, this court has jurisdiction to consider granting of bail as per the new amendment.

The learned Counsel for the Petitioner submits that undue and long delay in keeping the 2nd Accused in remand custody is a clear violation of her human rights and is against the presumption of innocence guaranteed under the Article 13(5) of the Constitution.

A court can consider evidence in a bail inquiry. During a bail hearing, the court typically evaluates various factors to determine whether an Accused 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 Accused'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 defendant can be trusted to return for trial or if they pose a danger to public safety.

In this case the 2nd Accused alleged to have committed Offences under Section 54A(b) and (d) 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.

I agree with the learned State Counsel that this is not an appropriate case to consider the factual and evidentiary matters pertain to the investigations at this stage. It can only be tested at the trial upon the witnesses being cross examined and re-examined.

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 **Carder (On behalf of Rashid Kahan) v Officer-in-Charge Narcotics Bureau** [2006] 3 SLR 74 the Court held that:

“Heroin has become a menace in our society. It is not easily detectable. Due to the fact alone, the tendency to commit this kind of crime repeatedly has become feasible. The repetitive factor prevalent in this sort of crime and the difficulty of detection are significantly strong reasons for refusing bail in this type of cases.”

In this case the pure Heroin detected is 6.8487 Kilograms, which certainly a very high commercial quantity. Considering the seriousness of the sentence prescribed under the Poison, Opium and Dangerous Drugs Ordinance, there is a high risk of absconding.

Hence, I do not consider the delay over five 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, the charges framed against 2nd Accused and the circumstances of the case, I consider this is not an appropriate case to sanction bail to the 2nd Accused at this stage. Hence, I refuse to release the 2nd Accused on bail.

Hence, this Bail Application is dismissed.

The Registrar of this Court is directed to this order to the High Court of Matara and Officer-in-Charge of the Deiyandara Police Station.

JUDGE OF THE COURT OF APPEAL

Pradeep Hettiarachchi, J.

I agree.

JUDGE OF THE COURT OF APPEAL