

**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 0365/2025

Vs.

High Court of Homagama

Muthunayaka Gedera Mahinda Kumara

Case No. HC 17/23

alias Ravul Kumara

ACCUSED

AND NOW BETWEEN

Muthunayaka Gedera Mahinda Kumara

alias Ravul Kumara

No. 127/A/1, Halpita,

Polgasowita.

ACCUSED-PETITIONER

Vs.

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 Azzez, SC for the Respondent.

ARGUED ON : **11/02/2026.**

DECIDED ON : **02/04/2026.**

ORDER

P. Kumararatnam, J.

The Petitioner is the Accused named in the High Court of Homagama Case No. HC 17/23. He had applied for bail for the second time in this case.

On 09.01.2022, the Accused was arrested at Polgasowita by officers attached to the Police Narcotics Bureau, Kandy branch upon an allegation relating to possession of Heroin which grossly weighed about

300 grams. At the time of his arrest, he was riding a motor bike bearing No. WP BHV 8165.

The suspect was produced and facts were reported to the Kesbewa 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 17/02/2022. After analysis, the Government Analyst had forwarded the report to Court on 22/04/2022. According to the Government Analyst, 138.7 grams of pure Heroin (Diacetylmorphine) had been detected from the substance sent for the analysis.

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

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

1. The Accused has been in remand custody for little over four years.
2. The trial has commenced and only evidence of PW1 has been concluded in the High Court trial.
3. No reasonable prospect that the trial could be concluded within a 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 has already been sent to the High Court of Homagama on 08.11.2022. Hence, the Learned State Counsel submitted that the delay is not an exceptional circumstance to be considered to enlarge the Accused on bail. Further, the time spent for preparing the indictment does not constitute an exceptional circumstance.

The suspect has been in remand for little over four years. According to the Government Analyst Report, the pure quantity of Heroin detected from the possession of the Accused is 138.7 grams.

Accordingly, 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 138.7 grams. 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 Homagama and the trial has 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 Accused 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(d) and (b) 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 138.7 grams, 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. Hence, it is prudent to conclude the High Court case expeditiously keeping the Accused in remand.

It was brought to the notice that the Accused has two pending High Court cases for similar offending. One is pending before the High Court of Homagama and other is pending before the High Court of Anuradhapura. Further he has one previous conviction for the possession of 750 milligrams of Heroin.

The Accused has committed the offence pertaining to this case while he was on bail. This clearly shows his propensity of continuous engagement in drugs dealing. Further, he had already breached the bail conditions imposed on him with regard to other pending cases.

The violation of bail conditions in drug cases would usually lead to immediate arrest, a mandatory revocation of bail, and remand to custody, especially in situations where the new crime is serious. Courts would prioritize public safety which makes it highly likely that bail will be refused for subsequent drug offences, as it would point to a high risk of re-offending.

Hence, I do not consider the delay more than four years in remand to fall 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 in the indictment against the Accused, the pending High Court cases and other circumstances of the case, I consider this is not an appropriate case to sanction bail to the Accused at this stage. Hence, I refuse to release the Accused on bail.

Hence, this Bail Application is dismissed.

The Registrar of this Court is directed to send this order to the High Court of Homagama 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