

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

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

Court of Appeal Bail

Application No:

CA Bail/0310/2026

Weerahinge Kusumawathi

No. 235, Nugegalayaya,

Kiriwewa, Sevanagala.

PETITIONER

Magistrate Court of Embilipitiya

Case No.BR 2038/24

Omalpage Madusha Wasanthi

(Presently in remand prison)

SUSPECT

Vs.

1. The Attorney General

Attorney General's Department,
Colombo-12.

2. Officer-in-Charge

Police Station,
Sevanagala.

3. Officer-in Charge,

Police Narcotics Bureau,
Colombo-01.

RESPONDENTS

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

COUNSEL : **Neranjana Jayasinghe with Randunu**
Heelage and Pravindika Kularathne for
the Petitioner.
Tharaka Kodagoda, SC for the
Respondents.

ARGUED ON : **21/09/2026.**

DECIDED ON : **12/10/2026.**

ORDER

P.Kumararatnam,J.

The Petitioner had applied for bail on behalf of the Suspect under Section 83(2) of the Poisons, Opium and Dangerous Drugs Ordinance amended Act No.41 of 2022. The Petitioner is the mother of the Suspect.

On 31.10.2024, upon receiving an information, the Suspect was arrested by officers attached to the Sevanagala Police Station for allegedly offences punishable under Section 54A (d) and (b) of the Poisons, Opium and Dangerous Drugs Act No. 13 of 1984 amended by act No. 41 of 2022.

As per the B Report submitted by the Sevanagala Police Station, officers attached to the Special Task Force Camp, Moratuwa discovered some substances suspected to be Heroin near the hen coop from the open

land on which the house of the Suspect is also located. The Suspect already denied that the recovery was not done as per her direction. The police had arrested Suspect along with her husband who was named as the 1st Suspect in this case. He was granted bail by this Court upon no objection submission made by the State.

The substances which were recovered from the open land weighed about 53.65 kilograms.

The production had been sent to the Government Analyst Department on 05/11/2024. After analysis, the Government Analyst had forwarded the report to Court on 23/12/2025. According to the Government Analyst, 244.8 grams of pure Heroin (Diacetylmorphine) had been detected from the substance sent for the analysis.

The Following exceptional circumstances are submitted by the Petitioner:

1. The Suspect is in remand nearly for about 02 years.
2. The substances were not recovered from her custody. It was recovered in an open land close to her house.
3. The Suspect husband who was also arrested along with her has been granted bail by this Court.

The Learned State Counsel submitted that the delay is not an exceptional circumstance to be considered to enlarge the suspect on bail. Further, the time spent for preparing the indictment does not constitute an exceptional circumstance.

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 244.8 grams. Hence, this Court has jurisdiction to consider granting of bail as per the new amendment.

The learned Counsel for the Petitioner urged this Court to consider that the detaining a Suspect for an extended period of time amounts to a violation of his fundamental rights which can be considered as an exceptional ground.

The Learned Counsel for the Petitioner submitted that the Suspect was not in possession any contraband when she was arrested.

The factual and evidentiary matters pertain to the investigations 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.

In **Nasher v. Director of Public Prosecution [2020] VSCA 144** the court held that:

“a combination of delay, onerous custodial conditions, and the relative weakness of the prosecution case may, when considered with all relevant circumstances, compel the conclusion that exceptional circumstances have been established”.

Further, the Learned Counsel has highlighted a portion of the B Report filed by the Investigating Officer and submits that there is a serious doubt with regard to the recovery of the contraband allegedly to have been recovered from the Suspect in this case. This factor was considered by this court when Suspect’s husband was granted bail under Case No. Ca/BAL/0071/2025.

Hence, this court has come to a conclusion that the Suspect has established exceptional ground for the granting of bail to her.

The Offences under Section 54A(d) and (b) of the Poisons, Opium and Dangerous Drugs Ordinance as amended by the Act No.13 of 1984 are no doubt serious offences but seriousness of the offences alone cannot form a ground to refuse bail. In considering these matters, the court must bear in mind the presumption of innocence. Further, according to the police, no previous or pending case/s reported against the Suspect.

Taking all these into account, especially the pure quantity of Heroin detected, the period in remand, the highlighted portion in the B Report and other circumstances of the case, I consider this an appropriate case

to grant bail to the Suspect. Hence, I order the Suspect be granted bail with following strict conditions.

1. Cash bail of Rs.50,000/=.
2. To provide 02 sureties. They must sign a bond of Five Hundred Thousand (Rs.500,000/-) each.
3. The Petitioner should be the one of the sureties.
4. The Suspect and the sureties must reside in the address given until conclusion of his case.
5. Not to approach any prosecution witnesses directly or indirectly or to interfere with.
6. To surrender her passport if any, to court and not to apply for a travel document. The Controller of the Immigration and Emigration is informed of the travel ban on the Suspect.
7. To report to the Sevanagala Police Station on the last Sunday of every month between 9am to 1pm.
8. Any breach of these conditions is likely to result in the cancellation of her bail.

The Bail Application is allowed and the learned Magistrate of Embilipitiya is hereby directed to enlarge the Suspect on bail on the above bail conditions.

The Registrar of this Court is directed to send this Bail Order to the Magistrate Court of Embilipitiya and Officer-in-Charge of the Police Station, Sevanagala.

JUDGE OF THE COURT OF APPEAL

R.P.Hettiarachchi, J.

I agree.

JUDGE OF THE COURT OF APPEAL