

**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/0331/2025**

Mohamad Gani Ahamed Zayan
No. 187,16/F,
Jayasamagi Mawatha, Kalubowila,
Dehiwala.

SUSPECT-PETITIONER

**Magistrate Court of Nugegoda
Case No. B 31698/24**

Vs.

1. 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 : **Harith Hettiarachchi with Himasha**
Fernando for the Petitioner.
Tharaka Kodagoda, SC for the
Respondents.

ARGUED ON : **27/02/2026.**

DECIDED ON : **30/03/2026.**

ORDER

P.Kumararatnam,J.

The Petitioner had applied for bail on behalf of him under Section 83(2) of the Poisons, Opium and Dangerous Drugs Ordinance amended Act No.41 of 2022. The Petitioner is the 1st Suspect in this case.

On 02.05.2024, upon receiving an information, the Petitioner was arrested by officers attached to Police Narcotics Bureau, Colombo-01. After a surveillance, the police team had raided the house of the Petitioner mention in the Petition and recovered a stock of narcotics hidden in an almirah in the bedroom. The police had found the key in the wallet of the Petitioner. Seven parcels of different narcotics had been recovered from the almirah. The detection of the key and the narcotics were recovered upon the statement made under Section 27(1) of the Evidence Ordinance.

The recovered items are as follows:

1. Parcel 01 contained 204 grams of Cocaine.
2. Parcel 02 contained 243 grams of Cocaine.
3. Parcel 03 contained 242 grams of Cocaine.
4. Parcel 04 contained MDMA 22 grams.
5. Parcel 05 contained MDMA 08 grams.
6. Parcel 06 contained 03 grams of Hashish.
7. Parcel 07 contained 1440 grams of Cocaine.

Heroin also recovered from the Petitioner which weighed about 1400 grams.

The total weight of the alleged substance Cocaine weighed about 2.129 Kilograms. The total weight of the alleged substance MAMA was 30 grams and the total weight of the Hashish was 03 grams.

The Petitioner was produced and facts were reported to the Nugegoda Magistrate under Section 54A (d) and (b) of the Poisons, Opium and Dangerous Drugs Ordinance as amended by the Act No.13 of 1984. A detention order was obtained to conduct further investigation in keeping the Petitioner under police custody.

The production had been sent to the Government Analyst Department on 08/05/2024. After analysis, the Government Analyst had forwarded the report to Court on 18/03/2025. According to the Government Analyst, 1137.4 grams of pure Heroin (Diacetylmorphine) and 128.90 grams of Cocaine 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 custody nearly for about 21 months.
2. No suspicious substance recovered from the Petitioner at the time of his arrest.

3. The Petitioner is a father of a child and the sole breadwinner of the family.
4. The Petitioner's wife is suffering from breast cancer.
5. Trial has not commenced even after receiving the Government Analyst Report.

One of the preliminary objections taken up by the State is that the Petitioner has failed to establish an acceptable "exceptional circumstance" to invoke the jurisdiction of this Court.

The 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. According to the State Counsel, the investigation notes pertaining to this case has not been received by the Attorney General's Department.

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 1137.4 grams and the Cocaine detected is 128.90 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 Petitioner was not in possession any contraband when he was arrested. It is alleged that the police had arrested the Petitioner, and recovered the said production under Section 27(1) of the Evidence Ordinance.

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”.

Accordingly, considering the fact that there has been a delay of 21 months since in the remand custody, it falls into the category of excessive and oppressive delay taking into account the circumstances of this case. Further trial has not commenced in the High Court. Investigation notes have not been received by the Attorney General’s Department. Hence, this court has come to the conclusion that the Petitioner has established exceptional grounds for the granting of bail.

The Offences under Section 54A(b) and (d) 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, the according to the police, no previous or pending case/s reported against the Petitioner.

Taking all these into account, especially the pure quantity of drugs detected, the period in remand, non-commencement of the trial and other circumstances of the case, I consider this is an appropriate case to grant bail to the Petitioner pending trial. Hence, I order the Petitioner be granted bail with following strict conditions.

1. Cash bail of Rs.200,000/=.
2. To provide 02 sureties. They must sign a bond of two million each.
3. The Petitioner and the sureties must reside in the address given until conclusion of his case.

4. Not to approach any prosecution witnesses directly or indirectly or to interfere with.
5. To surrender his 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 Petitioner.
6. To report to the Police Narcotics Bureau on the second and the last Sunday of every month between 9am to 1pm.
7. Any breach of these conditions is likely to result in the cancellation of his bail.

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

The Registrar of this Court is directed to send this Bail Order to the Magistrate Court of Nugegoda 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