

IN THE COURT OF APPEAL OF THE DEMOCRATIC SOCIALIST

REPUBLIC OF SRI LANKA

In the matter of an Application for Bail under and in terms of Section 83(2) of the Poisons, Opium and Dangerous Drugs Ordinance, as amended by Act No. 41 of 2022 of the Democratic Socialist Republic of Sri Lanka.

Officer-in-Charge,
Police Narcotics Bureau,
Colombo 01.

Complainant

Court of Appeal Bail Application
No: **CA/BAL/176/2026**

Magistrate's Court of Colombo
Case No: **B 32932/01/2024**

-Vs-

1. Jayasinghe Manachchige Hasintha Malshan
2. Hendawitharanalage Gayashan Lakmal
3. Koggala Wellalage Sanoj Krishan
4. Marakkala Manage Niran Hasintha
5. Marakkala Manage Sanjaya Kumara
6. Weligaththu Sethuge Sudesh Nishantha
7. Arukattu Patabendige Malith Malinda
8. Kanakka Hewage Umesh Eranga
9. Abeysiriwardane Magampaththuwe
Mahawidhanage Thamesh Thilanka
10. Abeysiriwardane Magampaththuwe
Mahawidhanage Rushan Thilanka
11. Hewa Thondiliyage Saltan
12. Wachchi Hannedige Rukman Susantha
13. Hewa Patage Shan Pramitha

Suspects

AND NOW BETWEEN

Arukattu Patabendige Malith Malinda

Petitioner

-Vs-

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

Complainant-Respondents

Before : **P Kumararatnam, J.**

Pradeep Hettiarachchi, J.

Counsel : Kalinga Indatissa, PC, with Rashmini Indatissa, Razana Salin,
Harin Saddhasena, Kavindu Indatissa, Sajini Wickramasuriya
for the Petitioner
Shezan Mahboob, SC for the Respondents

Inquiry on : 17.07.2026

Decided on : 18.09.2026

Pradeep Hettiarachchi, J

Order

1. This Bail Application is preferred to this Court by the 7th Suspect-Petitioner named Arukattu Patabendige Malith Malinda (hereinafter referred to as the “7th Suspect-Petitioner”) in terms of Section 83(2) of the Poisons, Opium, and Dangerous Drugs Ordinance (hereinafter sometimes referred to as “the Ordinance”).
2. According to the Petition, the 7th Suspect-Petitioner was apprehended by the Indian Navy and subsequently handed over to the Police Narcotics Bureau (PNB) of Sri Lanka on suspicion of having committed offences under the Poisons, Opium and Dangerous Drugs Ordinance (POADDO).
3. According to the Petition, the 7th to 11th Suspects were on a fishing expedition aboard the multi-day fishing trawler *Pramitha Putha*. Acting on intelligence received from the Sri Lanka Navy, the Indian Navy conducted maritime and aerial surveillance in the area. During the operation, several parcels, which were subsequently confirmed to contain Heroin, were found floating in the sea in close proximity to another fishing trawler named *Manuka Putha*.
4. Although the trawler *Pramitha Putha*, on which the 7th to 11th Suspects were travelling, was also operating in the same vicinity, there was no information or evidence to suggest that any of the parcels had been thrown overboard from *Pramitha Putha*. Nor was there any evidence that the crew of *Pramitha Putha* made any attempt to retrieve or collect the floating parcels.
5. Thereafter, on 03.12.2024, all the Suspects were produced before the Magistrate’s Court of Colombo under the case No. B 32932/01/20224, on suspicion of having committed offences under Sections 54(1) (A)(b), 54(1) (A)(c), 54(1) (A)(d), and Section 54B of the Poisons, Opium and Dangerous Drugs Ordinance as amended by Act No. 41 of 2022, and were subsequently remanded. The Suspects have been in remand custody since then.
6. On 03.12.2025, the Government Analyst Report was issued, and according to the said report, the net quantity of Methamphetamine alleged to have been contained in the parcels recovered from the sea is 193.7007 Kilograms.

7. A careful examination of the 'B' Report filed by the Police Narcotics Bureau reveals that it contains no material implicating the crew of *Pramitha Putha* in the commission of the alleged offences. In particular, it discloses no evidence linking the 7th to 11th Suspects to the parcels recovered from the sea or otherwise indicating their involvement in the alleged narcotics transaction. Consequently, the 'B' Report, in its present form, discloses no material capable of warranting the continued remand of the 7th to 11th Suspects.
8. The 'B' Report discloses only that the Suspects aboard the vessel *Pramitha Putha* were taken into custody on mere suspicion. Significantly, neither the 'B' Report nor any subsequent reports filed by the Police disclose any material connecting the Suspects to the contraband recovered from the Suspects by the Indian Navy.
9. It is noteworthy that, where a suspect is produced before a Magistrate under the Poisons, Opium and Dangerous Drugs Ordinance, and the net quantity of the dangerous drug involved exceeds the prescribed statutory threshold (e.g. 10 grams for Heroin, where applicable), neither the Magistrate nor the High Court has jurisdiction to grant bail. In such circumstances, bail may be granted only by the Court of Appeal upon the establishment of exceptional circumstances as per Section 83(2) of the Poisons, Opium and Dangerous Drugs Ordinance as amended by Act No. 41 of 2022.

10. Section 83 of the Act reads:

83(1). Subject to the provisions of section 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 77; 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.*

11. However, exceptional circumstances are not defined in the Statute. Therefore, whether the grounds advanced on behalf of the 7th Suspect-Petitioner can be considered exceptional circumstances must be determined based on the facts and circumstances of each individual case.
12. As stated in ***Ramu Thamodarampillai vs The Attorney General [2004] 3 Sri. LR 180***, *“the decision must in each case depend on its own particular facts and circumstances.”*
13. In the instant Application, the 7th Suspect-Petitioner has mainly averred the following grounds as exceptional circumstances;
 - a. The 7th Suspect-Petitioner was not found in possession of any prohibited substance;
 - b. Even during the subsequent investigations, no prohibited substances have been recovered from the possession or control of the Petitioner;
 - c. The allegation against the Petitioner is one of abetment, and there is no material reflected in the proceedings before the Learned Magistrate of Colombo that the 7th Suspect-Petitioner has committed any positive overt act towards the abetment of an offence;
 - d. The incarceration of the 7th Suspect-Petitioner is without any justification or reasonable material;
 - e. The summary of evidence and file of record do not reveal or disclose any incriminatory material regarding the 7th Suspect-Petitioner;
 - f. This detention was made by the Indian Navy and as no prohibited substance had been found in the possession of the 7th Suspect-Petitioner or under his control, there is no legal or otherwise basis to bring about any charges against the 7th Suspect-Petitioner under the Provisions of the Poisons, Opium and Dangerous Drugs Ordinance as amended by Act No. 41 of 2022;

- g. The prolonged incarceration of the 7th Suspect-Petitioner without any material against him also amounts to a denial of a proper and reasonable investigation;
 - h. Neither the initial 'B' report nor the further reports in the Magistrate's Court disclose either through summary of evidence or through facts reported to court any basis upon which the charge of aiding and abetting could be leveled against the 7th Suspect-Petitioner;
 - i. The material placed before the Learned Magistrate does not disclose any prima facie nexus between the Petitioner and the alleged narcotic substances. The 7th Suspect-Petitioner was not found in possession of any prohibited substances, and no material has been recovered linking the 7th Suspect-Petitioner to the transportation, storage, or handling of the alleged narcotics;
 - j. The only allegation against the 7th Suspect-Petitioner is that he was present on board the fishing vessel "Pramith Putha" and that mere presence at the scene without proof of knowledge or participation does not constitute aiding and abetting under the Poisons, Opium and Dangerous Drugs Ordinance. The material before the Court does not disclose any act or omission on the part of the 7th Suspect-Petitioner indicating knowledge of the alleged narcotics; and
 - k. The 'B' reports, and further reports do not disclose any positive overt act committed by the Petitioner in furtherance of the alleged offence.
14. Accordingly, one of the main grounds advanced by the 7th Suspect-Petitioner is that neither the initial 'B' report nor the further reports filed before the Magistrate's Court disclose, whether by way of evidence or the facts reported to the Court, any material capable of sustaining or justifying the allegation that the 7th Suspect-Petitioner aided and abetted the commission of the alleged offence. Furthermore, it is contended that no prohibited substances were found in possession of the 7th Suspect-Petitioner.
15. In this regard, the legislature, in its wisdom, has enacted stringent laws to combat offences relating to dangerous drugs with a view to protecting present and future generations from the scourge of drug abuse and trafficking. However, the rigorous

nature of these laws imposes a corresponding duty upon judicial officers to exercise their powers judiciously, with due care and diligence, particularly where an order has the effect of depriving a person of his or her personal liberty. It is true that the police frequently seek the remand of suspects pending the completion of investigations.

16. However, a solemn judicial duty rests upon the Magistrate to carefully assess the merits of such an application before ordering the remand of a suspect. A remand order must never be made mechanically or as a matter of routine. In other words, a Magistrate must not act as a mere rubber stamp for the police.
17. Rather, the Magistrate is required to scrutinize the contents of the 'B' Report with due care and satisfy himself or herself that it contains sufficient material to justify the continued deprivation of the suspect's liberty, particularly where the offence complained of is governed by stringent statutory restrictions on the grant of bail.
18. It is desirable to emphasize that a request by the police for remand cannot be granted as a matter of course. The Court must independently assess whether the statutory requirements for remand have been satisfied and whether continued detention is justified on the facts and circumstances of the particular case. The judicial discretion to remand a suspect must be exercised on cogent legal grounds and not merely because investigations are said to be ongoing.
19. Where the liberty of an individual is at stake, the Court must insist upon a comprehensive and properly supported 'B' Report disclosing the nature of the allegations, the stage of the investigation, and the factual basis for seeking remand. Failing such scrutiny, the constitutional guarantee of personal liberty would be seriously undermined.
20. In ***Mahanama Tillakaratne v. Bandula Wickramasinghe*** (1999) 1 Sri L.R. 372 at 382, Justice Dheeraratna stressed the importance of applying judicial mind when a remand order is sought by the police as follows:

“Issuing a warrant is a judicial act involving the liberty of an individual and no warrant of arrest should be lightly issued by a Magistrate simply because a prosecutor or an investigator thinks it is necessary. It must be issued as the law

requires, when a Magistrate is satisfied that he should do so, on the evidence taken before him on oath. It must not be issued by a Magistrate to satisfy the sardonic pleasure of an opinionated investigator or a prosecutor.”

21. Kulatunga, J in ***Dissanayaka v Superintendent Mahara Prison and others [1991] (2) SLR 247, 248-249*** stated the following to highlight the importance of examining the material to decide the validity of the arrest.

“Nevertheless, it is for the Court to determine the validity of the arrest objectively. The Court will not surrender its judgement to the executive for if it did so, the fundamental right to freedom from arbitrary arrest secured by Article 13(1) of the Constitution will be defeated. The executive must place sufficient material before the Court to enable the Court to make a decision, such as the notes of investigation, including the statements of witnesses, observations etc., without relying on bare statements in affidavits.”

22. In ***Nasher v. Director of Public Prosecutions [2020] VSCA 144***, the Supreme Court of Victoria held that:

“Given the weaknesses that we have identified in the prosecution case on charges 1 to 4 and the ‘attempt’ alternatives, the very long delay before a trial is likely to take place, and the onerous circumstances of the appellant’s current remand, we have concluded that it was not open to the judge to determine that exceptional circumstances had not been established.” [Paragraph 41]

The Supreme Court further stated:

“In this matter, we have concluded that the combination of delay, onerous custodial circumstances and the relative weakness of the prosecution case, when considered with all other relevant surrounding circumstances, compel the conclusion that his Honour should have found the existence of exceptional circumstances that justify a grant of bail. Indeed, it was not reasonably open to him not to so find.” [para:42]

23. In ***Jayasingha vs. Attorney General 50 NLR 202***, it was held that;

“Where a person arrested without a warrant is produced before the Magistrate under section 126A of the Criminal Procedure Code, and the report is not accompanied by a summary of the statement made by the witnesses examined in the course of the investigation, an order remanding the suspect is irregular. Such irregularity, however, does not vitiate the order of remand if it has caused no prejudice to the suspect and the Supreme Court can apply the provisions of Section 36 of the Courts Ordinance.”

24. In ***Danny vs. Sirinimal Silva, Inspector of Police and Others (2001) 1 Sri. L.R 29***, Justice Shirani Bandaranayake held that,

“I must express my concern over Magistrates issuing orders of remand, mechanically, simply because the police want such orders made. I cannot do better than to quote the words of my brother, Dheeraratne, J., said in connection with Magistrates issuing warrants of arrest (in the case of Mahanama Tillakaratne v. Bandula Wickramasinghe): Magistrates should not issue remand orders “to satisfy the sardonic pleasure of an opinionated investigator or a prosecutor. Remanding a person is a judicial act and as such a Magistrate should bring his judicial mind to bear on that matter before depriving a person of his liberty.”

25. In the present case, following the filing of the initial 'B' Report, the Police Narcotics Bureau has failed to place before the Learned Magistrate any fresh material or to apprise the Court of the progress of the investigation insofar as it relates to the 7th to 11th Suspects arrested from the fishing vessel *Pramitha Putha*. As is evident from the 'B' Report dated 03.12.2024, the arrest of the present Suspect, together with the other crew members of *Pramitha Putha*, was effected solely on suspicion. No incriminating material was recovered either from the Suspects or from the vessel itself.

26. Moreover, to date, the prosecution has failed to place before the Court any further material connecting the Suspects to the parcels of Methamphetamine recovered from the sea or otherwise indicating their involvement in the alleged offences. In the absence

of such material, the continued detention of the 7th to 11th Suspects cannot be justified merely on the basis of the initial suspicion upon which they were arrested.

27. Further, the Petitioner contended that the 'B' report and further reports do not disclose any positive overt act committed by the 7th Suspect-Petitioner in furtherance of the alleged offence. This, coupled with the prolonged incarceration of the 7th Suspect-Petitioner, in the absence of any material implicating him in the alleged offence, amounts to a denial of a proper, fair, and reasonable investigation.
28. Our Courts have recognized the prejudice caused to a suspect by lengthy and inordinate delay in prosecuting him. To elaborate further, the right to a speedy trial is not only aimed at expediting the administration of justice but also at preventing the oppression of a citizen by keeping a criminal prosecution hanging over them for an indefinite period.
29. Therefore, it is incumbent upon the relevant authorities to act with due diligence to avoid inordinate delays in prosecuting offenders. If the prosecution fails to act with due diligence and cannot explain the delay on their part, it would, in my opinion, constitute an exceptional circumstance as required by Section 83 of the Poisons, Opium and Dangerous Drugs Ordinance.
30. In the present case, the 7th Suspect-Petitioner had been in remand since 25.11.2024 and in remand custody since 03.12.2024, for a period well over one year and 3 months. Despite this prolonged incarceration, the Respondents have failed to place before the Learned Magistrate of Colombo any material, whether through the initial 'B' report or further reports filed, disclosing that the 7th Suspect-Petitioner committed any positive overt act capable of attracting criminal liability for the offence of aiding and abetting with which he has been charged.
31. At the inquiry before this Court, the learned State Counsel appearing for the respondents, while opposing the application for bail, informed the Court that the officials of the Police Narcotics Bureau had not yet recorded statements from the Indian Navy officers who were involved in the arrest of the Suspects and that, consequently, the investigations remained incomplete.

32. However, even if such statements are recorded at a future date, the evidentiary value of those statements, particularly when obtained after the lapse of a considerable period of time, would remain highly questionable. In any event, no material was placed before this Court to substantiate the existence of such statements and the delay in producing such statements.
33. Further, the Respondents submitted that the Petitioner had failed to demonstrate any exceptional circumstances justifying the grant of bail. It was further contended that the quantity of dangerous drugs allegedly recovered was of a commercial quantity and that the offence, if proved, is punishable with death. In those circumstances, it was argued that the likelihood of the 7th Suspect-Petitioner absconding and evading trial would be significantly increased if bail were granted.
34. It is true that the delay alone would not constitute exceptional circumstances warranting the grant of bail. However, as held in *Ramu Thamodarampillai vs The Attorney General (supra)*, *exceptional circumstances are to be decided in the light of the facts and circumstances of each case.*
35. Accordingly, in the present case, it is manifest that neither the initial 'B' Report nor further reports filed before the Learned Magistrate disclose, whether by way of the summary of evidence or the facts reported to the Court, any material capable of sustaining the allegation that the 7th Suspect-Petitioner aided and abetted the commission of the alleged offence. Significantly, the material placed before the Learned Magistrate fails to disclose even a prima facie nexus between the 7th Suspect-Petitioner and the alleged narcotic substances.
36. Notwithstanding this complete absence of incriminating material, the Respondents have continued to keep the 7th Suspect-Petitioner in custody without placing before the Learned Magistrate any fresh material demonstrating his complicity in the alleged offence or apprising the Court of any meaningful progress in the investigation relating to him.
37. In these circumstances, the continued incarceration of the 7th Suspect-Petitioner for a prolonged period, in the absence of any material implicating him in the offence for

which he was arrested, constitutes an oppressive and inordinate delay. Such prolonged deprivation of liberty, unsupported by any prima facie material connecting the 7th Suspect-Petitioner to the alleged offence, amounts to exceptional circumstances warranting the grant of bail to the 7th Suspect-Petitioner.

38. Based on the above analysis, I am inclined to grant bail to the 7th Suspect-Petitioner subject to the following conditions;

- a. The 7th Suspect-Petitioner shall furnish cash bail in the sum of Rupees Twenty-Five Thousand (Rs. 25,000/-).
- b. There shall be two sureties.
- c. The 7th Suspect-Petitioner shall report to the Officer-in-Charge, Police Narcotics Bureau, Colombo 01 on the 1st Sunday of every month between 9.00 am to 10.00 am;
- d. The 7th Suspect-Petitioner shall surrender his passport, if any, to the Magistrate's Court of Colombo.
- e. The Controller General of Immigration and Emigration shall be informed of the travel ban imposed on the 7th Suspect-Petitioner.

39. This Application is accordingly allowed, and the Registrar of this Court is directed to transmit a copy of this Order to the Registrar of the Magistrate's Court of Colombo and to the Officer-in-Charge of the Police Narcotic Bureau, Colombo 01 forthwith.

Judge of the Court of Appeal

P. Kumararatnam, J

I agree,

Judge of the Court of Appeal