

**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 No. 17 of 1929 as amended by the Acts No. 13 of 1984 and No. 41 of 2022.

The Officer-in-Charge,  
Police Narcotic Bureau,  
Colombo 01.

**Complainant**

**-Vs-**

Court of Appeal Bail  
Application No:  
**CA/BAL/362/25**

Panadura Magistrate Court:  
**B 12457/2023**

1. Warsha Hennadige Gavindu Krishantha  
Zoysa  
No. 26, Thuduwa Road,  
Pandaura.
2. Thotagamuwe Lahiru Sandaruwan Silva  
No 38/D, Malamulla,  
Pandaura West.

**Suspects**

**AND NOW BETWEEN**

Waduge Supuni Nirmani Fernando  
No. 26, Thuduwa Road,  
Panadura.

**Petitioner**

**-Vs-**

1. The Officer-in-Charge,  
Police Narcotic Bureau,  
Colombo 01.

**Complainant-Respondent**

2. The Hon. Attorney General,  
Attorney General's Department,  
Colombo 12.

**Respondent**

3. Warsha Hennadige Gavindu Krishantha  
Zoysa  
No. 26, Thuduwa Road,  
Pandraura.

**1<sup>st</sup> Suspect-Respondent**

Before : **P Kumararathnam, J.**

**Pradeep Hettiarachchi, J.**

Counsel : Jayaba Kaluphana for the Petitioner  
Shehan Mahboob, SC for the Respondents

Inquiry on : 04-03-2026

Decided on : 27-05-2026

**Pradeep Hettiarachchi, J**

**Order**

**Background Facts**

1. This is an Application for bail filed by the Petitioner named Waduge Supuni Nirmani Fernando (hereinafter referred to as “the Petitioner”) on behalf of her husband named Warsha Hennadige Gavindu Krishantha Zoysa (hereinafter referred to as “the 1<sup>st</sup> Suspect”) under Section 83(2) of the Poisons, Opium and Dangerous Drugs Ordinance (hereinafter sometimes referred to as “the Ordinance”).
2. According to the B-Report dated 25-10-2023, annexed to the Petition, the Suspect was arrested on 24-10-2023 in front of the house bearing No. 377/A/4 Dikthuduwa Road, Panadura South by the police officers attached to the Police Special Task Force of Moratuwa for trafficking and keeping in his possession of 1 kilogram and 40 grams of Methamphetamine, an offence punishable under section 54A (b) and 54A (d) of the Ordinance. This arrest was made consequent to some information received by PC Maduranga (71654) of Police Special Task Force, Moratuwa.
3. Subsequent to his arrest, both the 1<sup>st</sup> Suspect’s residence and the house bearing No. 377/A/4, Dikthuduwa Road, Panadura South had been searched by the police. However, nothing suspicious had been recovered from the said premises.
4. Thereafter, the Accused was produced before the Magistrate Court of Panadura on 25-10-2023, and the police obtained a detention order to keep the 1<sup>st</sup> Suspect under detention at the Police Narcotic Bureau till 30-10-2023 to carry out further investigations.
5. The 1<sup>st</sup> Suspect was produced before the Magistrate’s Court again on 30-10-2023, and the Learned Magistrate ordered to keep the 1<sup>st</sup> Suspect in remand custody. The 1<sup>st</sup> Suspect has been in remand custody since then.
6. Subsequently, on 15-06-2024, the police had arrested the 2<sup>nd</sup> Suspect. However, this Court has granted bail to the 2<sup>nd</sup> Suspect on 29-04-2025.

7. As per the Government Analyst Report dated 15-05-2024, the net quantity of Methamphetamine recovered from the possession of the 1<sup>st</sup> Suspect is 708.4 grams.

**Relevant Law**

8. Under Section 83(2), this Court can consider bail only if exceptional circumstances are made out. Section 83, as amended by the Poisons, Opium and Dangerous Drugs (Amendment) Act, No. 41 of 2022, reads:

*Section 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 - (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, [sic] shall not be released on bail except by the Court of Appeal in exceptional circumstances.*

*(3) For the purposes of this section “dangerous drug” means Morphine, Cocaine, Heroin and Methamphetamine.*

9. The provisions of Section 83 (2) as amended by Act, No. 41 of 2022, manifest the intention of the legislature, i.e., a person accused or suspected of being in possession of 10 grams or more of the dangerous drugs is required to be kept in remand, unless such person satisfies this Court as to the existence of circumstances that are exceptional. Therefore, the burden is on the Petitioner to establish the existence of exceptional circumstances.

10. However, the exceptional circumstances are not defined in the Ordinance. Therefore, whether the grounds advanced by the Petitioner constitute exceptional circumstances must be determined based on the specific facts and circumstances of each case.

11. As stated in *Ramu Thamodarampillai v The Attorney General* [2004] 3 Sri. LR 180, “*The decision must in each case depend on its own particular facts and circumstances.*”

**Exceptional Circumstances**

12. The following grounds have been urged by the Petitioner as exceptional circumstances warranting consideration for bail:

- (a) The Suspect has been in remand custody for 22 months.
- (b) The Suspect is the sole bread-winner of the family.
- (c) This Court has already granted bail for the 2<sup>nd</sup> Suspect of the above-mentioned Panadura Magistrate Court matter.
- (d) There is no likelihood that the Suspect will be indicted in the near future.
- (e) There is no prima facie case against the Suspect.
- (f) There is no likelihood that the Suspect, if he was released on bail, will evade the trial or endanger the safety of the public or any particular person.
- (g) There is no likelihood that the Suspect, if he was released on bail, will evade the trial or endanger the safety of the public or any particular person.

13. Accordingly, the main ground advanced by the Petitioner is the delay in prosecuting the 1<sup>st</sup> Suspect.

14. However, this Court, in a long line of cases, has held that the delay in prosecuting a suspect alone will not suffice to consider granting bail to a suspect unless such delay amounts to an oppressive and inordinate delay. As held in *Attorney General v. Ediriweera* (S.C. Appeal No. 100/2005), “*Delay is always a relative term and the question to be considered is not whether there was mere explicable delay, as when there is a backlog of cases, but whether there has been excessive or oppressive delay and this always depends on the facts and circumstances of the case....*”

15. Considering the legislative intent behind Section 83(1) (Prior to the Amendment) of the Ordinance, it was stated in *Labukola Ange Wisin Gedera Ashani Dhanushshika v. OIC Divisional Crimes Investigation Unit Panadura* CA/PHC/APN/04/2016 (Court of Appeal Minutes dated 06-10-2016) as follows;

*“The Petitioner’s first point is that the suspect is in remand nearly for two years. The intention of the Legislature is to keep in remand any person who is suspected of or accused of possessing or trafficking heroine until the conclusion of the case. The Section 83(1) of the Poisons, Opium and Dangerous Drugs Ordinance express the intention of the Legislature. It is enacted by the Parliament that “No person suspected or accused of an offence under section 54A or section 54B of this Ordinance shall be released on bail, except by the High Court in exceptional circumstances.”*

16. The special bail provisions under Section 83(2) establish a stringent framework for certain types of narcotics offences, primarily to prevent suspects from absconding or re-engaging in similar criminal activities. This is due to the unique nature of drug-related offences, which are often committed in a highly organized and sophisticated manner. Therefore, if the Courts grant bail solely on the ground of delay, without giving due consideration to the surrounding circumstances such as the previous conduct of the suspect/ accused concerned, the quantity of the dangerous drug that has been recovered, the possibility of the suspect/ accused re-offending and evading the judicial process, the sophisticated manner in which the crime was committed and its impact on the society at large, then it would, in my view, undermine the very purpose of the Ordinance.
17. Nevertheless, at the same time, this Court is also mindful of the fact that the stringent provisions of a statute should not be used as a tool to deprive a person’s liberty, thereby forcing them to live in trepidation without any knowledge of the progress of the investigation or the possible outcome of their case.
18. Our Courts have recognized the prejudice caused to a suspect by lengthy and inordinate delays 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.
19. 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.

20. It is important to note that the 1<sup>st</sup> Suspect in the present case was arrested on 24-10-2023, and he has been in custody for more than two and a half years as of the date of the inquiry. Furthermore, on the further B-Report dated 26-03-2025, submitted to the Court by the 1<sup>st</sup> Respondent, it is mentioned that the preliminary investigations against the Suspects are over and the dossier of investigation has already been forwarded to the Attorney General's Department on 25-03-2025 under the reference no. CR3/175/2025.

21. Although in the Statement of Objections, it is mentioned that the 1<sup>st</sup> Suspect has already been indicted at the High Court of Panadura and the indictment has been dispatched, the trial against the 1<sup>st</sup> Suspect has not yet commenced, and the Learned State Counsel was unable to indicate a date on which the trial will possibly commence. He has failed to provide any satisfactory explanation to this Court for the considerable delay in instituting proceedings against the 1<sup>st</sup> Suspect, particularly in circumstances where the investigation dossier had already been forwarded to the Attorney General's Department as far back as 25.03.2025.

22. Indian Supreme Court in ***Rabi Prakash v The State of Odisha*** Special Leave to Appeal (Crl.) No (s). 4169/2023 (Decided on 11-11-2022) held as follows;

*“The prolonged incarceration, generally militates against the most precious fundamental right guaranteed under Article 21 of the Constitution and in such a situation, the conditional liberty must override the statutory embargo created under section 37(1)(b) (ii) of the NDPS Act.”*

23. It is also pertinent to note that, as per the previous convictions report marked P1, the 1<sup>st</sup> Suspect has no previous convictions and there are no other pending cases against him, which, if had, would have gone against this Court's decision to grant bail.

24. Therefore, while this Court cannot simply disregard the commercial quantity of Methamphetamine that had been recovered from the 1<sup>st</sup> Suspect, the delay of more than two and a half years, the reasons for which had not been sufficiently explained by the Respondents, persuade this Court to grant bail to the 1<sup>st</sup> Suspect.

25. Based on the above analysis, I am inclined to grant bail to the 1<sup>st</sup> Suspect subject to the following conditions;

- (a) Rupees two hundred thousand cash bail with two sureties;
- (b) The Petitioner must be one of the sureties;
- (c) The 1<sup>st</sup> Suspect shall surrender his passport, if any, to the Court of Law in order to prevent the obtaining of travel documents. The Immigration and Emigration Department shall be informed of this order forthwith;
- (d) The sureties must enter into a bond amounting to Rupees one million each;
- (e) The Suspect shall report to the Officer-in-Charge, Police Narcotic Bureau, Colombo 01 on the 1<sup>st</sup> Sunday of every month between 9.00 am and 10.00 am.

26. 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 Court of Panadura and to the Officer-in-Charge of the Police Narcotics Bureau, Colombo 01, forthwith.

**Judge of the Court of Appeal**

**P. Kumararatnam, J**

I agree,

**Judge of the Court of Appeal**