

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-

1. Remgees Sagaya Fernando
2. Sellayya Wasantha Kumar

Suspects

Court of Appeal Bail Application
No: CA/BAL/371/25

High Court of Colombo:
HC/5280/25

Magistrate Court of Maligakanda:
B 24429/2023

AND THEN

Democratic Socialist Republic of Sri
Lanka

Complainant

-Vs-

Remgees Sagaya Fernando

Accused Person

AND NOW BETWEEN

Reeta Jeyanthi Fernando
No. 23/13, Jampettah Street,
Colombo 13
(On behalf of the Accused Person
Remgees Sagaya Fernando, currently
incarcerated in Colombo Remand Prison)

Petitioner

-Vs-

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

Respondents

Before : **Hon. P Kumararathnam, J.**
Hon. Pradeep Hettiarachchi, J.

Counsel : Lelani Sirisena for the Petitioner
Tharaka Kodagoda, SC for the Respondents

Inquiry on : 25-02-2026

Decided on : 12-05-2026

Pradeep Hettiarachchi, J

Order

Background Facts

1. This is an Application for bail filed by the Petitioner named Reeta Jeyanthi Fernando (hereinafter referred to as “the Petitioner”) on behalf of her husband named Remgees Sagaya Fernando (hereinafter referred to as “the 1st Accused”) 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 23-06-2023, annexed to the Petition, the 1st Accused has been arrested on 22-06-2023 along with one other suspect, by the police officers attached to the Police Narcotic Bureau for trafficking and keeping in his possession 350 grams of Methamphetamine, an offence punishable under section 54A1 (b) and 54A1 (d) of the Ordinance.
3. Thereafter, the Accused was produced before the Magistrate Court of Colombo on 23-06-2023, and he has been in remand custody since the date of arrest.

Relevant Law

4. 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.

5. 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.
6. 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.
7. 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.*”
8. The following grounds have been urged by the Petitioner as exceptional circumstances warranting consideration for bail:
 - (a) The police had failed to disclose the location of the raid and the names of the police officers who took part in the raid and the mode of journey and the manner in which the raid was conducted and other attendant circumstances.

- (b) The 1st Accused is being detained in connection with a case which has no bearing on him which course of action is illegal, infringement of the fundamental rights of the 1st Accused and manifestly contrary to law.
- (c) The 1st Accused had no link to the alleged incident.
- (d) The 1st Accused is 56 years old and prior to his arrest he worked as a dried fish seller. The Petitioner herself is 56 years old and is unemployed. The 1st Accused and the Petitioner have no children. The 1st Accused is the sole breadwinner of the family and due to his incarceration, the Petitioner has lost the love, affection, care, protection and security.
- (e) The 1st Accused has been in remand custody for more than 2 years and 3 months since the date of arrest, i.e., 22-06-2023 without the trial being concluded. Therefore, the Petitioner's right to a fair trial has been violated.
9. The Respondents in their Statement of Objections dated 16-02-2026 have *inter alia* stated that the Petitioner had failed to come before this Court in clean hands as the Petitioner has not submitted information regarding the previous convictions of the 1st Accused. Accordingly, the Respondents' position is that this bail application should be dismissed *in limine* due to lack of *uberrimae fides*.

Consideration of Exceptional Circumstances

10. The main ground advanced by the Petitioner is the delay in prosecuting the 1st Accused. The Petitioner has spent nearly two years and three months in remand custody as at the date of this Petition. Furthermore, in the present case the 1st Accused has been arrested on 22-06-2023. The Government Analyst's Report was ready by 10-10-2023. As per the proceedings, the 1st Accused had been served with the Indictment on 24-04-2025 and the case had been first fixed for pre-trial conference on 16-06-2025. However, the trial against him has not yet commenced.

11. Regarding the time period spent in remand, this Court has previously in a long line of judicial authorities have held that the period spent in remand custody alone does not suffice to grant bail to a suspect or an accused. For instance, in ***Labukola Ange Gedara Ashani Dhanushika*** CA (PHC) APN 04/2016, Dehideniya J stated that the time spent in remand custody alone cannot be considered as an exceptional circumstance warranting the grant of bail to a suspect when the suspect has been previously convicted for similar offences. He stated;

“In the present case the Petitioner has failed to establish any exceptional circumstances warranting this Court to exercise the revisionary jurisdiction. 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 heroin 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." The suspect in the present case has been previously convicted on similar offences. Therefore, remanding itself, of a person of this caliber cannot be an exceptional circumstance to grant bail.”

12. As per the previous convictions report marked P1, the 1st Accused had been previously convicted on 15-10-2020 for keeping in his possession of 8Kg of Kerala Ganja and for transportation of another 6 Kg of Kerala Ganja by the High Court of Colombo under the case bearing 1167/2019 and was imposed a fine of Rs. 50,000/- and six months imprisonment suspended for five years.

13. Therefore, the 1st Accused's previous conduct is suggestive of the fact that he has been dealing with commercial quantities even in the past and that there is a possibility of the 1st Accused re-offending if granted bail. More importantly, the 1st Accused had been

arrested for possession and trafficking of heroin while he was still serving a suspended term for the aforementioned offence.

14. In ***Cader (on behalf of Rashid Khan) vs. OIC Narcotic Bureau*** [2006] 3 Sri. LR 74 it was held that;

“Provision has been made in the Bail Act to release persons on bail if the period of remand extends more than 12 months. No such provision is found in the case of Poison, Opium, and Dangerous Drugs Ordinance. Although bail was granted in some of the cases mentioned above, none of these cases referred to the time period in remand as constituting an exceptional circumstance. Hence, bail cannot be considered on that ground alone. It appears from the cases cited above that there is no guiding principle with regard to the quantity found either.”

15. In the same case, while focusing the attention on the nature and gravity of the offences falling under the Ordinance, Eric Basnayake J. further stated as follows:

“Heroin has become a menace in our society. It is not easily detectable. Due to the fact alone, the tendency to commit this kind of crime repeatedly has become feasible. The repetitive factor prevalent in this sort of crime and the difficulty of detection are significantly strong reasons for refusing bail in this type of cases.”

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 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. Also, as per the Government Analyst Report dated 10-10-2023, the net quantity of Methamphetamine recovered from the possession of the 1st Accused is 161.4 grams. This denotes a commercial quantity as opposed to a user quantity.

18. In addition to the above, the Petitioner has stated that the police had failed to disclose the location of the raid and the names of the police officers who took part in the raid and the mode of journey and the manner in which the raid was conducted and other attendant circumstances. However, in the B-Report dated 23-06-2023, the location of the raid had been clearly mentioned as the statue near Jampettah Street turning towards 23 Watte. It is mentioned as follows;

“2023.06.22 වන දින අංක 23/13 ජම්පටා පාර, කොළඹ 13 ලිපිනයේ පදිංචි රෙම්ජිස් ප්‍රනාන්දු යන අය ජම්පටා පාරේ 23 වත්තට හැරෙන සුරුවම අසලදී පැය 1540 ට අත්අඩංගුවට ගෙන ඇත.”

19. Furthermore, the names of the police officers who were involved in the raid had also been mentioned in the said B-Report. Therefore, the above position maintained by the Petitioner is devoid of merits.

20. It is also mentioned in the Petition that the 1st Accused is the sole breadwinner of the family and the Petitioner, being the wife of the 1st Accused is deprived of love, care, affection, protection and the security that is expected from a husband due to the 1st Accused's prolonged detention in the remand prison. This cannot, in my view, be considered as an exceptional circumstance warranting his release on bail. In the majority of cases, this is often the plight of the rest of the family when the sole bread winner of the family is in remand.

21. Therefore, I am of the view that the grounds adduced by the Petitioner do not constitute exceptional circumstances warranting the grant of bail to the 1st Accused. This

Application is accordingly dismissed, and the Registrar of this Court is directed to transmit a copy of this Order to the Registrar of the High Court of Colombo, Magistrate Court of Maligakanda, and to the Officer-in-Charge of the Police Narcotic Bureau, Colombo 01, forthwith.

Judge of the Court of Appeal

Hon P. Kumararatnam, J

I agree,

Judge of the Court of Appeal