

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(2) of the Poisons, Opium and Dangerous Drugs Ordinance as amended by section 4 of the Poisons, Opium and Dangerous Drugs (Amendment) Act No. 41 of 2022.

Warnakula Kattadige Mahesh
Santhushitha
(9th Suspect- Currently in the Magazine
Remand Prison)

Court of Appeal Bail Application No:
CA/BAL/ 41/2025

Magistrate Court Case No:
B 64112/1/2022 (Colombo)

Sasini Madhushika
No. 119/1, Wawdhatha Wagawa
Nakulugamuwa
(On behalf of the 9th Suspect above-
named)

Petitioner

Vs

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

Respondents

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

Counsel : Lelani Sirisena for the Petitioner
Shehan Mahboob, SC for the Respondents

Inquiry on : 16.09.2025

Decided on : 02.12.2025

Pradeep Hettiarachchi, J

Order

1. This is an Application for bail filed by the Petitioner named Sasini Madhushika (hereinafter referred to as “the Petitioner”) on behalf of her husband named Warnakula Kattadige Mahesh Santhusitha (hereinafter referred to as “the 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 25-01-2022, annexed to the Petition, SSP Saamantha Wijesekera has received some information that the preparations are underway to import a large quantity of drugs into Sri Lanka along the southern coast using the all-purpose fishing vessel IMUL-A- 1080-TLE *Suresh 02*. Acting on this information, the officers of the Sri Lanka Navy and the Police Narcotic Bureau had conducted a joint operation on 17-01-2022 subsequent to which they took into custody on board six suspects for possession, trafficking and importation of nearly 330 kilograms of Heroin into Sri Lanka. The Suspect in the present case was one of them. Thereafter, on 23-01-2022, the said team of officers has arrested the all-purpose boat IMUL- A- 1078-MTR *Oshan Putha* that came to purchase drugs from the all-purpose fishing boat IMUL-A- 1080-TLE *Suresh 02*. Five suspects who were on board the vessel at the time have also been arrested.

3. Furthermore, as per the first B-Report filed on 25-01-2022, parallel to the aforesaid investigations at the sea, the Police Narcotic Bureau arrested six other suspects on 24-01-2022. The basis for the arrest of these suspects was aiding and abetting the other six suspects for the importation into Sri Lanka and trafficking and keeping in their possession of heroin.
4. As per the further B-Report dated 26-01-2022, the gross quantity of heroin recovered from the all-purpose boat IMUL-A-1080-TLE *Suresh 02* was 343 kilograms and 456 grams. However, according to the Government Analyst Report dated 23-01-2023, net quantity of heroin recovered from the said all-purpose boat was 212.67 kilograms.
5. The Suspect in the present case had been arrested along with the other five suspects on 25-01-2022 by the Chief Inspector H.M.C.C. Herath at the second terminal of the Colombo Port for possession, trafficking and importation of heroin into Sri Lanka. Thereafter, the Suspect was produced before the Magistrate on 26-01-2022 under the case bearing No. B. 64112/01/2022.
6. Thereafter, on 25-02-2022, bail application bearing No. HCEBA/ 198/2022 was filed on behalf of the Suspect before the High Court of Colombo seeking to enlarge the Suspect on bail in the Colombo Magistrate Court Case bearing No. B 64112/01/2022.
7. Subsequently, the Suspect was granted bail by the High Court of Colombo on 23-03-2022.
8. Being aggrieved by the order of the High Court dated 23-03-2022, the 1st Respondent preferred a revision application bearing No. CA/CPA/ 41/22 to the Court of Appeal seeking to set aside aforesaid order of the High Court.
9. The Court of Appeal by its order dated 14-03-2023, allowed the aforesaid revision application and ordered to set aside the order of the High Court dated 23-03-2022. Thereafter, the Suspect appeared before the Magistrate Court and was once again remanded.

10. Thereafter, a special leave to appeal application bearing no. SC/SPL/LA/116/23 was filed before the Supreme Court seeking to set aside the Order of the Court of Appeal dated 14-03-2023. However, the Supreme Court refused to grant leave.
11. The Petitioner states that all the other suspects in the Colombo Magistrate Court No. B 64112/01/2022 had been granted bail by the High Court of Colombo prior to the amendment No. 41 of 2022 and the 1st Respondent filed a revision application only in respect of the 7th Suspect and the Suspect in the present case. It is also stated that the Suspect in the present case is also the brother of the skipper of the all-purpose boat IMUL-A- 1080-TLE Suresh 02, who is the 7th Suspect in the Magistrate Court Case No. B. 64112/01/2022.

Relevant Law

12. 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.

13. 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 Suspect to establish the existence of exceptional circumstances.

14. 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.

15. 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.

Consideration of the Exceptional Circumstances

16. 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 nearly two years after the aforesaid arrest and nearly two years after the issuance of the Government Analyst Report without being indicted.
- (b) There are no previous convictions and pending matters against the Suspect.
- (c) According to the B-Report filed by the 2nd Respondent this Suspect was also arrested on the boat but in the first B-Report dated 25-01-2022 there was no mention of the Suspect. The Additional Report dated 26-01-2022 mentioned this Suspect’s name as the 9th Suspect. This fact creates a serious doubt about this case and honorable High Court Judge has also considered this situation as exceptional in the order dated 23-03-2022.
- (d) All other Suspects have been granted bail by the High Court other than this Suspect and the 7th Suspect.

17. The Respondents, on the other hand, in their Statement of Objections dated 27-05-2025, have stated that the pure quantity of heroin recovered was 212.67 kg, which is commercial quantity; if the Suspect is convicted, the punishment is either death or the life

imprisonment therefore there is a possibility that the Suspect might try to abscond/evade the trail if bail is granted.

18. The main ground advanced by the Petitioner is the delay in prosecuting the Suspect. The Suspect had been arrested on 25-01-2022 by the Police Narcotic Bureau and has been incarcerated since then and until he was enlarged by the High Court of Colombo on 23-03-2022. However, since the 1st Respondent preferred a revision application to this Court seeking to set aside the said order and the same was allowed by the Court of Appeal, the Suspect had to surrender himself to the Magistrate Court of Colombo once again. Therefore, except for the brief period that he was out on bail, the Suspect has been in remand custody since the date of his arrest.

19. 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 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 he 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."

20. Similarly, in **Cader (on behalf of Rashid Khan) v 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.

21. Therefore, by introducing special bail provisions under Section 83(2) of the Ordinance, the intention of the legislature was to 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 quantity of the dangerous drugs involved, the sophisticated manner in which the drug trafficking operation was executed and the possibility of the suspect re-offending and evading trial if granted bail, it would, in my view, undermine the very purpose of the Act.
22. Hence, when deciding whether to grant bail or not to a suspect in an application of this nature, the Courts have to be mindful of the other attendant circumstances such as the previous conduct of the Suspect, the sophisticated manner in which the drug trafficking operation was planned and executed, the possibility of the suspect re-offending and evading trial if granted bail and the overall impact that the Suspect's release on bail may have on the society.
23. While the Suspect in the present case has no previous convictions, this Court cannot lightly disregard the net quantity of heroin reportedly recovered by the Navy personnel during the search of the all-purpose boat IMUL-A- 1080-TLE Suresh 02 on which the Suspect was on board. According to the Government Analyst Report dated 23-01-2023, net quantity of heroin recovered from the said all-purpose boat was 212.67 kilograms.
24. The weight of the heroin is far beyond what could be intended for personal consumption and is undoubtedly meant for commercial purposes. Therefore, in the event of a conviction, the likely sentence would be either the death penalty or life imprisonment.

Given the seriousness of the offence and the severity of the possible punishment, the likelihood of the suspect absconding if enlarged on bail is also very high.

25. Another ground advanced by the Petitioner is that according to the B-Report filed by the 2nd Respondent, this Suspect was also arrested on the boat but in the first B-Report dated 25-01-2022 there was no mention of the Suspect. The Additional Report dated 26-01-2022 mentioned this Suspect's name as the 9th Suspect. This fact creates a serious doubt on the prosecution's case and honorable High Court Judge has also considered this situation as exceptional in the order dated 23-03-2022.
26. It is true that the exceptional circumstance considered by the learned High Court Judge when granting bail to the Suspect is that the name of the Suspect is not mentioned in the first B-Report filed on 25-01-2022 and the delay in handing over the Suspect to the Police narcotic Bureau.
27. However, it is pertinent to note that the B-Report filed on 25-01-2022 has revealed the nature of the initial investigation and the fact that 11 suspects who were on board were taken into custody and the investigations are pending. But the suspects taken into custody from land for aiding and abetting the suspects who were on boat had been produced with their names appearing in the B-Report and there is no mention of the suspects taken from the boat including the Suspect in the present case. But in the B-Report filed subsequently, the names of the aforesaid 11 Suspects who were taken into custody were mentioned and as per the report they have been produced before the Magistrate on 26-01-2022.
28. However, in both B-Reports there is no information as to how the present Suspect along with the other five suspects who were taken into custody of the navy on the 17-01-2022, were kept until the date on which they were produced before the Magistrate. It only states that further investigations are proceeding and that the suspects taken into custody while on the sea are being handed over to the Police Narcotic Bureau.
29. All the above facts have been taken duly taken into consideration by the Court of Appeal in its Order dated 14-03-2023. However, the Court of Appeal stated that those are matters which to be considered in a different type of application, on another forum and not at that stage and allowed the revision application.

30. It is also in the Petition that the Suspect's family is facing severe hardships and was adversely affected due to the prolonged detention in remand custody. This cannot, in my view, be considered as an exceptional circumstance warranting the Suspect's release on bail. In the majority of cases, this is often the situation especially when the sole bread winner of the family is in remand.
31. It has also been revealed that the investigation dossier has been forwarded to the Hon. Attorney General and registered under CR3/ 402/2023. Hence, it can be inferred that the Suspect will be charged without undue delay and that the trial may soon commence. Accordingly, there is no indication of any undue or oppressive delay on the part of the Respondents in the investigation process. Given the quantity of heroin detected and the manner in which it was imported into Sri Lanka, the time taken to conclude the investigation cannot be considered unreasonable or excessive.
32. In light of the facts of the present application and the aforementioned authorities, this Court is not persuaded that the grounds urged by the Petitioner constitute exceptional circumstances warranting the Suspect's release on bail.
33. Accordingly, the bail application of the Petitioner is dismissed. The Registrar of this Court is directed to transmit a copy of this Order to the Registrar of the Magistrate Court of Colombo and the Officer-in-Charge of the Police Narcotic Bureau forthwith.

Judge of the Court of Appeal

P.Kumararatnam, J.

I agree.

Judge of the Court of Appeal

