

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
Act as amended by Act No. 41 of 2022.

Officer-in-Charge
Police Narcotics Bureau
Colombo 01.

Complainant

Vs

Balasubramaniam Kokila Chelvan *alias*
Ganesh

Suspect

AND NOW BETWEEN

Thavarasa Danalechchami
170/3 A, Madampitiya Road
Colombo 01.

Petitioner

Vs

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

Respondents

Court of Appeal Bail Application:
CA/BAL/ 58/2025

Magistrate Court of Welisara Case
No: **B 746/2022**

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

Counsel : Jaliya Samarasinghe for the Petitioner
Wishwa Wijesooriya, SC for the State

Inquiry on : 01.10.2025

Decided on : 05.12.2025

Pradeep Hettiarachchi, J

Order

Background to the Application

1. This is an Application for bail filed by the Petitioner named Thavarasa Danaletchchamy (hereinafter referred to as “the Petitioner”) on behalf of her husband named Balasubramanium Kokila Chelvan (hereinafter referred to as “the Accused”) under section 83(2) of the Poisons, Opium and Dangerous Drugs Ordinance (hereinafter sometimes referred to as “the Ordinance”).
2. According to the Petition, the Accused has been arrested on 25-02-2022 by the Police Narcotic Bureau for the possession and trafficking of 1268 grams of Heroin, an offence punishable under section 54 A(1) (d) and 54 A(1) (b) of the Ordinance. The Accused was further found to be in his possession Rs. 793,350/=, an offence punishable under section 3(2) of the Prevention of Money Laundering Act No. 5 of 2006.
3. The Accused has been in remand custody for nearly three years as at the date of this Petition.

4. As per the Government Analyst Report dated 18-04-2022, net quantity of Heroin recovered from the possession of the Accused was 752.8 grams.

Relevant Law

5. Section 83(2) of the Ordinance has introduced special provisions when a person is accused or suspected of offences under section 54A and 54B of the Ordinance. 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.

6. 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 Court as to the existence of circumstances that are exceptional. Therefore, the burden is on the Suspect to establish the existence of exceptional circumstances.

7. 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.
8. 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.”*
9. In **S v Peterson 2008** (2) SACR (C) 355 the Court held that;

Generally speaking “exceptional” is indicative of something unusual, extraordinary, remarkable, peculiar or simply different but that because of varying degrees, it will therefore depend on the context and on the particular circumstances of the case under consideration.

Consideration of the Exceptional Circumstances

10. The following grounds have been urged by the Petitioner as exceptional circumstances warranting consideration for bail;
 - (a) The mere presence of the Accused at the premises is insufficient to establish his guilt in respect of the alleged offences.
 - (b) No summary of evidence against the Accused was produced.
 - (c) The Accused vehemently denies all the charges leveled against him.
 - (d) The Accused is not absconding or evading the trial.
 - (e) As per section 84 of the Ordinance the maximum time period that a suspect could be kept in remand is two years and in the present case, the said two year period has already lapsed by 25-02-2024.
 - (f) The existence of a strong *prima facie* case against the Accused, in itself, a bar to the grant of bail to the Accused.
 - (g) The Accused has made no undue influence on the witnesses and there is no opportunity whatsoever for the Accused to make any undue influence on the witnesses.

- (h) The Court should not deprive a citizen of his/ her freedom and keeping the Accused in the remand custody is contrary to the existing provisions in the Constitution.
- (i) The Accused is the sole breadwinner of the family and the Accused's prolonged detention has caused various hardships to the family of the Accused.
- (j) Seriousness of the offence committed is not a ground to refuse bail.
- (k) The Court should take into consideration the presumption of innocence embodied in Article 13(5) of the Constitution.
- (l) Inordinate or oppressive delay in prosecuting the Accused is an exceptional circumstance.
- (m) Granting bail to the Accused is necessary for the Accused to prepare his defense in the pending case.

11. Accordingly, one of the main grounds advanced by the Petitioner is the delay in prosecuting the Accused.

12. 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...*”

13. The period of remand, in isolation, cannot be considered a sufficient ground for the grant of bail. It must be assessed in conjunction with other attendant circumstances, particularly within the framework of the statutory provisions governing the granting of bail. At the same time, the Court should be mindful of the presumption of innocence, which is a fundamental safeguard guaranteed to every suspect until proven guilty by a competent court of law.

14. Therefore, the stringent provisions of law should not be allowed to operate as a tool to deprive a person of liberty without just cause. When considering a bail application of this nature, the Court must have due regard to the intention of the legislature, the gravity of the offence charged, the severity of the possible punishment, the likelihood of the

accused absconding if released on bail, the stage and progress of the investigation or trial, and the fundamental principles of presumption of innocence and personal liberty

15. In the present case, the Accused was arrested on 25-02-2022. The Government Analyst Report was ready by 18-04-2022. The Petitioner has tendered a certified copy of the case record in the High Court of Negombo case bearing No. HC/39/23, according to which, the Indictment against the Accused had been filed on 27-03-2023 and it had been served on the Accused on 07-11-2023. The pre-trial has commenced on 12-03-2024. As per the proceedings available before this Court, it appears that the pre-trial conference has not been concluded as at the date of this Petition, i.e. 21-02-2025.
16. It is important to note that the procedure prescribed by section 195A of the Code of Criminal Procedure Act does require a pre-trial conference to be concluded within a period not exceeding three months from the date on which the accused appeared before the court and it is primarily the duty of the presiding judge to ensure the adherence to the said mandatory time frames. Upon perusal of the journal entries dated 12-03-2024, 09-05-2024, 09-07-2024, 18-09-2024, 25-10-2024, 20-11-2024 and 20-01-2025 it appears that the pre-trial conference has not been concluded even after the lapse of eight months since the date on which it has commenced, due to various reasons such as the unavailability of productions and certain documents and due to no fault of the Defense.
17. On the argument date, it was informed to this Court that the case was fixed for trial on 29-09-2025 and it has got postponed to 05-03-2026.
18. In these circumstances, it is difficult, if not impossible to anticipate a possible time frame within which the trial against the Accused would be concluded. No justifiable reason is forthcoming from the prosecution explaining such delay.
19. While this Court has not lost sight of the fact that the Accused had previously been convicted by the High Court of Colombo for an offence of a similar nature in Case No. 516/01/2019 (MC Maligakanda B 33184/01/2017) for possession and trafficking of 542 grams of heroin, for which he was sentenced to one year's rigorous imprisonment suspended for 15 years, the delay of more than three years in concluding the present trial, when considered together with the prosecution's failure to offer any justifiable explanation for such delay, amounts to an inordinate and oppressive delay.

20. Furthermore, it is important to emphasize that when a person is deprived of his liberty and held in detention; those responsible for such deprivation must consciously and diligently take the necessary steps to conclude legal action. If no reasonable explanation is provided for any delay, such delay will be deemed excessive or oppressive.
21. Having due regard to the presumption of innocence, the personal liberty of the Accused, and the totality of the circumstances, this Court is of the view that exceptional circumstances exist warranting the grant of bail. Accordingly, the Accused is ordered to be released on bail, subject to appropriate conditions designed to secure his presence before Court and to ensure the due administration of justice.
22. Accordingly, I hereby order that the Accused shall be released on bail subject to following conditions.
- (a) Cash bail of Rs.200,000.00;
 - (b) There shall be three sureties and they must enter into a bond of Rs 1 million each;
 - (c) The Petitioner shall be one of the sureties;
 - (d) The Accused shall surrender his passport if any to the courts and shall not apply for a travel document without the permission of the Court; and
 - (e) The Accused is required to report to the Officer in Charge of Police Narcotic Bureau on the 1st and 30th of every month.
23. The Registrar of this court is directed to send a copy of this order to the Magistrate Court of Welisara, High Court of Negombo 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

