

IN THE COURT OF APPEAL OF THE DEMOCRATIC SOCIALIST

REPUBLIC OF SRI LANKA

In the matter of an Application for Bail under
Section 83(2) of the Poisons, Opium and
Dangerous Drugs Act as amended by Act No.
41 of 2022.

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

Complainant

Court of Appeal Bail Application:
CA/BAL/ 10/2026

Welisara MC Case No:
B/735/2025

-Vs-

Suduwa Devage Sanidu Ashen Dilhara

Suspect

AND NOW BETWEEN

Nawarathne Mudiyanseilage Dilmi
Geethanjali Nawaratne
No. 167/5, Weeraratne Mawatha,
Walpola, Ragama.

Petitioner

-Vs-

1. Hon. Attorney General,
Attorney General's Department,
Colombo 12.

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

Respondents

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

Counsel : Sanjith Senanayake with Priyadarshani Gunarathne instructed
by Upul Dissanayake for the Petitioner
Shezan Mahboob, SC for the Respondents

Inquiry on : 03-06-2026

Decided on : 30-07-2026

Pradeep Hettiarachchi, J

Order

1. This Bail Application is preferred to this Court by the Petitioner named Nawaratne Mudiyanseelage Dilmi Geethanjali Nawaratne (hereinafter referred to as “the Petitioner”) on behalf of her husband named Suduwa Devage Sanidu Ashen Dilhara (hereinafter referred to as “the Suspect”) 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 B-Report annexed to the Petition, on 12-02-2025, the Suspect was arrested by the officers attached to the Organized Crime Prevention Unit II of the Special Task Force, Jayewardenepura Camp. A small parcel suspected to contain Methamphetamine, two mobile phones and a bunch of keys had been found in the possession of the Suspect at the time of arrest.

3. However, the Petitioner's version regarding the same is that, on 12-02-2025, a group claiming to be from the Second Raid Unit of the Sri Jayewardenepura Kotte Special Task Force entered the residence where the Suspect, the Petitioner and their young child were residing. The officers ordered them to sit in the living room, closed the door, locked the gate and stationed two men in civilian clothing outside. The Suspect was arrested and thereafter taken away in a white van without being informed of any of the charges.
4. Pursuant to a statement made by the Suspect, the said team of police officers had proceeded to the address bearing No. 150/D, Bollatha, Ganemulla. According to the Petitioner, the said house had been taken on rent by the Suspect, and he had later sub-let it to a person called Shantha Bope Arachchi. The team of police officers had then arrived at the said premises with the Suspect. Upon arrival, the police officers had entered into the said house using one of the keys that was in the bunch of keys earlier recovered from the Suspect.
5. It is stated in the B-Report that, during the search, the Suspect had pointed out a brown colored plastic bag on the table. Thereafter, the police officers had found a transparent polythene parcel which was already opened and another white plastic bag tied at the opening. The opened polythene parcel was suspected to be containing Methamphetamine while the tied plastic bag was suspected to be containing Heroin.
6. According to the B-Report, the parcel containing Methamphetamine, which was initially seized, weighed 46 grams while the two parcels that were subsequently recovered from the second location contained 1kg and 10 grams of Methamphetamine and 152 grams of Heroin.
7. However, according to the Government Analyst Report dated 22-09-2025, the net weight of Methamphetamine that was initially recovered from the possession of the Suspect is 40.23 grams. The net weight of the Methamphetamine and Heroin recovered from the second location is 888.1 grams and 55.15 grams, respectively.
8. It is also stated in the Petition that the Suspect was forcibly taken into custody from his residence in an unlawful manner by the officers, the drugs and other items were subsequently introduced to him and that he was later produced before the Magistrate Court of Welisara.

9. The Petitioner has stated that she has also filed a complaint to the law enforcement authorities regarding the illegal arrest of the Suspect in this case.

Relevant Law

10. 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 as follows:

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 grams 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.

11. 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.
12. 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.

13. 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

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

- (a) The police discovered a quantity of drugs in the possession of a person named Shantha Bope Arachchi and subsequently arrested the said Bope Arachchi as well. With the knowledge of the said Shantha Bope Arachchi, the quantity of the drugs found in Shantha Bope Arachchi’s possession was introduced by the police to the Suspect, and thereafter, the police released the person named Shantha Bope Arachchi. Furthermore, after Shantha Bope Arachchi was released, he was murdered by some individuals on 20-02-2025 in the Uswetakeiyyawa area. The case bearing No. B/913/25 is currently before the Magistrate’s Court of Welisara.
- (b) The Suspect does not have any previous convictions against him.
- (c) Since the Indictment has not been served and the trial has not been commenced, it is imperative to consider the fact that it will take a long duration of time for the trial to be concluded. As a result, the Suspect will languish in prison indefinitely, and there is oppressive delay in this matter.
- (d) The Suspect is a father of a young child, and as the sole breadwinner, his absence has made it increasingly difficult for his unemployed wife to care for their child.
- (e) The Suspect’s child has been suffering from asthma since birth, and the Petitioner has been unable to take care of the child alone without the Suspect.
- (f) The Suspect in this case also suffers from asthma, and since he is in remand custody, he has not been able to receive proper treatment for it and his condition has worsened.

(g) The Petitioner is also receiving treatment for a long time due to a medical condition in her spinal cord and that she has been unable to carry out her daily activities and receive proper treatment without the Suspect.

(h) The Suspect has been in remand custody for more than 10 months.

(i) There would be substantial miscarriage of justice if the Suspect is not enlarged on bail.

15. Upon perusal of the Petition and the B-Report, it appears that there are two conflicting versions regarding the manner of arrest and regarding the alleged recovery of Methamphetamine and Heroin. However, I am of the opinion that these are trial issues to be determined by the trial judge, upon an evaluation of the evidence led before him.

16. Furthermore, the Petitioner has urged that the Suspect is the sole breadwinner and that his child and the Suspect himself are both suffering from asthma and require proper treatment. It is also mentioned that the Petitioner herself is suffering from a chronic medical condition in her spinal cord which makes it challenging for her to perform day-to-day activities.

17. Apparently, the main grounds advanced by the Petitioner in support of this bail application are personal in nature, particularly the hardships faced by her family due to the Suspect's continued incarceration. It must be noted that the Petitioner must satisfy the Court that there are exceptional circumstances which, in the interest of justice, warrant the Suspect's release on bail.

18. 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.”

19. The fact that the Suspect is the sole breadwinner of the family and has a young child suffering from asthma and that the Petitioner herself is suffering from a condition which makes it difficult for her to carry out normal day-to-day tasks, are, in my view, cannot be

considered as exceptional circumstances warranting the Suspect's release on bail. In the majority of cases, this is often the situation when the husband is in remand.

20. More importantly, exceptional circumstances cannot be considered in isolation; they must always be assessed in conjunction with the alleged offence for which the suspect has been remanded.
21. Undoubtedly, the seriousness of the charges and the possible sentence can serve as an incentive for an accused to evade trial. These factors have been addressed in various cases, and the Court will not grant bail where there is a likelihood that the accused may abscond.
22. Furthermore, 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 courts grant bail solely on the ground of delay, without giving due consideration to the surrounding circumstances such as the quantity of drugs involved, the likelihood of conviction, and, in particular, the manner in which the suspects were engaged in drug trafficking, it would undermine the very purpose and object of the Act.
23. As stated in ***Labukola Ange Gedara Ashani Dhanishika*** CA (PHC) APN 04/2016, 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. Section 83(1) of the Poisons, Opium, and Dangerous Drugs Ordinance expresses 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 Petitioner 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.
24. 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.”

25. In the same case, while focusing the attention on the nature and gravity of the offences falling under the Act, 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 case.”

26. The Suspect had been arrested on 12-02-2025, and he has been in remand custody for nearly 1 year and 4 months as at the date of the inquiry before this Court. The Government Analyst Report had been issued on 22-09-2025.

27. This Court cannot lightly disregard the fact that the net weight of the Methamphetamine and Heroine recovered was 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 accused absconding is also very high.

28. 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. In the circumstances, I am of the view that the commercial quantity of Heroine and Methamphetamine involved and the possibility of absconding in view of the nature of the punishment that may be imposed if allegations against the Suspect are proved, when considered cumulatively, do not persuade this Court to grant bail to the Suspect.

29. 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 Magistrate Court of Welisara and 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