

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.

Gamage Ramani Pushpakanthi
163/B, Kanuketiya, Angamuwa,
Padukka

Petitioner

Court of Appeal Bail Application:
CA/BAL/ 0015/2026

High Court of Awissawella Case No:
HCA/07/2025

On behalf of

Gamage Sunil: ID 1964290013470
210, Udumulla,
Padukka
(Presently held in Kuruwita Prison)

Accused

-Vs-

1. Officer-in-Charge,
Police Narcotic Bureau,
Colombo 01.
2. Superintendent of Prisons,
Sri Lanka Prisons,
Kuruwita.
3. Hon. Attorney General,
Attorney General's Department,
Colombo 12.

Respondents

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

Counsel : Priyantha Nawana, PC for the Petitioner
Shezan Mahboob, SC for the Respondents

Inquiry on : 14-05-2026

Decided on : 23-07-2026

Pradeep Hettiarachchi, J

Order

Background Facts

1. This is an Application for bail filed by the Petitioner named Gamage Ramani Pushpakanthi (hereinafter referred to as “the Petitioner”) on behalf of her elder brother named Gamage Sunil (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 had been arrested on 18-05-2022 for alleged trafficking and possession of 3 kilograms and 300 grams of Heroin (Diacetylmorphine), an offence punishable under Section 54A (b) and 54A(d) of the Ordinance.
3. Thereafter, on 19-05-2022, the Accused was produced before the Awissawella Magistrate Court and was subsequently remanded. The Accused has been in remand custody since then.
4. On 26-09-2022, the Government Analyst Report was issued, and according to the said report, the net quantity of Heroin alleged to have been recovered from the Accused is 1891.3 g.

Relevant Law

5. 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 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.
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.”

Exceptional Circumstances

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

- (a) The Accused is an elderly person at the age of 61 years;
- (b) The circumstances under which the Accused was said to have been arrested are shrouded with improbabilities and its doubt will endure to the Accused resulting in a possible exoneration of the charges, if the Accused could instruct his counsel freely;
- (c) The Accused is inevitably deprived of a fair trial, as guaranteed by the Constitution, if he is compelled to face the trial whilst being held in remand;
- (d) The Accused is reaching a continuous four-year period of remand by May 2026, during which he suffered from age-related health issues, both physically and mentally, with no required care facilities in the prison;
- (e) The trial is likely to continue for a longer period of time with periodical adjournments resulting in the prolongation of the period on remand into an indefinite period causing further prejudice;
- (f) The Accused has no previous convictions or pending cases whatsoever until he was implicated in the commission of alleged offences in this case;
- (g) The Accused bears an unblemished character with no criminal records whatsoever, and he had not been pursued by name by the police but appears to have been arrested in circumstances shrouded with improbabilities;

- (h) There is no evidence whatsoever to establish elements of possession and/or trafficking within the meaning of Section 54A of the Poisons, Opium and Dangerous Drugs Ordinance, as amended;
- (i) There is no contemporaneous recording even though the police are equipped with such instruments for video recording and photographing in order to overcome the complaint of false implication like in this case; and,
- (j) The conduct of the police is highly suspicious as to why it did not field-test, weigh and seal the substance then and there if it was, in fact, recovered from the Accused; and, made notes contemporaneously.

10. Accordingly, one of the major grounds advanced by the Petitioner is the delay in prosecuting the Accused.

11. 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...*”.

12. 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 heroin until the conclusion of the case. 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.”

13. The special bail provisions under Section 83(2) prescribe 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 taking into consideration 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, defeat the very purpose of the Ordinance.
14. However, at the same time the Court should be 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.
15. Our Courts have recognized the prejudice caused to an accused 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.
16. 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.

17. The Accused in the present case had been arrested on 18-05-2022. He had been served with the Indictment on 14-05-2025, nearly three years after his arrest. The case was first fixed for trial on 30-09-2025. However, upon perusal of the journal entries, it could be observed that the trial had been postponed on numerous occasions since PW1, who is said to have conducted the investigation that resulted in the Accused's arrest, was absent. Accordingly, the Petitioner's main allegation is that the trial against the Accused has not yet commenced even after the lapse of four years since the date of arrest.
18. At the inquiry, the learned State Counsel for the Respondents informed this Court that the PW1's absence was due to the fact that he is a witness in several other cases and he had to testify in those cases; therefore, his presence could not be secured. However, no evidence was placed before this Court to substantiate the above-mentioned fact.
19. Furthermore, in addition to the above, it is averred in the Petition that the Accused is 61 years old as at the date of this Petition and that his health condition is not satisfactory. The Petitioner has annexed the medical reports marked P7 in support of the above statement.
20. While this Court cannot lightly disregard the large quantity of heroin involved in this case, i.e., 1891.3 g, I am of the opinion that the delay of four years, which delay that the prosecution has not been able to explain, coupled with the old age of the Accused and his deteriorating health condition, is an exceptional circumstance warranting the grant of bail to the Accused.
21. Based on the above analysis, I am inclined to grant bail to the Accused 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 sureties must enter into a bond amounting to Rupees one million each;
 - (d) The Accused shall report to the Officer-in-Charge, Police Narcotic Bureau, Colombo 01, on the 1st Sunday of every month between 9.00 am and 10.00 am; and,

(e) The Accused shall surrender his passport, if any, to the High Court of Awissawella.

22. 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 High Court of Awissawella and to 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