

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 Acts No. 13 of 1984 and No. 41 of 2022.

Senarath Dewage Shehan Pasindu
No. 633/4/6,
Nadungamuwa, Gampaha.

Petitioner

-Vs-

Court of Appeal Bail Application No:
CA/BAL/16/2026

Magistrate Court of Welisara Case No:
B 2318/2025

1. Officer-in-Charge,
Police Narcotics Bureau,
Colombo 01.

Complainant-Respondent

2. Senarath Dewage Lasindu Hirushan
Senarath No. 40/F/ 01, Galloluwa
Nadungamuwa.
(Now in remand prison Mahara)

Suspect-Respondent

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

Respondent

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

Counsel : Neville Abeyratne PC with Kaushalya Abeyratne Dias
instructed by A. Dayaratne, for the Petitioner
: Zacky Ismail, SC for the State

Inquiry on : 14-09-2026

Decided on : 06-10-2026

Pradeep Hettiarachchi, J

Order

Background Facts

1. This is an Application for bail filed by the Petitioner named Senarath Dewage Shehan Pasindu (hereinafter referred to as “the Petitioner”) on behalf of his brother named Senarath Dewage Lasindu Hirushan Senarath under Section 83(2) of the Poisons, Opium and Dangerous Drugs Ordinance (hereinafter sometimes referred to as “the Ordinance”).
2. The Suspect had been arrested along with two other Suspects, namely Ahmed Saheed Mohamed Rifath (hereinafter referred to as the “2nd Suspect”) and Mohamed Faiz Mohamed Zahran (hereinafter referred to as the “3rd Suspect”) on 10-05-2025, by a team of police officers attached to the Police Narcotic Bureau for aiding and abetting for importation and trafficking of Methamphetamine and Cocaine, which is an offence punishable under Section 54A of the Ordinance. According to the B-Report filed by the police, the gross quantity of Methamphetamine recovered was 2 kilograms and 492 grams, while the gross weight of Cocaine recovered was 5 grams.

3. However, according to the Government Analyst Report dated 15-12-2025, the pure quantity of Methamphetamine detected was 1518.3 grams. The pure quantity of Cocaine detected was 67 milligrams.
4. Thereafter, the Suspects were produced before the Magistrate Court of Welisara on 11-05-2025 and upon an application made by the 1st Respondent, the learned Magistrate ordered the Suspects to be detained at the Police Narcotic Bureau until 15-05-2025.
5. On 15-05-2025, the Suspects were again produced before the learned Magistrate, and the learned Magistrate ordered them to be remanded. The Suspect has been in remand custody since then.

Facts of the Case

6. The Suspect had been living with his grandmother L.A. Chandra Liyanaarachchi at the time of the incident.
7. The Suspect's brother named Isuru Sampath Senarath, who was employed in Oman, has sent a box containing dry rations and other related items to be used by his grandmother and his wife's family, who are living in Meerigama, through a cargo handling agent namely TRANSCO International Cargo Services. The intended recipient of the box was the Suspect's grandmother, Mrs. L.A. Chandra Liyanaarachchi. Her telephone number was included as the recipient of the box.
8. On 09-05-2025, SI Bandara, assigned to the service at the Central Mail Exchange, along with other police officers, had gone to the Sri Lanka Customs Warehouse situated at TRANSCO International Cargo Services at Wattala and examined a box in the presence of the Assistant Superintendent of Customs, Mr. Damith Kumara, and the 2nd and 3rd Suspects who had come to get the said box released from customs clearance.
9. Upon opening the said box, they have found three parcels along with the parcels of dry rations inside the box.

10. The police officers, being suspicious of the contents of the aforesaid three parcels, had opened the said parcels in the presence of the customs officers and 2nd and 3rd Suspects. Upon examining the contents of the said parcels, they found that the parcels contained substances resembling Methamphetamine and Cocaine. These items were taken into custody along with the two Suspects who came to obtain clearance for the aforesaid box.
11. Upon further questioning of the two Suspects, the police officers had obtained further details from the 2nd Suspect, who had been communicating with the present Suspect. According to the initial B-Report filed by the police, the present Suspect, who was the intended recipient of the said box, had shared his location to the 2nd Suspect via WhatsApp.
12. Thereafter, they proceeded along the route indicated in Google Maps and arrived at the Suspect's residence, where he was living with his grandmother. They questioned the Suspect and thereafter arrested him for aiding and abetting for the importation and trafficking of the said illegal substances.
13. On 11-05-2025, the Suspects were produced before the learned Magistrate.
14. Subsequently, on 16-05-2025, the learned Magistrate, after taking into consideration all the facts reported against the 2nd and 3rd Suspects, ordered them to be discharged from the case.

Relevant Law

15. 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.

16. 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.

17. 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.

18. 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.”

19. In ***W.A. Deepa Nandani Vs OIC-Police Station Marawila*** CA/PHC/APN/134/20, Iddawela J. stated *inter alia*;

“[t]he threshold of what amounts to ‘exceptional circumstances’ varies with each case. a demarcation of the boundaries of an exceptional circumstance is purely a subjective exercise and as such it cannot be given a rigid interpretation.

What is recognized as an exceptional circumstance in one case may not be so in another. As such, the facts of each case must be carefully examined in deciding whether or not the circumstances presented are exceptional.”

Exceptional Circumstances

20. The following grounds have been urged by the Petitioner as exceptional circumstances warranting the Suspect’s release on bail:

- (a) The Suspect has not imported any items to Sri Lanka through TRANSCO International Cargo Services, and the box that was cleared through TRANSCO International Cargo Services and the Customs was addressed to his grandmother.
- (b) The Suspect has never visited TRANSCO International Cargo Services or the Customs Authority for the clearance of the box which contained prohibited drugs on any date.
- (c) The Suspect was totally unaware of the arrival of the box to the warehouse of TRANSCO International Cargo Services until the police officers came to his residence along with the box cleared from Sri Lanka Customs. The Suspect had no knowledge that the said box contained illegal substances.
- (d) The said box, which is alleged to have contained illegal substance was opened at the TRANSCO International Cargo Services Warehouse in the presence of customs officers, the police, and the 2nd and the 3rd Suspects. The 2nd and the 3rd Suspects have already been released by the Courts.
- (e) The box that is alleged to have contained prohibited drugs was completely opened when it was brought to the Suspect’s grandmother’s house, and it was further revealed that the Suspect has not given any instruction whatsoever to claim clearance from the warehouse of Sri Lanka Customs authorities.
- (f) The Suspect is an innocent person who has not been produced before any court and has no pending cases and no previous convictions.

(g) He has been in remand for more than seven months up to the date of filing of this application.

(h) The Suspect has not done any act or deed in aiding or abetting or having in possession or trafficking of any prohibited drugs as revealed in the investigations by the police.

21. Accordingly, the main ground advanced by the Petitioner is that there is no evidence to establish that the Suspect has aided and abetted for the importation and trafficking of the illegal substances as alleged in the B-Report. It is stated that the Suspect was not the intended recipient of the said box and it was, in fact, addressed to his grandmother. It is further stated that he never went to obtain clearance for the said box, nor was he aware of the arrival of the said box until the police officers came to his residence along with the box cleared from Sri Lanka Customs.

22. It is pertinent to note that the police, in its further B-Report dated 22-10-2025, tendered to the Magistrate Court of Welisara, has clearly mentioned that even if they have investigated the call records of the Suspect, his brother and his grandmother, they were unable to discover any information relating to a drug trafficking network and therefore, they have concluded the preliminary investigations.

23. Therefore, I am of the view that the absence of sufficient evidence establishing a nexus between the Suspect and the recovery of the illegal substances in the manner aforesaid and the Suspect's remoteness from the incident are factors that can be taken into consideration by this Court when granting bail to the Suspect.

24. Furthermore, no any pending cases or previous convictions have been disclosed against the Suspect, which, if had, would go against the decision of this Court to grant bail to the Suspect.

25. Based on the above analysis, I am inclined to grant bail to the Suspect 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 five hundred thousand each;
- (d) The Suspect shall report to the Officer-in-Charge of the Police Narcotic Bureau on the 1st Sunday of every month between 9.00 am and 10.00 am; and
- (e) The Suspect shall surrender his passport, if any, to the Magistrate Court of Welisara.

26. The Registrar of this Court is directed to communicate this Order to the Magistrate Court of Welisara 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