

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.

Democratic Socialist Republic of Sri Lanka

Complainant

-Vs-

Court of Appeal Bail Application:
CA/BAL/ 162/2026

High Court of Negombo: **CRI-140-2024**

1. Anuradha Jayanath Loku
Hettiarachchi
2. Hettiarachchilage Sanjeewa
Pushpakumara

Accused

AND NOW BETWEEN

Arulappan Joseph Latha
No. 365/12, Rajasinghe Mawatha,
Ihala Karagahamuna,
Kadawatha.

Petitioner

-Vs-

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

Complainant-Respondent

2. Anuradha Jayanath Loku
Hettiarachchi

Accused- Respondent

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

Pradeep Hettiarachchi, J.

Counsel : Sandeepani Wijesooriya for the Petitioner
Shezan Mahboob, SC for the State

Inquiry on : 17-07-2026

Decided on : 08-10-2026

Pradeep Hettiarachchi, J

Order

Background Facts

1. This is an Application for bail filed by the Petitioner named Arulappan Joseph Latha (hereinafter referred to as "the Petitioner") on behalf of her husband named Anuradha Jayanath Loku Hettiarachchi (hereinafter referred to as "the 1st Accused") under Section 83(2) of the Poisons, Opium and Dangerous Drugs Ordinance (hereinafter sometimes referred to as "the Ordinance").

2. The 1st Accused had been arrested on 08-07-2023 by a team of police officers attached to the Special Task Force, and he was produced to the Magistrate Court of Welisara on 09-07-2023. He has been in remand custody since then.
3. Thereafter, he had been indicted in the High Court of Negombo for possession and trafficking of 129.5 grams of heroin, which is an offence punishable under Sections 54A (1) (b) and 54 A (1) (d) of the Ordinance.
4. The trial against the 1st Accused had commenced on 25-02-2026.

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.*”
9. 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

10. The following grounds have been urged by the Petitioner as exceptional circumstances warranting the 1st Accused’s release on bail:
 - (a) The 2nd Accused has been in remand custody for more than 2 years and 8 months regarding this alleged offence;
 - (b) It will take an indefinite time period to conclude the High Court trial;

(c) There is a high probability of an acquittal;

(d) The 1st Accused is a father of three children, and his wife has no income to support the family. As a result, the 1st Accused's family is facing severe financial hardships at the moment due to the continued incarceration of the 1st Accused.

11. Accordingly, the main ground advanced by the Petitioner is the delay in prosecuting the 1st Accused and the lengthy period of time he has spent in the remand custody.

12. 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...*”

13. 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 heroine 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.”

14. 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 the courts grant bail solely on the ground of delay, without giving due consideration to the surrounding circumstances such as the previous conduct of the suspect or the accused concerned, the quantity of the dangerous drug that has been recovered, the possibility of the suspect or the 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, undermine the very purpose of the Ordinance.
15. The 1st Accused had been arrested on 08-07-2023. The Government Analyst Report was ready by 21-08-2023, nearly one month after the date of arrest. The indictment against the 1st Accused had been filed on 11-12-2024, and the same had been served on the 1st Accused on 19-02-2025. The pre-trial conference had been concluded on 20-05-2025. The trial has commenced on 25-02-2026, and the evidence of PW1 has already been concluded. It is further stated in the petition that summons have already been issued to PW4 and PW7.
16. Therefore, I am of the opinion that there is no inordinate or oppressive delay on the part of the prosecution.
17. According to the pending cases and previous convictions report dated 07-06-2026, the 1st Accused has one previous conviction for possession of 423 milligrams of Heroin. Furthermore, it is pertinent to note that he has been arrested in connection with the present case while he has three pending cases for drug-related offences. It is stated in the said report that the 1st Accused has been indicted in the High Court of Gampaha under the cases bearing Nos. 85/01/2014 and 447/2019 for drug-related offences. This is suggestive of the fact that the 1st Accused is an individual who has a tendency to re-engage in offences of similar nature, which dissuades this Court from granting bail to the 1st Accused.

18. At present, he has been indicted and stands trial for trafficking 129.5 grams of Heroin, which is a commercial quantity as opposed to a user quantity.
19. In *Abdul Quideer Aboobucker v. AG* CA/PHC/APN 42/2011 (Decided on 31-08-2011), this Court has rejected the application for bail, considering the fact that the alleged quantity of drugs recovered from the suspect is of a commercial nature.
20. Also, in the event of a conviction, the likely sentence would be either the death penalty or life imprisonment. Having regard to the grave nature of the offence charged in the present case, and the offences with which the 1st Accused is charged in the other pending cases, I am of the view that there is a significant risk of the 1st Accused absconding if enlarged on bail.
21. The Petitioner (i.e. the 1st Accused's wife), by a motion dated 02-09-2026, has informed this Court that the Petitioner has to undergo a 'Cranio-Vertebral Dissection' (a tear in the inner lining in the major artery that supplies blood to the brain) and as a result of this, she is unfit to do heavy work. The Petitioner has annexed the true copies of her medical reports in support of this and has urged that this Court should take into consideration her medical condition when determining the present application.
22. It is also stated in the petition that the 1st Accused is a father of three children and his wife has no income to support the family. As a result, the 1st Accused's family is facing severe financial hardships at the moment due to the continued incarceration of the 1st Accused. This is the normal plight of a family when its sole breadwinner is in remand and this cannot, in my view, be considered as an exceptional circumstance warranting the grant of bail to the 1st Accused.
23. In the aforesaid circumstances, especially considering the quantity of Heroin recovered and the possibility of the 1st Accused absconding due to the serious nature of the offences he is charged with, coupled with his criminal antecedents, I am of the view that the time period spent in remand custody is not an exceptional circumstance that warrants the grant of bail to the 1st Accused.

24. Accordingly, this application is dismissed.

25. The Registrar of this Court is directed to communicate this Order to the High Court of Negombo 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