

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

Officer-in-Charge,
Police Station,
Hirana.

Complainant

Court of Appeal Bail Application No:
CA/BAL/195/2026

-Vs-

Magistrates' Court of Panadura Case No:
41882/25

Gunawardana Liyanage Nuwan
(Presently in Colombo Remand Prison)

Suspect

AND NOW BETWEEN

Habaraduwa Gamage Vipuli Priyanka
No. 181/D,
Newdawa Road,
Aruggoda,
Alubomulla.

Petitioner

On behalf of
Gunawardana Liyanage Nuwan (Presently in
Colombo Remand Prison)

-Vs-

1. Officer-in-Charge,
Police Station,
Hirana.

Complainant-Respondent

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

Respondent

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

Pradeep Hettiarachchi, J.

Counsel : Dinali Silva for the Petitioner
Zacky Ismail, SC for the State

Inquiry on : 05-08-2026

Decided on : 29-09-2026

Pradeep Hettiarachchi, J

Order

Background Facts

1. This is an Application for bail filed by the Petitioner named Habaraduwa Gamage Vipuli Priyanka (hereinafter referred to as "the Petitioner") on behalf of her husband named Gunawardana Liyanage Nuwan under Section 83(2) of the Poisons, Opium and Dangerous Drugs Ordinance (hereinafter sometimes referred to as "the Ordinance").

2. The Suspect was arrested by the police officers attached to Hirana Police Station on 30-09-2025, for possession and transportation of 1000 grams of Cocaine in the motor car bearing the registration no. KJ 8031. It is stated in the B-Report that the said vehicle, at the relevant time, was parked within the premises belonging to a third party.
3. According to the B-Report filed by the police, Cocaine was found beneath the carpet of the front seat of the said vehicle.
4. Subsequently, the Suspect was produced before the Magistrate Court of Panadura on 01-10-2025.
5. As per the Government Analyst Report dated 12-11-2025, the pure quantity of Cocaine recovered was 703.7 grams.

Relevant Law

6. 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.

7. 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.
8. 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.
9. 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.”
10. 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

11. The following grounds have been urged by the Suspect as exceptional circumstances warranting his release on bail:

(a) The Suspect has been in remand for nearly six months as at the date of the petition.

- (b) According to the B-Report, the investigation is highly questionable and lacks credibility. The police had not conducted the investigation in a fair and objective manner.
 - (c) There is no material, in any event, to establish the allegation of possession of Cocaine in the Suspect's exclusive possession or under his exclusive control.
 - (d) There is no evidence whatsoever to establish the elements of trafficking within the meaning of Section 54A (3) of the Ordinance.
 - (e) The Suspect has no pending cases or any previous convictions. He has an unblemished character.
 - (f) The case for the prosecution is bound to fail, for there is no evidence of any exclusive possession.
 - (g) The Suspect is the sole breadwinner of the family. The Petitioner, her children and the Suspect's aged sick mother are facing grave hardships due to the continuous incarceration of the Suspect. The Petitioner is in a difficult position to provide even the basic necessities to her children and the Suspect's mother, who is sick.
12. Accordingly, the main ground advanced by the Petitioner is that the investigation is highly questionable and lacks credibility and that the police had not conducted the investigation in a fair and objective manner. It is also stated that there is no material, in any event, to establish the allegation of possession and transportation of cocaine by the Suspect.
13. The initial B-Report filed by the police merely states that the vehicle bearing no. KJ 8031, which is said to have been used in the transportation of Cocaine, was parked at the address bearing No. 56/4, Jayasiri Place, Galthude, Panadura at the time the raid was conducted, and upon searching the said vehicle, Cocaine was found hidden underneath the carpet near its front seat. It is further mentioned that, subsequent to the

recovery of Cocaine from the vehicle the police arrested the Suspect. However, the facts disclosed in the initial B-Report filed by the police do not disclose any link between the Suspect and the alleged recovery of illegal substances. It does not mention whether the Suspect was also in the car at the time they searched the vehicle, or at least said vehicle was driven by the Suspect, or whether the Suspect is the owner of the said vehicle.

14. Furthermore, the Petitioner's position is that the Suspect earns his living as a three-wheeler driver and he drives vehicles of others when they hire him. It is also stated in the petition that the aforesaid vehicle is a rented vehicle and the Suspect is neither the registered owner nor a regular user of that vehicle.
15. In these circumstances, it is pertinent to note that it is the duty of the police to provide adequate information in the B-Report. It should contain clear and sufficient preliminary material demonstrating how the suspect is linked to the offence. Furnishing insufficient details is a serious lapse of duty on their part.
16. Therefore, I am of the view that the aforesaid omissions and deficiencies in the B-Report raise reasonable doubts regarding the manner in which the investigation was carried out, and the alleged recovery was effected. While these matters remain to be tried at trial, these factors raise serious doubts on the credibility of the raid conducted by the police.
17. In the above circumstances, I am of the opinion that this ground alone constitutes an exceptional circumstance warranting the grant of bail to the Suspect. Therefore, I would not proceed to deal with the other grounds advanced by the Suspect.
18. 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 one million each;

- (d) The Suspect shall report to the Officer-in-Charge of the Hirana Police Station 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 Panadura.

19. The Registrar of this Court is directed to communicate this Order to the Magistrate Court of Panadura and the Officer-in-Charge of the Police Station, Hirana forthwith.

Judge of the Court of Appeal

P. Kumararatnam, J.

I agree.

Judge of the Court of Appeal