

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

Court of Appeal Bail Application:
CA/BAL/ 231/2026

High Court of Matale: **MT/HC/
02/2026**

Magistrates' Court of Matale Case
No: **B 1054/2023**

-Vs-

Idam Gedera Lakshitha Kanchana
Edirisinghe
(Presently detained in remand prison)

Accused

Now between

Idan Gedera Kamal Samantha
Edirisinghe

Owilikanda,

Mathale.

Petitioner

-Vs-

1. Officer-in-Charge,
Divisional Crime Investigation
Division,
Gampola.
2. Hon. Attorney General,
Attorney General's Department,
Colombo 12.

Respondents

Idam Gedera Lakshitha Kanchana
Edirisinghe
(Presently detained in remand prison)

Suspect- Respondent

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

Pradeep Hettiarachchi, J.

Counsel : Tharaka Kodagoda, SC for the Respondents

Inquiry on : 24-08-2026

Decided on : 16-10-2026

Pradeep Hettiarachchi, J

Order

Background Facts

1. This is an Application for bail filed by the Petitioner named Idan Gedera Kamal Samantha Edirisinghe (hereinafter referred to as "the Petitioner") on behalf of his son named Idan

Gedera Lakshitha Kanchana Ediringhe (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 B-Report annexed to the Petition, one Kasun Lakmal Bulathwaththa had been arrested by IP Kumudu Kumara attached to Gampola Crime Investigations Division on 24-08-2023, for possession and trafficking of 20 grams of Heroin. Thereafter, subsequent to a statement made by him, the police arrested the Accused in the present case at his premises. The Accused had allegedly confessed to entering and stealing heroin from Panadura Magistrate Court Complex. The Accused has allegedly confessed that the stolen Heroin was concealed near the paddy land adjoining to his land in a black colored plastic tube.
3. The Accused had led the team of investigations to the location where the substance was concealed, resulting in the discovery of 3 kilograms and 75 grams of Heroin.
4. Thereafter, the two accused had been produced before the Magistrate Court of Matale on 25-08-2025, and the learned Magistrate ordered the accused to be detained for 72 hours for the purpose of investigation.
5. On 28-08-2023, the accused were produced before the learned Magistrate, and the learned Magistrate ordered the accused to be kept in remand custody. The 2nd Accused has been in remand custody since then.

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 Petitioner as exceptional circumstances warranting the Accused's release on bail:

- (a) The Accused denies all the allegations leveled against him.
- (b) The Accused is in remand custody for 2 years and 8 months as at the date of the present application.
- (c) The High Court trial has still not commenced, and there are 13 witnesses in the indictment who are supposed to be called for the prosecution.
- (d) The Accused has no previous convictions.

12. Accordingly, the main ground advanced by the Petitioner is the fact that the Accused's denial of all the allegations made against him. It is stated in the petition that the Accused did not have any illegal substances in his possession at the time of arrest and the said quantity of Heroin was found near a paddy land adjoining the Accused's land in a black coloured plastic tube.

13. In my opinion, a mere denial of the allegations, unsupported by any material evidence, cannot be regarded as an exceptional circumstance warranting the exercise of this Court's discretion. While the Accused's involvement in the case is a matter to be decided by the trial judge, it is interesting to note that the Accused has two pending cases for stealing productions from Mirigama police and the production room of the Magistrate's Court of Panadura.

14. Another ground advanced by the Petitioner is the fact that the Accused has spent 2 years and 8 months in the remand custody as at the date of the present application, and the trial before the High Court has still not commenced, and there are 13 witnesses in the indictment

who are supposed to be called for the prosecution. Therefore, it will take a long time to conclude the case.

15. Regarding the time period spent in remand, this Court has previously, in a long line of judicial authorities have held that the period spent in remand custody alone does not suffice to grant bail to a suspect or an accused. For instance, in ***Labukola Ange Gedara Ashani Dhanushika*** CA (PHC) APN 04/2016, Dehideniya J stated that the time spent in remand custody alone cannot be considered as an exceptional circumstance warranting the grant of bail to a suspect when the suspect has been previously convicted for similar offences. He stated;

“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.”

16. 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.”

17. 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.

18. The Accused in the present case has been arrested on 24-08-2023. The Government Analyst Report was ready by 15-07-2024, and the indictment against the Accused has been filed on 15-12-2025. It is stated in the petition that the pre-trial conference was fixed for 11-05-2026. Therefore, it is anticipated that the trial against the 2nd Accused will soon commence once the pre-trial conference is concluded.
19. Furthermore, as per the Government Analyst Report dated 15-07-2024, the net quantity of Heroin detected in the present case was 1979.7 grams. Therefore, the weight of Heroin is 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 if enlarged on bail is also very high.
20. Another ground advanced by the Petitioner is that the Accused has no previous convictions against him. While no previous convictions have been reported against the Accused, this Court cannot lightly disregard the nature of the pending cases against him as disclosed in the further reports filed by the police. In the further report dated 28-08-2023, it is stated that the Accused has a case pending before the Magistrate Court of Attanagalle under the case bearing No. B 1813/23 for stealing and keeping in his possession an illegal substance while in service at the Mirigama police station.
21. Also, in the further report dated 11-09-2023, it is stated that the aforesaid Heroin recovered by the police pursuant to the raid had been stolen by the Accused from the production room of the Panadura Magistrate Court on or around 21-08-2023 and there is a case pending

against him in the Panadura Magistrate Court under the case bearing No. 10190/2023 in respect of that incident.

22. It is also pertinent to note that the Accused has previously invoked the jurisdiction of the Court under the case bearing no. CA/BAL/455/24 regarding the same matter. This Court, by the order dated 06-02-2026, has refused to grant bail to the Accused considering his involvement in similar drug-related offences despite being a police officer.
23. In the aforesaid circumstances, given the net quantity of Heroin detected and especially the fact that the Accused is a law enforcement officer who had previously been arrested for similar drug-related offences, when considered cumulatively, dissuade this Court from granting bail to him.
24. Accordingly, this application is dismissed.
25. The Registrar of this Court is directed to communicate this Order to the High Court of Matale and the Officer-in-Charge of the Divisional Crime Investigation Division of Gampola.

Judge of the Court of Appeal

P. Kumararatnam, J.

I agree.

Judge of the Court of Appeal