

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.

Mallikage Chandralatha Perera
62, Weliwita
Kaduwela

Petitioner

Court of Appeal Bail Application No:
CA/BAL/281/2025

-Vs-

Case No. MC Colombo: **B 37622/08/25**

1. Hon. Attorney General
Attorney General's Department
Colombo 12.
2. Officer- in-Charge
Colombo Crime Division
Dematagoda

Respondents

3. Kokmawatha Liyanage Don Amila Kumara
(Currently in remand prison)

Suspect-Respondent

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

Counsel : Ramith Dunusinghe for the Petitioner
Shehan Mahboob, SC for the State

Inquiry on : 06-07-2026

Decided on : 17-09-2026

Pradeep Hettiarachchi, J

Order

Background Facts

1. This is an Application for bail filed by the Petitioner named Mallikage Chandralatha Perera (hereinafter referred to as “the Petitioner”) on behalf of her son named Kokmawatha Liyanage Don Amila Kumara (hereinafter referred to as “the Suspect”) 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 Suspect had been arrested on 28-01-2025 by a team of police officers attached to the Organized Crime Investigation Unit of Colombo (hereinafter referred to as “CCD”) for the trafficking and possession of 2 Kg and 218 grams of Heroin, an offence punishable under Section 54A(1) (d) and 54A(1) (b) of the Ordinance.
3. Thereafter, the Suspect was produced before the Magistrate's Court of Colombo on 29-01-2025, and the learned Magistrate ordered the Suspect to be remanded. The Suspect has been in remand custody since then.

Relevant Law

4. 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.

5. 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.
6. 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.
7. 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

8. The following grounds have been urged by the Petitioner as exceptional circumstances warranting consideration for bail:
 - (a) The drugs were not found in the possession of the Suspect, and that he was merely arrested while he was painting his house. He was then taken into custody by the CCD for investigations. After a while, the CCD officers brought the Suspect back to his house, at which point the Suspect saw two bags in a bucket being dug out of a hole in front of his house. Therefore, the Petitioner's position is that the said drugs were introduced to the Suspect by the CCD.
 - (b) The Suspect has been in remand prison since 28-01-2025 for nearly three months.
 - (c) The Suspect was engaged in buying and selling of vehicles, and at the time of his arrest, all the vehicles and the money in the Suspect's possession were taken into custody by the CCD officers.
 - (d) The Suspect is 41 years old, a father of two children, and that his wife is separated from him and he is the one who provides maintenance for both children.
9. Accordingly, the Petitioner disputes the fact that Heroin was recovered from the possession of the Suspect. In fact, the Petitioner's position is that the heroin was introduced to the Suspect. However, I am of the opinion that, unless there is a glaring discrepancy in the Respondents' version of events regarding the recovery of Heroin from the possession of the Suspect, this is not the appropriate stage to consider whether Heroin was introduced to the Suspect or not. It is, in fact, a trial issue to be determined by the Trial Judge after evaluating all the evidence placed before him.
10. The second ground advanced by the Petitioner is that the Suspect has been in remand prison since 28-01-2025 and that the prolonged incarceration of the Suspect and the delay in prosecuting the Suspect are exceptional circumstances warranting the grant of bail to the Suspect.

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 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.”

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 society at large, then it would, in my view, defeat the very purpose of the Ordinance.
14. Furthermore, as per the Government Analyst Report dated 30-12-2025, the pure quantity of Heroin detected in the present case was 260.9 grams. Therefore, the weight of the Heroin

is far beyond what could be intended for personal consumption and is undoubtedly meant for commercial purposes. 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.

15. 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 Suspect absconding if enlarged on bail is also very high.
16. Another ground advanced by the Petitioner is that the Suspect is a father of two children and his wife is separated from him, and the Suspect is the one who provides maintenance for both children. It was further submitted that, due to his continued incarceration, his children are facing severe hardships. This cannot, in my view, be considered as an exceptional circumstance warranting the Suspect's release on bail. In the majority of cases, this is often the plight of the rest of the family when the sole breadwinner of the family is on remand.
17. Therefore, I am of the view that the grounds adduced by the Petitioner do not constitute exceptional circumstances warranting the grant of bail to the Suspect. This Application is accordingly dismissed.
18. The Registrar of this Court is directed to communicate this bail Order to the Magistrate's Court of Colombo, and the Officer-in-Charge of the Colombo Crime Division, Dematagoda forthwith.

Judge of the Court of Appeal

P. Kumararatnam, J.

I agree.

Judge of the Court of Appeal