

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 as amended by Act No. 41 of 2022.

Officer-in-Charge,

Police Station,

Kuliyapitiya.

Complainant

-Vs-

Court of Appeal Case No:

CA/BAL/ 0361/26

Magistrate Court Case No: **MC**

Kuliyapitiya B 78746/25

Thudugalage Pasindu Malith Thudugalage

Suspect

AND NOW BETWEEN

A. M. Gayani Adhikari

Pahala Bohingamuwa,

Kuliyapitiya.

Petitioner

(Appearing on behalf of the Suspect, who is presently in remand custody)

-Vs-

1. Officer-in-Charge,
Police Station,
Kuliyapitiya.
2. Hon. Attorney General,
Attorney General's Department,
Colombo 12.
3. The Government Analyst,
Government Analyst Department,
No. 31, Isuru Mawatha,
Battaramulla.

Respondents

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

Counsel : Tenny Fernando with Pasindu Gamage for the Petitioner
M. A. M Lafeer, SC for the Respondents

Inquiry on : 23-09-2026

Decided on : 19-10-2026

Pradeep Hettiarachchi, J

Order

Background Facts

1. This is an application for bail filed by the Petitioner named A.M. Gayani Adhikari (hereinafter referred to as “the Petitioner”) on behalf of her husband named Thudugalage Pasindu Malith Thudugalage (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. The Suspect was arrested on 28-10-2025 by a team of police officers led by the Chief Inspector Kamal Rathnayake pursuant to some information received by him. Upon searching the Suspect, the 1st Respondent had found a parcel concealed in the Suspect’s undergarments, and further examination of the said parcel had revealed that it contained Heroin.
3. The gross quantity of Heroin so detected was 25.300 grams.
4. Subsequent to the arrest, the Suspect was produced before the Magistrate Court of Kuliyaipitiya on 29-10-2025 and, upon an application made by the 1st Respondent, the learned Magistrate ordered the Suspect to be detained till 04-11-2025.
5. On 04-11-2025, the Suspect was produced before the learned Magistrate, and the learned Magistrate ordered the Suspect to be remanded. The Suspect 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 Suspect’s release on bail:

- (a) The detention rests upon a fabricated document; *fraus omnia vitiate*
- (b) Three irreconcilable versions destroy the prosecution’s credibility at the threshold.
- (c) The unviewed objective evidence: failure to consider legally admissible CCTV and mobile recordings.
- (d) Unconscionable and continuing pre-trial delay – violation of Article 13 (3) of the Constitution.
- (e) The State’s default cannot prejudice the citizen: the absence of the Government Analyst’s Report.
- (f) The prosecution has not come to this Court in clean hands. Therefore, they have forfeited their right to oppose bail.
- (g) The manifest fragility of the prosecution case and the high probability of an acquittal.

12. Accordingly, the main ground advanced by the Petitioner is that the detention rests upon a fabricated instrument, which is the B-Report tendered by the police. It is stated in the petition that the position taken up by the Chief Investigation Officer in his Affidavit filed on 01-12-2025 wholly contradicts both the B-Report and the explanation tendered to the Magistrate because in the said Affidavit it is stated that “while they were on

patrol, an individual was searched on suspicion after revealing the identity of the police officer, and detected a parcel concealed in his undergarments” – an account of a chance-suspicion led patrol-trip that is fundamentally at odds with the intelligence-led raid described in the B-Report.

13. In this regard, it is pertinent to note that, in part 2 of the said Affidavit tendered by IP Kamal Ratnayake, it is stated that the raid was led pursuant to some information received by him while on patrol. Therefore, I am of the opinion that the affidavit tendered by the Chief Investigation Officer does not totally contradict the B-Report’s version of intelligence-led information.
14. Another discrepancy that was brought to the attention of this Court was that, in the course of his response in open court on 31-10-2025, the 1st Respondent made a critical submission that “he was not amongst the party that arrested the Suspect at the place of arrest” but was positioned elsewhere during the operation and that the Suspect was arrested by the other officers led by SI. Ekanayake and thereafter produced before him. It is further stated that this admission, in substance, is a confession that the B-Report, which expressly mentions him as the officer who personally detected the parcel, is false in material particulars.
15. It is important to note that neither in the B-Report nor in his Affidavit dated 01-12-2025 has the 1st Respondent mentioned that he was positioned elsewhere and that the Suspect was arrested by other police officers led by SI Ekanayake and thereafter produced before him. Instead, it was mentioned in the B-Report and the Affidavit that he personally examined the Suspect and recovered Heroin from his possession.
16. This discrepancy regarding the arrest and the recovery of illegal substances from the possession of the Suspect, in my opinion, is a glaring discrepancy that raises doubts on the genuineness of the raid, which persuades this Court to take into consideration.
17. The other main ground advanced by the Petitioner is the delay in issuing the Government Analyst Report.

18. The Suspect had been arrested on 28-10-2025. The productions have been referred to the Government Analyst by the Magistrate Court of Kuliyaipitiya on 01-12-2025, and according to receipt memorandum issued by the Government Analyst Department, the productions have been received on 19-12-2025. Furthermore, this Court, by its order dated 13-07-2026, directed the Registrar of this Court to issue notice to the Government Analyst to submit the Report as quickly as possible. However, the Deputy Government Analyst, Mr. K.A.D.C. Kodithuwakku, by the letter dated 31-07-2026, has informed this Court that narcotic substances sent under the present case have not yet been assigned for analysis due to heavy workload and the large number of pending cases that are being handled by the Narcotics Laboratory of the Government Analyst Department. The Government Analyst Report has not been made available to this Court up to date.
19. Therefore, there has been a considerable delay in the issuance of the Government Analyst's Report, which has significantly impeded the process of instituting proceedings against the Suspect. In my view, a citizen's liberty should not be held hostage to administrative failures on the part of the State, particularly where the delay is not attributable to the Suspect.
20. It is also pertinent to note that, as per the previous convictions report dated 30-10-2025, the Suspect has been arrested previously by the police on five occasions for possession of small quantities of Heroin.
21. In view of the foregoing, I am of the opinion that, while this Court cannot simply disregard the quantities of illegal substances recovered and the previous conduct of the Suspect, the delay in issuing the Government Analyst Report coupled with the discrepancies in the B-Report and later versions of the prosecution story is an exceptional circumstance that warrants the consideration of this Court.
22. Based on the above analysis, I am inclined to grant bail to the Suspect subject to the following conditions;

- (a) Rupees five 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, Police Station, Kuliyaipitiya 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 Kuliyaipitiya.

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

Judge of the Court of Appeal

P. Kumararatnam, J.

I agree.

Judge of the Court of Appeal