

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.

Officer-in-Charge,
Police Station,
Biyagama.

Complainant

-Vs-

Court of Appeal Bail Application No.:
CA/BAL/0434/2025

Magistrates' Court of Mahara Case No.:
B 1817/2024

Supun Isanga Weerathunga,
No. 54/07,
Bovila Road,
Ihala Bomiriya,
Kaduwela.
(presently kept in Remand Custody)

Suspect

AND NOW

Weerathunga Mudiyanseelage Padmasiri
Bandara
No. 54/07,
Bovila Road,
Ihala Bomiriya,
Kaduwela.

Petitioner

-Vs-

Officer-in-Charge,
Police Station,
Biyagama.

Complainant-Respondent

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

2nd Respondent

Supun Isanga Weerathunga
No. 54/07,
Bovila Road,
Ihala Bomiriya,
Kaduwela.
(presently kept in Remand Custody)

Suspect

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

Pradeep Hettiarachchi, J.

Counsel : Nuwan Jayawardane with Sathyajith Munasinghe for the
Petitioner
Malik Azeez, SC for the Respondents

Inquiry on : 04-08-2026

Decided on : 08-10-2026

Pradeep Hettiarachchi, J

Order

1. This is an application for bail filed by the Petitioner named Weerathunga Mudiyanseelage Padmasiri Bandara (hereinafter referred to as “the Petitioner”) on behalf of his son named Supun Isanga Weerathunga (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 26.04.2024 by a team of police officers attached to Biyagama Police Station, led by Sub Inspector Gamage, who was the Officer-in-Charge of the Crimes Investigations Unit of Biyagama Police Station.
3. According to the Petition, the said police officers initially arrested a person named Lahiru Sampath Priyankara for being in possession of a gross quantity of 2310 milligrams of Methamphetamine.
4. Upon questioning the said person, the police officers arrested another person named Wicramasinghe Arachchilage Suranga Priyadarshana based on information disclosed by Lahiru Sampath Priyankara.
5. Thereafter, upon further questioning and investigation, the police officer arrested the above-named Suspect for allegedly being in possession of a gross quantity of 15 Kilograms and 81 grams of Methamphetamine, a gross quantity of 941 grams of Heroin, and 14 Kilograms and 527 grams of Hash.
6. According to the Petition, the alleged substances were found by the police officers from the Suspect, who had concealed a quantity of Methamphetamine in his hip area. The said police officers also recovered quantities of Methamphetamine and Heroin from a Suzuki Spacia motor car bearing number SG CBC 1421. Thereafter, a further quantity of Methamphetamine was recovered from the almirah of the Suspect’s residence.
7. Accordingly, the Suspect was produced before the Magistrate’s Court of Mahara on 27.04.2024, whereupon an order was made authorizing his detention in police custody for the purpose of further interrogations.

8. Thereafter, the Suspect was once again produced before the learned Magistrate of Mahara on 03.05.2024, and the learned Magistrate ordered the Suspect to be remanded. Accordingly, the Suspect has been in remand custody since then.

Relevant Law

9. 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.

10. 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.

11. 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.

12. 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.”

13. In ***W.A.Deepa Nandani v 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

14. The following grounds have been urged by the Petitioner as exceptional circumstances warranting consideration for bail;

- a. The Complainant arrested the Suspect without any justifiable reason, and the said arrest was allegedly effected with the sole intention of keeping the Suspect in remand custody for an unduly prolonged period.
- b. The Suspect denies all allegations leveled against him and maintains that no illegal substance was recovered from his possession.
- c. The Suspect has been in remand custody since 26.04.2024, for a period exceeding 17 months.

- d. The Counsel appeared on behalf of the Suspect, made several applications seeking the production and examination of CCTV records and telephone records. However, the Complainant has failed to conduct a proper investigation.
 - e. The family members of the Suspect are undergoing many hardships as a result of his prolonged incarceration in remand custody.
 - f. The Suspect does not have any previous convictions against him.
15. Accordingly, the main ground advanced by the Petitioner is the delay in prosecuting him.
16. 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...*”
17. 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.”

18. 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.”

19. In the same case, while focusing the attention on the nature and gravity of the offences falling under the Ordinance, Eric Basnayake J. further stated as follows:

“Heroin has become a menace in our society. It is not easily detectable. Due to the fact alone, the tendency to commit this kind of crime repeatedly has become feasible. The repetitive factor prevalent in this sort of crime and the difficulty of detection are significantly strong reasons for refusing bail in this type of cases.”

20. 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.

21. According to the Government Analyst Report dated 10.04.2025, 12.7404 kilograms of Methamphetamine and 6.66 grams of Heroin, and Cannabis Sativa L. identified in the brown coloured solid substance had been detected from the Suspect. Needless to say,

these are commercial quantities used for trafficking purposes. Therefore, the weight of the illegal substances recovered from the Suspect is far beyond what could be intended for personal consumption and is undoubtedly meant for commercial purposes.

22. 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.
23. 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.
24. In the aforesaid circumstances, especially considering the quantity of Heroin and Methamphetamine recovered from the possession of the Suspect and the possibility of absconding due to the serious nature of the offences, I am of the view that the delay alone is not an exceptional circumstance that warrants the grant of bail to the Suspect.
25. Further, the Petitioner contended that there is no physical evidence linking the Suspect to narcotic smugglers or drug peddlers. It is also stated that, despite having access to modern investigative tools, officers have failed to produce any credible technological evidence (such as call records, CCTV footage) linking the Suspect to the substance in question and, therefore, this lack of evidence undermines the prosecution's case and raises doubts on the thoroughness and the objectivity of the investigation.
26. However, I am of the opinion that the aforesaid ground advanced by the Petitioner does not constitute exceptional circumstances that warrant the grant of bail to the Suspect, especially considering the amount of Methamphetamine and Heroin said to have been recovered from the possession of the Suspect.
27. Another ground advanced by the Petitioner is the financial hardships faced by the family of the Suspect and the adverse impact on them due to his lengthy incarceration. This cannot, in my view, be considered as an exceptional circumstance warranting the Suspect's release on bail.

28. In these circumstances, I am of the view that the grounds adduced by the Suspect do not constitute exceptional circumstances warranting the grant of bail to the Suspect. I am not inclined to grant bail to the Suspect at this stage. Accordingly, this application is dismissed.

29. The Registrar of this Court is directed to communicate this Order to the Magistrate's Court of Mahara and the Officer-in-Charge, Police Station, Biyagama forthwith.

Judge of the Court of Appeal

P. Kumararatnam, J.,

I agree

Judge of the Court of Appeal