

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.

Court of Appeal Bail Application No:
CA/BAL/445/2025

MC (Welisara): **B/ 732/2025**

Officer-in-Charge,
Police Station,
Kandana.

Complainant

-Vs-

Sivapalan Divakaran Dinesh Kumara *alias* Suraj
No. 102/A, Halgahakumbura,
Baseline Road, Borella,
Colombo 08.

Suspect

AND NOW BETWEEN

Imasha Supuni Liyanage
No. 60/09/24, Sahaspura,
Baseline Road,
Borella,
Colombo 08.

Petitioner

-Vs-

1. Officer-in-Charge,
Police Station,
Kandana.
2. Hon. Attorney General,
Attorney General's Department,
Colombo 12.

Respondents

Sivapalan Divakaran Dinesh Kumara *alias* Suraj
No. 102/A, Halgahakumbura,
Baseline Road, Borella,
Colombo 08.
(Currently languishing in Mahara Remand
Prison)

Suspect

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

Pradeep Hettiarachchi, J.

Counsel : Mark Anton for the Petitioner
Zacky Ismail, SC for the Respondents

Inquiry on : 15-07-2026

Decided on : 23-09-2026

Pradeep Hettiarachchi, J

Order

Background Facts

1. This is an Application for bail filed by the Petitioner named Imasha Supuni Liyanage (hereinafter referred to as “the Petitioner”) on behalf of her husband named Sivapalan Divakaran Dinesh Kumara *alias* Suraj (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 had been arrested on 11-02-2025 by the police officers attached to the Kandana Police Station for possession and trafficking of 1008 grams of Methamphetamine, an offence punishable under Section 54A (d) and 54A (b) of the Ordinance.
3. According to the B-Report dated 12-02-2025, police sergeant Ranjith, who was attached to the Southern Criminal Division of the Western Province, has received information from a private informant regarding the distribution of narcotic drugs in Kandana, Ragama, Modera and Borella. Acting upon the said information, a team of police officers proceeded to pursue the motor car bearing the registration no. KX-1287.
4. Thereafter, the said vehicle was intercepted and stopped by the police near the Buddhist Centre on the Kandana Railway Station Road. The police had then searched the Suspect, who alighted from the vehicle, at which point a parcel which he had been concealing between his legs fell to the ground. Upon further examination, the police found in the said parcel a packet suspected to be containing Methamphetamine.
5. Thereafter, the police officers proceeded to the Narcotic Bureau for the purpose of weighing the substance found in the parcel. Upon opening the said parcel, five packets suspected to be containing Methamphetamine were found. The weighing of the said packets was alleged to have been done in front of the Suspect, and the gross quantity of Methamphetamine recovered from the Suspect was 1008 grams. However, according to the Government Analyst Report dated 31-12-2025, the pure quantity of Methamphetamine detected was 240.4 grams.
6. Furthermore, subsequent to the weighing and identification of case productions, the Suspect was brought to the Kandana Police Station.

7. Thereafter, the Suspect was produced before the Magistrate Court of Welisara on 12-02-2025, and the learned Magistrate ordered the Suspect to be detained at the Kandana Police Station until 17-02-2025.
8. On 17-02-2025, the Suspect was again produced before the learned Magistrate, and the learned Magistrate ordered the Suspect to be remanded. The Suspect has been in remand custody since then.
9. The position of the Petitioner is that the recovery of Methamphetamine from the possession of the Suspect is a fabricated story and instead Methamphetamine was introduced to the Suspect by the police officers by force.

Relevant Law

10. 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.

11. 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.
12. 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.
13. 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.*”
14. 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

15. The following grounds have been urged by the Petitioner as exceptional circumstances warranting the consideration for bail:
- (a) The B-Report prepared by the police contains several material deficiencies. It does not disclose the exact time at which the arrest had taken place, nor does it disclose the vehicle numbers of the police officers who participated in the raid or from where the Suspect was followed prior to the interception.

- (b) The Suspect is a father of a three-year-old daughter. His three-year-old daughter is very much attached to him, and due to his continuous incarceration, her mental health and well-being are being severely affected.
- (c) The Suspect was the sole breadwinner of the family, and his continuous incarceration has caused grave hardships to the Petitioner's family.
- (d) The Suspect has been remanded in custody for nearly one year as at the date of the petition.
- (e) An indictment has not been served as at the date of this petition, notwithstanding the lapse of nearly one year from the date of the Suspect's arrest. Furthermore, additional time will be necessary to initiate and conclude trial proceedings.
- (f) There are no pending cases or previous convictions against the Suspect in relation to any of the offences punishable under and in terms of the Poisons, Opium and Dangerous Drugs Ordinance as amended by the Act No. 41 of 2022.

16. Accordingly, the main ground advanced by the Petitioner is the material deficiencies in the initial B-Report filed by the police. It does not disclose the exact time at which the arrest had taken place, nor does it disclose the vehicle numbers of the police officers who participated in the raid or from where the Suspect was followed prior to the interception. It is also stated in the petition that, although the Suspect was arrested at Kandana, the packet containing the narcotic substance was not opened at the time of arrest but only upon arrival at the Police Narcotic Bureau. The journey from the place of arrest to the Narcotic Bureau would take nearly an hour, passing several police stations, thereby giving rise to a material doubt or irregularity as to the time at which the packet containing the alleged narcotic substance was opened.

17. I am of the opinion that factors such as non-disclosure of the time of arrest, the vehicle numbers of the police officers who participated in the raid and the place from where the Suspect was followed prior to the interception create a serious doubt on the genuineness of the raid.

18. Another ground urged by the Petitioner is the delay in prosecuting the Suspect. As stated in the petition, the Suspect has been languishing in the remand custody for nearly one year as at the date of the petition.
19. Regarding the delay in prosecuting the Suspect, 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...*”
20. 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.”

21. 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.

22. Nevertheless, at the same time this Court is also mindful of the fact that the stringent provisions of a statute should not be used as a tool to deprive a person's liberty, thereby forcing them to live in trepidation without any knowledge of the progress of the investigation or the possible outcome of their case.
23. Our Courts have recognized the prejudice caused to a suspect by lengthy and inordinate delays in prosecuting him. To elaborate further, the right to a speedy trial is not only aimed at expediting the administration of justice but also at preventing the oppression of a citizen by keeping a criminal prosecution hanging over them for an indefinite period.
24. Therefore, it is incumbent upon the relevant authorities to act with due diligence to avoid inordinate delays in prosecuting offenders. If the prosecution fails to act with due diligence and cannot explain the delay on their part, it would, in my opinion, constitute an exceptional circumstance as required by section 83 of the Poisons, Opium and Dangerous Drugs Ordinance.
25. The Suspect in the present case had been arrested on 11-02-2025. The Government Analyst Report was ready by 31-12-2025. The learned State Counsel informed this Court that they have not yet received the IB extracts. Furthermore, there is no satisfactory reason forthcoming from the Respondents that explains the reason as to why the investigation relating to the Suspect is not over yet, which amounts to an oppressive and /or inordinate delay.
26. In these circumstances, it cannot be reasonably anticipated as to when the indictment against the Suspect will be served on him.
27. Furthermore, it is also pertinent to note that the Suspect has no previous convictions and there are no other pending cases against him, which, if had, would have gone against this Court's decision to grant bail.

28. Therefore, while this Court cannot simply disregard the commercial quantity of Methamphetamine that had been recovered from the Suspect, the delay of more than one and half years, coupled with the absence of any criminal antecedents, constitutes an exceptional circumstance that warrants the grant of bail to the Suspect.

29. 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, Police Station, Kandana 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 Welisara.

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

Judge of the Court of Appeal

P. Kumararatnam, J.

I agree.

Judge of the Court of Appeal

