

IN THE COURT OF APPEAL OF THE DEMOCRATIC SOCIALIST
REPUBLIC OF SRI LANKA

In the matter of an Application for bail in
terms of Section 83 (2) of the Poisons,
Opium and Dangerous Drugs Act, as
amended by Act No. 41 of 2022.

Officer-in-Charge,
Police Narcotic Bureau.
Colombo 01.

Complainant

-Vs-

Court of Appeal Bail Application:
CA/BAL/ 0501/2025

Magistrates' Court of Maligakanda
Case No.: **B 51554/2023**

Suwanda Hannadige Sameer Nishantha
No. 141/14, Dewanampiyathissa
Mawatha, Colombo 10.

(Presently kept in remand custody)

Suspect

AND NOW BETWEEN

Uludeen Samsun Nisha
No. 509/1,
Yapa Gunasekara Mawatha,
Gothatuwa.

Petitioner

-Vs-

1. Officer-in-Charge,
Police Narcotic Bureau,
Colombo 01.

Complainant-Respondent

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

Respondent

3. Suwanda Hannadige Sameer
Nishantha
No. 141/14, Dewanampiyathissa
Mawatha, Colombo 10.
(Presently kept in remand custody)

Suspect-Respondent

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

Pradeep Hettiarachchi, J.

Counsel : Amila Palliyage with Sandeepani Wijesooriya for the Petitioner
Malik Azeez, SC for the State

Inquiry on : 04-08-2026

Decided on : 08-10-2026

Pradeep Hettiarachchi, J

Order

Background Facts

1. This is an Application for bail filed by the Petitioner named Uludeen Samsun Nisha (hereinafter referred to as “the Petitioner”) on behalf of her son named Suwanda Hannadige Sameer Nishantha (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 Complainant Respondent (hereinafter referred to as “the Complainant”) has reported facts relating to the arrest of two Suspects pursuant to a raid carried out by the Complainant, by way of B-Report dated 08-12-2023. The Suspect was named as the 3rd Suspect in the Magistrate’s Court of Maligakanda Case No. B/51554/23, on the basis that the Suspect was the cohabiting partner of the 2nd Suspect and that there was evidence to indicate that the Suspect, who was already in remand custody under the Magistrate’s Court of Mount Lavinia case bearing no. B/17116/2023, had been engaged in the alleged drug trafficking business while in remand custody.
3. It is further stated in the initial B-Report that the police proceeded to Apartment No. 3, 8th Floor, No. 3, Kensington Gardens, Bambalapitiya, Colombo 04, where the 2nd Suspect was residing. Upon searching the said apartment, the police found a vehicle key. The 2nd Suspect allegedly informed the police that the said key belonged to vehicle bearing No. WP CBA 0171, which was parked in the garage of the said apartment complex. Upon examining the said vehicle, the police allegedly discovered illegal substances concealed therein. It is further stated in the B-Report that the said vehicle was registered in the name of a business venture operated by the 2nd Suspect and one Mohomed Hayan Mohomed Isam.

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.*”
8. 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

9. The following grounds have been urged by the Petitioner as exceptional circumstances warranting the Suspect’s release on bail:
 - (a) The Suspect has been in remand custody for more than 1 year and 11 months;
 - (b) The Complainant has failed to provide any evidence that the Suspect had exclusive possession of any illegal substances;
 - (c) The Complainant has failed to provide any evidence to link the Suspect, even for aiding and abetting, as the alleged illegal substances were recovered from a vehicle parked in a garage;
 - (d) The Complainant made him the 3rd Suspect in this matter to keep him unjustly in remand custody for a long period of time;
 - (e) The Suspect denies all the allegations leveled against him as no illegal substance was recovered from his possession;
 - (f) The Suspect is the sole breadwinner of the family, and now his family has to undergo financial difficulties;
 - (g) The Suspect lived with his wife of cohabitation and his two children, a daughter of 7 years and a son of 2 years. Due to the long-term incarceration of the Suspect, the family is suffering from mental agony.
10. Accordingly, the main ground advanced by the Petitioner is the delay in prosecuting the Suspect and the lengthy period of time he has spent in the remand custody.

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) 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.

14. The Suspect was named in the further B-Report dated 13-12-2023. The Government Analyst Report was ready by 20-09-2024. The learned State Counsel, by way of a motion dated 02-09-2026, has informed this Court that the indictment against the Suspect has already been dispatched under the reference no. CR3/30/2025.
15. Therefore, I am of the opinion that there is no inordinate or oppressive delay in indicting the Suspect.
16. Another main ground advanced by the Petitioner is that the Complainant has failed to provide any evidence that the Suspect had exclusive possession of any illegal substances and that the alleged illegal substances were found from a vehicle parked in a garage of the apartment complex where the 2nd Suspect is residing at. In my opinion, whether the Complainant has established any nexus between the Suspect and the recovery of the illegal substances is a trial issue to be determined by the trial judge upon carefully evaluating all the evidence led at the trial. Unless there is a glaring discrepancy or an inherent improbability in the prosecution's version of events, we are not inclined to consider such factual matters at this stage.
17. Furthermore, according to the pending cases and previous convictions report dated 03-02-2026, the Suspect has four previous convictions, including for possession of 5 grams and 650 milligrams of Heroin. It is pertinent to note that the Suspect has been indicted before the High Court of Colombo for possession of 5 grams and 650 milligrams of Heroin under the case bearing No. 1667/2020. On 08-06-2022, he had been found guilty of the first and second counts. In respect of each count, the learned trial judge imposed a fine of Rs. 100,000/= and a sentence of one year's rigorous imprisonment, suspended for a period of ten years. Therefore, it is clear that the Suspect has been arrested in connection with the present case while serving a suspended term. Also, according to the said report, the Suspect has two cases relating to offences of similar nature pending before the High Court of Colombo. This is suggestive of the fact that the 1st Accused is an individual who has a tendency to re-engage in offences of similar nature, which dissuades this Court from granting bail to the 1st Accused.
18. At present, he has been indicted for trafficking 167.7 grams of Methamphetamine and 14.2 grams of Cocaine, which are commercial quantities as opposed to user quantities.

19. 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.
20. It is also stated in the petition that the Suspect lived with his wife of cohabitation and his two children, a daughter of 7 years and a son of 2 years, and due to the long-term incarceration of the Suspect, the family is suffering from mental agony. While this is an unfortunate situation, this cannot, in my view, be considered as an exceptional circumstance as this is the normal plight of the family when a family member is in remand custody.
21. In the aforesaid circumstances, I am of the view that the time period spent in remand custody is not an exceptional circumstance that warrants the grant of bail to the Suspect.
22. Accordingly, this application is dismissed.
23. The Registrar of this Court is directed to communicate this Order to the Magistrate's Court of Maligakanda and the Officer-in-Charge of the Police Narcotic Bureau, Colombo 01 forthwith.

Judge of the Court of Appeal

P. Kumararatnam, J.

I agree.

Judge of the Court of Appeal