

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 the Acts No. 13 of 1984 and No. 41 of 2022.

Democratic Socialist Republic of Sri Lanka

Complainant

Court of Appeal Bail Application

No: **CA/BAL/503/25**

Colombo High Court Case No:

HC/ 5310/2025

-Vs-

Dediwalage Sajeewani Rupika Fernando

Accused

AND NOW BETWEEN

Regina Jayanthi Kalansuriya

17/4, G.P. Perera Mawatha,

Kolonnawa.

Petitioner

-Vs-

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

Complainant-Respondent

2. Dediwalage Sajeewani Rupika Fernando

Accused-Respondent

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

Counsel : Sandeepani Wijesooriya for the Petitioner
Wishwa Wijesuriya, SC for the Respondents

Inquiry on : 11-03-2026

Decided on : 04-06-2026

Pradeep Hettiarachchi, J

Order

Background Facts

1. This is an Application for bail filed by the Petitioner named Regina Jayanthi Kalansuriya (hereinafter referred to as “the Petitioner”) on behalf of her daughter named Dediwalage Sajeewani Rupika Fernando (hereinafter referred to as “the Accused”) under Section 83(2) of the Poisons, Opium and Dangerous Drugs Ordinance (hereinafter sometimes referred to as “the Ordinance”).
2. According to the B-Report annexed to the Petition, the Accused had been arrested on 13-06-2023, by a team of police officers attached to the Special Task Force Unit of Rajagiriya for keeping in her possession 252 grams of Heroin, an offence punishable under Sections 54A 1 (b) and 54A 1 (d) of the Ordinance.
3. Thereafter, the Accused was produced before the Magistrate's Court of Colombo on 14-06-2023, and the Accused is in remand custody since then.
4. According to the Government Analyst Report dated 26-03-2024, the pure quantity of Heroin recovered from the Accused was 56.4 grams.

5. The Accused had been indicted on 25-02-2025 for an offence punishable under Section 54A 1 (b) and 54A 1 (d) of the Ordinance and also for committing an offence punishable under Section 3(1) of the Prevention of Money Laundering Act No. 05 of 2006 as amended by Act No. 40 of 2011.

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.*”

Exceptional Circumstances

10. The Petitioner has urged the following grounds as exceptional circumstances warranting consideration for bail:

- (a) The High Court trial has not commenced even after two and a half years from the date of arrest.
- (b) The Accused has been in remand custody for more than two and a half years. Hence, there is an excessive and oppressive delay.
- (c) The Accused has two children, and this situation has left the children without parental care or support, causing severe emotional and practical hardship.
- (d) The Accused’s husband was hospitalized on 20-11-2025 due to Mid-brain Intracerebral Hemorrhage (ICH), which is a type of stroke caused by bleeding directly into the brain tissue.

11. Accordingly, the main ground advanced by the Petitioner is the delay in prosecuting the Accused.

12. 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... ”.

13. 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.”

14. 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 the society at large, then it would, in my view, defeat the very purpose of the Ordinance.
15. However, at the same time the Court should be 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.

16. Our Courts have recognized the prejudice caused to an accused 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.
17. 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.
18. The Accused in the present case had been arrested on 13-06-2023. She had been served with the Indictment on 23-03-2025. The case was fixed for trial on 23-01-2026. The Petitioner's main allegation is that the trial against the Accused has not yet commenced even after the lapse of two and a half years since the date of arrest.
19. Even if it is mentioned in the Petition that the Accused has one previous conviction and one pending case, neither the Petitioner nor the Respondent has disclosed further information regarding the same. As such, this Court is unable to take those matters into account when determining the present Application.
20. It is also pertinent to note that another Bail Application bearing no. CA/BAL/535/2024 had been preferred to this Court in respect of the Accused. However, this Court by its Order dated 14-12-2024 has refused to grant bail to the Accused due to absence of the exceptional circumstances warranting the grant of bail. The Court noted that since the IB Extracts have been forwarded to the Attorney General's Department within time and the indictment has already been dispatched, there is no delay in prosecuting the Accused.
21. However, the present Petition discloses certain circumstances that were not before the Court at the time of the previous application. It is averred in the Petition that the Accused's husband suffered a stroke and was hospitalized on 20-11-2025. It is further stated that the Accused is the mother of two children and that due to the poor health condition of her husband, the children have been left without adequate parental care and support. We also

notice that, as per the birth certificates marked X3, one of the Accused's children is still a minor who is about 16 years old.

22. In these circumstances, this Court is of the view that the prolonged delay in prosecuting the Accused, when considered together with the serious health condition of the Accused's husband and the welfare concerns relating to her children who are presently without adequate care and support, constitute an exceptional circumstance warranting the grant of bail to the Accused.

23. Based on the above analysis, I am inclined to grant bail to the Accused 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 Accused shall report to the Officer-in-Charge, Police Narcotic Bureau;
- (e) Colombo 01 on the 1st Sunday of every month between 9.00 am and 10.00 am;
and,
- (f) The Accused shall surrender her passport, if any, to the High Court of Colombo.

24. This Application is accordingly allowed, and the Registrar of this Court is directed to transmit a copy of this Order to the Registrar of the High Court of Colombo and to 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