

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/521/2025

Magistrates' Court of Mahara Case No.:
B 1636/24

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

Complainant

-Vs-

Abeykoon Mayadunnage Harsha Madushanka
No. 1101, Kendaliyadde Road,
Galwala Waththta,
Ragama.

Suspect

AND NOW BETWEEN

Abeykoon Mayadunnage Harsha Madushanka
No. 1101, Kendaliyadde Road,
Galwala Waththta,
Ragama.
(Currently at remand prison)

Suspect- Petitioner

-Vs-

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

Complainant-Respondent

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

Respondent

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

Pradeep Hettiarachchi, J.

Counsel : Punarji D. Karunasekera for the Petitioner
Wishwa Wijesuriya, SC for the State

Inquiry on : 16-07-2026

Decided on : 24-09-2026

Pradeep Hettiarachchi, J

Order

Background Facts

1. This is an Application for bail filed by the Suspect-Petitioner named Abeykoon Mayadunnage Harsha Madushanka (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 initial B-Report dated 14-04-2024, the Suspect had been arrested on 13-04-2024 pursuant to a raid conducted by a team of police officers led by SI Kahingala of the Police Special Task Force. The raid was alleged to have been conducted pursuant to some information received by a private informant of SI Kahingala.
3. The Suspect was found standing near his residence carrying a plastic bag that was blue and white in colour. Upon examining the said plastic bag, the police found a transparent polythene bag that contained some white coloured substance suspected to be Methamphetamine. The gross weight of the Methamphetamine recovered from the Suspect was 526 grams.
4. According to the Government Analyst Report dated 30-09-2024, the pure quantity of Methamphetamine recovered from the possession of the Suspect was 230.5 grams.
5. Thereafter, the Suspect was produced before the Magistrate Court of Mahara on the same day and the learned Magistrate ordered the Suspect to be detained at the Police Narcotic Bureau until 19-04-2024.
6. On 19-04-2024, 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.

Relevant Law

7. 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.

8. 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.
9. 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.
10. 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.*”
11. 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

12. The following grounds have been urged by the Suspect as exceptional circumstances warranting his release on bail:

- (a) The improbabilities of the version of events as indicated by the Complainant-Respondent in the reports filed in the Magistrate Court make it clear that this case has been fabricated against the Suspect.
- (b) The high prevalence of drug cases being fabricated by the officers of the Police Department.
- (c) The Suspect had assisted the investigation in its entirety.
- (d) The Suspect had been in remand custody for almost one year and seven months.
- (e) The Suspect has no other pending cases or previous convictions with regard to drug offences.
- (f) No indictment has been forwarded against the Suspect.
- (g) The Suspect is the sole breadwinner of the family and must earn an income to care for his parents.
- (h) The facts as reported by the Complainant Respondent relating to his arrest are highly improbable.
- (i) His parents are subjected to financial difficulties and emotional and societal pressure due to his continued incarceration.
- (j) The Suspect's father is unable to care for his sick mother by himself.

13. Accordingly, the main ground urged by the Suspect is the improbability of the prosecution version of events regarding his arrest. His position is that he was arrested while standing in front of his house carrying a plastic bag that contained Methamphetamine is highly improbable. It is further stated in the petition that he did not have any illegal substances in

his possession at the time of his arrest, and the same was introduced to him by the Complainant Respondent and other officers stating that they had received a tip-off.

14. It is further stated in the petition that it has become a common practice for certain police officers to fabricate drug-related cases against the persons identified in the tip-offs without considering the possibility that their names may have been stated out of spite or for some ulterior purposes.
15. However, I am of the opinion that the improbabilities in the prosecution version of events or whether the Complainant-Respondent or anyone else had any ulterior motives in implicating the Suspect in the case are matters to be decided by the Trial Judge, unless there is a glaring discrepancy or an inherent improbability that warrants the intervention of this Court at this stage.
16. Another ground advanced by the Suspect is the delay in prosecuting him. As stated in the petition, the Suspect has been languishing in the remand custody for nearly one year and seven months as at the date of the petition.
17. 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...*”
18. 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.”

19. 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.
20. 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.
21. 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.
22. 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.

23. The Suspect in the present case had been arrested on 13-04-2024. The Government Analyst Report was ready by 30-09-2024. There is no satisfactory reason forthcoming from the Respondents as regards the delay in indicting the Suspect. In my view, absence of reasonable justification for such delay renders it both inordinate and oppressive.
24. 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.
25. In addition to the above, it is stated in the petition that the health condition of the Suspect's parents and the fact that he is the sole and able breadwinner of the family are exceptional circumstances to be considered by the Court.
26. It is stated in the petition that the Suspect's mother is bedridden and immobile, having been diagnosed with Non-Hodgkin's Lymphoma (NHL), for which she had to undergo various investigations, chemotherapy, and a course of intensive medication. One of her legs has also been amputated below the knee due to her health condition. According to the Petition, the Suspect is the only capable person in the family who is able to care for her, as the Suspect's father is also in poor health condition, suffering from chronic conditions such as Diabetes Mellitus and Ischaemic Heart Disease. It is further stated that his father was hospitalized in May 2025 due to breathing difficulties, and that the doctors had informed him that his investigations revealed evidence of an old tuberculosis infection or a malignancy that may be cancerous. Additionally, he had been informed that there is an accumulation of fluid around both lungs and that he requires continuous management and treatment. The Suspect has annexed the medical reports relating to his ailing parents, marked P4 and M in support of these averments.
27. Therefore, having regard to the medical condition of the Suspect's parents, as set out above, it appears that there exists a humanitarian consideration that warrants the consideration of this Court. The continued incarceration of the Suspect may have a significant impact on the ability of his parents to receive the necessary medical care and assistance. Accordingly, the circumstances relating to the health of the Suspect's parents and his responsibility towards their care as the sole breadwinner of the family constitute humanitarian considerations

which, in my view, ought to be taken into account by this Court in determining the outcome of this application.

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 two years, coupled with the absence of any criminal antecedents and the existence of humanitarian grounds such as the requirement to take care of his ailing parents, constitute 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 sureties must enter into a bond amounting to Rupees one million each;
 - (c) The Suspect shall report to the Officer-in-Charge of the Police Narcotic Bureau on the 1st Sunday of every month between 9.00 am and 10.00 am; and
 - (d) The Suspect shall surrender his passport, if any, to the Magistrate Court of Mahara.
30. The Registrar of this Court is directed to communicate this Order to the Magistrate Court of Mahara and the Officer-in-Charge of the Police Narcotic Bureau forthwith.

Judge of the Court of Appeal

P. Kumararatnam, J.

I agree.

Judge of the Court of Appeal