

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.

Democratic Socialist Republic of Sri Lanka

Complainant

-Vs-

Court of Appeal Bail Application
No: **CA/BAL/60/2025**

High Court of Colombo Case No:
HC/ 4900/24

1. Mohamed Simsad Mohamed Simnas
2. Sainallahabdeen Jamal

Accused

AND NOW BETWEEN

Muhammudu Subair Fathima Silminas
No. 24 A, Jayarathne Road,
Negombo.

Petitioner

-Vs-

1. Hon. Attorney General,
Attorney General's Department,
Colombo 12.
2. Headquarters Inspector,

Headquarters Police Station,
Negombo.

Respondents

Mohomed Simsad Mohomed Simnas,
No. 24A,
Jayarathne Road,
Negombo.
(Currently being detained in Negombo
remand prison)

1st Accused

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

Pradeep Hettiarachchi, J.

Counsel : Kasun Liyanage with Asoka Wijewardene and Thilakkana
Indunil for the Petitioner
: Tharaka Kodagoda, SC for the State

Inquiry on : 12-06-2026

Decided on : 06-10-2026

Pradeep Hettiarachchi, J

Order

Background Facts

1. This is an Application for bail filed by the Petitioner named Muhammudu Subair Fathima Silminas (hereinafter referred to as “the Petitioner”) on behalf of her husband named Mohomed Simsad Mohomed Simnas (hereinafter referred to as “the 1st

Accused”) under Section 83(2) of the Poisons, Opium and Dangerous Drugs Ordinance (hereinafter sometimes referred to as “the Ordinance”).

2. The 1st Accused had been arrested along with the 2nd Accused on 07-12-2020, by a team of police officers for possession and trafficking of 201 grams and 70 milligrams of Diacetylmorphine, 203 grams of Methamphetamine and 40 kg and 662 grams of Cannabis.
3. According to the initial B-Report dated 08-12-2020, pursuant to information received by SI Indika, the vehicle bearing registration no. KL 5699, in which the 1st Accused and the 2nd Accused were travelling, was stopped by the said team of police officers near the road adjacent to Kadolkale Mandala. At the time, the 1st Accused had been driving the said vehicle, while the 2nd Accused had been seated in the passenger seat. Upon searching the 1st Accused, the police had recovered Heroin and Methamphetamine from the right-side pocket of the trousers worn by him. Some cannabis had also been recovered from his possession. Further, 16 parcels containing Heroin had been recovered from the right-side pocket of the trousers worn by the 2nd Accused. A key to Room No. 402 of the Kadolkelle Negombo Residence Hotel had also been recovered from the possession of the 2nd Accused. Thereafter, the police had proceeded to the said hotel and conducted a search of Room No. 402. Upon searching the room, a further 17 packages containing Cannabis had been recovered.
4. As per the Government Analyst Report, 66.39 grams of Methamphetamine, 49.65 grams of Heroin and 34 kilograms and 423 grams of Cannabis Sativa L were detected from the samples sent to the Government Analyst Department.

Relevant Law

5. 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.

6. 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.
7. 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.
8. 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.”
9. 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

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

- (a) Violation of the 1st Accused’s right to an expeditious trial, being an integral element of a fair trial, in as much as even after the lapse of more than 04 years since the date of arrest, the trial is yet to commence.
- (b) The affidavits dated 16-01-2021, affirmed to by Vinod Kumar Devakumar (the owner of the Kadolkele Negombo Residence Hotel) and his wife namely Devananth Thenuka (marked Y7 and Y8) disclosing the true version of events surrounding the arrest of the 2nd Accused as well as the affidavit dated 08-11-2021 affirmed to by the 2nd Accused attributing the recovery of Cannabis and Methamphetamine to his exclusive possession at the room no. 402 of the said Kadolkele Negombo Residence Hotel (marked Y9) *ex facie*, creates a doubt on the veracity of the prosecution’s version of events.
- (c) Even though in the investigation notes of PW1 it is stated that the instant raid was done pursuant to some information received by him. According to the B-Report, the information was said to have been received by IP Indika. This discrepancy in the investigative materials, *ex facie*, casts a doubt on the prosecution’s version of events.
- (d) Even though in the investigation notes of PW1 it is stated that the key to room no. 402 was recovered from the possession of the 1st Accused, in the B-Report

it is stated that the same had been recovered from the possession of the 2nd Accused. This discrepancy in the investigative materials, *ex facie*, casts a doubt on the prosecution's version of events.

(e) The 1st Accused is the sole breadwinner of the family. The Petitioner and her two minor daughters are struggling to make the ends meet without his support.

11. Accordingly, the main ground advanced by the Petitioner is the delay in prosecuting the 1st Accused.

12. It is stated in the petition that the delay was caused by the lack of diligent prosecution by the police. The police had failed to refer Methamphetamine to the Government Analyst along with the two other types of contrabands. Therefore, even if the 1st Accused was arrested on 07-12-2020, the sample containing Methamphetamine had only been referred to the Government Analyst on 07-09- 2022, approximately two years later. The Petitioner has annexed the documents marked X7 and X8 in support of the above averment.

13. 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...*”

14. 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.”

15. 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.
16. 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.
17. 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.

18. 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.
19. The 1st Accused had been arrested on 07-12-2020, and he has been in custody for nearly five and half years as at the date of the inquiry. As already stated above, due to the police's failure to refer the sample containing Methamphetamine to the Government Analyst Department along with two other contrabands, the sample containing Methamphetamine has only been sent to the Government Analyst Department on 07-09-2022, almost two years since the date of arrest.
20. It is noteworthy that no plausible explanation has been forthcoming for the delay in sending the contraband to the Government Analyst. In the absence of any satisfactory explanation for such delay, I am of the view that it amounts to an inordinate and oppressive delay on the part of the prosecution.
21. Furthermore, it is pertinent to note that in the letter marked X9, the learned Magistrate has expressed his dismay regarding the police's failure to send the IB extracts to the Attorney General's Department to prepare the indictment.
22. In the aforesaid circumstances, I am of the view that there is a clear lack of diligence shown by the prosecution in indicting the 1st Accused, which has caused the 1st Accused to stay in remand custody for a lengthy period of time.
23. After several delays that could be attributed to the prosecution, the indictment had been served on the 1st Accused on 08-10-2024. It was submitted by the learned State Counsel that the pre-trial conference had been concluded on 14-02-2025; the trial has commenced on 23-02-2026, and only part of the evidence-in-chief of PW1 has been led.

24. Therefore, it can reasonably be anticipated that the 1st Accused will have to stay in remand custody for a considerable time period till the case is concluded. Moreover, if the prosecution is ultimately unable to secure a conviction and the 1st Accused is acquitted or otherwise released due to the discrepancies in the B-Report and the investigation notes referred to above, he would, by then, have spent more than six years in remand custody without having been found guilty of the offences alleged against him.
25. It is important to note that the Accused had earlier preferred a bail application to this Court under the case no. CA/BAL/441/23 and this Court had dismissed the said bail application by the order dated 20-06-2024 on the ground that there is no oppressive or inordinate delay on the part of the prosecution. In refusing the said bail application, the Court has also taken into consideration the commercial quantity of Heroin and Methamphetamine found from the possession of the 1st Accused.
26. However, even after the lapse of two years since the said order, the trial against the 1st Accused has not yet been concluded. More importantly, the prosecution has only led part of the evidence-in-chief of PW1. This further demonstrates the uncertainty as to the period within which the trial is likely to be concluded. The 1st Accused had spent nearly five years and ten months in the remand custody since the date of arrest. Such prolonged pre-conviction detention, in my opinion, is inconsistent with the principle of presumption of innocence which remains the cornerstone of criminal jurisprudence.
27. It is also stated in the Petition that there is a major discrepancy in the prosecution's version and the 1st Accused's version regarding the manner in which the arrest took place. The 1st Accused's position is that he was apprehended by the police at Room No. 102 of the Kadolkele Negombo Residence Hotel. The 2nd Accused, who was in the room no. 402 was also arrested along with him. The 1st Accused had visited the said hotel to meet its owner named Vinod Kumar Devakumar, who is one of his long-standing friends, in the evening of 06-12-2020 (as opposed to 07-12-2020 mentioned in the initial B-Report). According to the 1st Accused, he had not known the 2nd Accused prior to the said incident, and the said room no. 402, from which the illegal substances

had been found was reserved under the 2nd Accused's name, and the illegal substances recovered from the said room were maliciously introduced to him by the police. In support of this, the Petitioner has annexed the affidavits marked Y7, Y8 and Y9. It is pertinent to note that, in the affidavit marked Y9, the 2nd Accused has admitted the fact that the Cannabis and Methamphetamine recovered from room no. 402 were in his exclusive possession.

28. Accordingly, there are two competing versions regarding the circumstances in which the arrest took place. However, the determination as to which version is true is a matter to be decided at the trial upon a careful analysis and evaluation of all the evidence placed before the learned Trial Judge, unless the prosecution version is so inherently improbable or contains such a glaring discrepancy that it cannot reasonably be accepted.

29. Notably, the inordinate delay, coupled with the discrepancies between the B-Report and the notes of the investigating officers, constitutes an exceptional circumstance warranting the grant of bail.

30. Furthermore, it is pertinent to note that the 1st Accused has been arrested in connection with the present case while he was already indicted in Case No. HC 1187/19. According to the Petitioner, the 1st Accused stands trial before the High Court of Negombo in that case for the following charges;

- (a) Conspiracy to traffic Heroin
- (b) Possession and trafficking of 71.95 grams of Heroin
- (c) Aiding and abetting to traffic 362.14 grams of Heroin
- (d) Possession and trafficking of 1091. 4 grams of Heroin

31. While this Court cannot simply disregard the quantities of illegal substances recovered and the fact that the 1st Accused has been arrested in connection with the present case, while he has a pending case in the High Court of Negombo, the period of five years and ten months spent in remand custody, prior to being found guilty by the High Court, is an exceptional circumstance that warrants the consideration of this Court.

32. Based on the above analysis, I am inclined to grant bail to the 1st Accused subject to the following conditions;

- (a) Rupees five hundred thousand cash bail with three 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 Headquarters Inspector, Headquarter Police Station, Negombo on the 1st Sunday of every month between 9.00 am and 10.00 am; and
- (e) The 1st Accused shall surrender his passport, if any, to the High Court of Colombo.

33. The Registrar of this Court is directed to communicate this Order to the High Court of Colombo and the Headquarters Inspector, Police Station, Negombo forthwith.

Judge of the Court of Appeal

P. Kumararatnam, J.

I agree.

Judge of the Court of Appeal