

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.

Deegalla Durage Ajith Shantha
Chief Inspector of Police,
Vice Prevention Unit,
Police Station,
Walana.

Complainant

Court of Appeal Bail Application No.:
CA/BAL/0065/2026

Magistrates' Court of Mount Lavinia
Case No.: **B 61363/2025**

-Vs-

Balasuriyage Pradeep Kumara Perera
105/07, 8th Lane,
Thelawala, Mount Lavinia.
(Presently incarcerated in the Magazine Prison)

Suspect

AND NOW BETWEEN

Balasuriyage Pradeep Kumara Perera
105/07, 8th Lane,
Thelawala, Mount Lavinia.
(Presently incarcerated in the Magazine Prison)

Suspect- Petitioner

-Vs-

1. Headquarters Inspector,
Police Station,
Mount Lavinia.

Complainant-Respondent

2. Deegalla Durage Ajith Shantha
Chief Inspector of Police,
Vice Prevention Unit,
Police Station,
Walana.

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

Respondents

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

Pradeep Hettiarachchi, J.

Counsel : Amila Palliyage with Sandeepani Wijesooriya, S. Udugampola,
Subaj De Silva, Lakitha Wakishta Arachchi and Gayathrika De
Silva for the Petitioner

: Tharaka Kodagoda, SC for the Respondents

Inquiry on : 12-06-2026

Decided on : 18-09-2026

Pradeep Hettiarachchi, J

Order

Background Facts

1. This is an Application for bail filed by the Suspect-Petitioner named Balasuriyage Pradeep Kumara Perera (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 B-Report dated 14-06-2025, pursuant to information received by one IP Siriwardena, the Suspect was arrested on 13-06-2025 at around 15:30 hours by a team of police officers attached to Walana Vice Prevention Unit for the possession of 185 grams of heroin, which is an offence punishable under Section 54A (b) and 54A (d) of the Ordinance.
3. Thereafter, the Suspect was produced before the Magistrate Court of Mount Lavinia and the learned Magistrate ordered the Suspect to be detained at the Moratuwa Police Station for 7 days.
4. On 18-06-2025, the Suspect was again produced before the Magistrate Court of Mount Lavinia and the learned Magistrate ordered the Suspect to be remanded.

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.*”

Exceptional Circumstances

9. The following grounds have been urged by the Suspect as exceptional circumstances warranting consideration for bail:
 - (a) The 2nd Respondent had deliberately introduced illegal substances and implicated the Suspect;
 - (b) The deliberate and/or illegal and/or malicious and /or arbitrary manner in which the investigations were conducted by the 1st and 2nd Respondents thereby causing grave injustice and prejudice to the Suspect;
 - (c) The 1st Respondent had deliberately, inaccurately and maliciously reported facts to the learned Magistrate and thereby attempted to abuse power and the investigation process.

- (d) The Suspect's story is corroborated by the CCTV footage that has been filed in the Magistrate's Court of Mount Lavinia.
 - (e) The Suspect is the sole breadwinner of the family, and his family will have to undergo financial difficulties due to prolonged detention.
 - (f) The Suspect has no intention of absconding, and there is no reason to believe that he will abscond from court proceedings.
10. Accordingly, the main ground relied on by the Suspect is that the 2nd Respondent introduced Heroin to him in order to falsely implicate him in this case and the 2nd Respondent's version of events is highly improbable.
11. It is stated in the Petition that the Suspect left his home with his wife and children at 14:25 hours and arrived at a shop named 'Piyara' around 14:30 hours. One of their daughters, who was with them at the time, had then received a phone call from a relative who informed them that police officers from the Walana Police Station were present at his residence. The Suspect had then left the shop with his wife and children at around 14:59 hours and had reached home around 15:20 hours.
12. It is further stated in the Petition that, according to the CCTV footage from the adjoining junction, the white van bearing the registration no. 250-6347 had arrived at his house at 14:45 hours and left at 16:47 hours. Thereafter, the said van had returned once again at around 17:17 hours and departed at 17:24 hours.
13. The Suspect's position is that, at the time of the raid, he was at a shop called Piyara in Moratuwa and it is highly improbable that he would return home with illegal substances knowing that police officers are already present at his house. The Suspect had submitted the relevant CCTV footage, several photographs of the same, the affidavits and the telephone records of his wife and the relative in support of his version that he returned home from Piyara shop at around 1530 hours after receiving a phone call from their relative informing them of the police's presence at his residence.

14. However, I am of the opinion that assessing the probability of the 2nd Respondent's version and determining whether Heroin was introduced to the Suspect or not are trial issues to be determined by the trial judge after evaluating all the evidence placed before him.
15. The second ground advanced by the Suspect is the malicious and arbitrary manner in which the 2nd Respondent had carried out the investigation and the grave injustice that has been caused to the Suspect as a consequence of that. It is stated in the Petition that, subsequent to the Suspect's arrest, the DVR machine of the CCTV installed at his house was removed and taken by the police officers.
16. In determining an application of this nature, this Court shall take into consideration 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.”

17. In ***Cader (on behalf of Rashid Khan) v OIC Narcotic Bureau*** [2006] 3 Sri. LR 74, it was held that;

“Provision has been made in the Bail Act to release persons on bail if the period of remand extends more than 12 months. No such provision is found in the case of Poison, Opium, and Dangerous Drugs Ordinance. Although bail was granted in some of the cases mentioned above, none of these cases referred to the time period in remand as constituting an exceptional circumstance. Hence, bail cannot be

considered on that ground alone. It appears from the cases cited above that there is no guiding principle with regard to the quantity found either.”

18. In the same case, while focusing the attention on the nature and gravity of the offences falling under the Ordinance, Eric Basnayake J. further stated as follows:

“Heroin has become a menace in our society. It is not easily detectable. Due to the fact alone, the tendency to commit this kind of crime repeatedly has become feasible. The repetitive factor prevalent in this sort of crime and the difficulty of detection are significantly strong reasons for refusing bail in this type of cases.”

19. 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 to a suspect 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 society at large, then it would, in my view, defeat the very purpose of the Ordinance.
20. It is important to note that, according to the pending cases report marked P1, the Suspect in the present case has about four previous convictions for drug-related offences, including the possession of Heroin. More importantly, the Suspect had been arrested for possession and trafficking of Heroin, and he has two pending cases for offences of similar nature.
21. Furthermore, as per the Government Analyst Report dated 18-12-2025, the net quantity of heroin recovered from the possession of the Suspect is 24.75 grams. This denotes a commercial quantity as opposed to a user quantity.
22. Another ground advanced by the Suspect is that he is the sole breadwinner of the family and, as a result of his continued incarceration, his family has to undergo economic hardships. This cannot, in my view, be considered an exceptional circumstance warranting

the Suspect's release on bail. In the majority of cases, this is often the plight of the rest of the family when the sole breadwinner of the family is in remand.

23. Therefore, I am of the view that the grounds adduced by the Suspect do not constitute exceptional circumstances warranting the grant of bail to the Suspect. This Application is accordingly dismissed.

24. The Registrar of this Court is directed to communicate this bail Order to the Magistrate Court of Mount Lavinia, and the Chief Inspector of Police, Vice Prevention Unit, Walana Police Station forthwith.

Judge of the Court of Appeal

P. Kumararatnam, J.

I agree.

Judge of the Court of Appeal