

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 Poisons, Opium and Dangerous (Amendment) Act No. 41 of 2022.

Pathiraja Mudiyansele Hemantha Rohana
Kumara
25/20, 3rd Lane, Perakum Mawatha,
Attidiya, Dehiwala.

Court of Appeal Bail Application No:
CA/BAL/70/2026

Petitioner

Magistrate Court of Moratuwa Case No:
B 3600/2025

On behalf of:

Vidanalage Niranjan Jude Ajantha
Wickremaratne
(Presently in the Colombo remand prison)

-Vs-

1. Headquarters Inspector (HQI)
Police Station,
Mount Lavinia.
2. Officer-in-Charge,
Crime Investigation Unit,
Police Station,
Mount Lavinia.

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

Respondents

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

Counsel : Dhanushka Rahubadda with Uvindu Jayasiri, Dhanusha
Udawatte and Dilini Erandika, instructed by Praveen
Premathilaka for the Petitioner
Zacky Ismail, SC for the State

Inquiry on : 08-07-2026

Decided on : 24-09-2026

Pradeep Hettiarachchi, J

Order

Background Facts

1. This is an Application for bail filed by the Petitioner named Pathiraja Mudiyanseelage Hemantha Rohana Kumara (hereinafter referred to as “the Petitioner”) on behalf of his son-in-law named Vidanalage Niranjan Jude Ajantha Wickremaratne (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 annexed to the Petition, the Suspect and his wife were arrested on 28-08-2025 near the Commercial Bank at Golumadama Junction, by the 2nd Respondent

and the police officers attached to his unit pursuant to some information received from a private informant. At the time of arrest, the Suspect and his wife were found to be in possession of Diacetylmorphine (10g in the pocket of the Suspect and 200g in the handbag of the Suspect's wife).

3. Subsequently, the Suspect and his wife were taken to their residence in Attidiya. Upon searching the residence, the police officers recovered 300 grams of heroin from a wardrobe located in one of the rooms of the house.
4. Thereafter, on 29-08-2025, the Suspect and his wife were produced before the learned Magistrate and as per the application made by the 1st Respondent, the learned Magistrate committed the Suspect and his wife to police custody for further investigation until 04-09-2025.
5. On 09-04-2025, the Suspect and his wife were again produced before the learned Magistrate, and the learned Magistrate ordered them remanded. The Suspect and his wife have been in remand custody since then.
6. The Suspect denies the possession of any illegal substance by him and his wife, and his position is that the said amount of heroin was introduced to them.

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 Petitioner as exceptional circumstances warranting consideration for bail:

- (a) As per the B-Report and further reports filed by the 2nd Respondent, the investigation is concluded, and there are no further steps to be taken with regard to the investigation.
- (b) The Suspect has been in incarceration for nearly five months as at the date of this petition.
- (c) The Suspect is a 38-year-old male and is a father of two children aged 10 and 6 years.
- (d) The incarceration of both the Suspect and his wife has caused the children to be deprived of their parents' affection and protection.
- (e) The Suspect was the sole breadwinner of the family and at present, the Petitioner and his wife look after the two children of the Suspect. The Petitioner and his wife are facing severe financial difficulties and severe mental pressure as they have to handle the errands of the children whose both parents are in remand.

13. Accordingly, the main ground advanced by the Petitioner is the delay in prosecuting the Suspect. It is the position of the Petitioner that the investigations against the Suspect have been concluded. Yet, no indictment has been served on the Suspect.

14. 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...*"

15. 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.”

16. 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.
17. The Suspect in the present case had been arrested on 28-08-2025. As per the B-Reports filed by the 2nd Respondent, the investigation is concluded, and there are no further steps to be taken with regard to the investigation. The Government Analyst Report, though it was not available at the time of filing this petition, was later made available to this Court, and it indicated a pure quantity of 150.08 grams of heroin (out of 510 grams).
18. However, even if the investigations have been concluded and the Government Analyst Report has been made available, no indictment has been forwarded against the Suspect. The learned State Counsel has not given a satisfactory explanation before this Court regarding the delay.

19. Another main ground advanced by the Petitioner is the concerns relating to the welfare of the Suspect's children. It is stated in the Petition that the Suspect is a father of children aged 10 and 6 years. It is stated in the petition that the Suspect is the sole breadwinner of the family, and the Suspect's wife too was arrested along with him. As such, the children are left under the care of the Suspect's in-laws who are already facing severe financial hardships. Consequently, this has left the children in a very vulnerable and helpless situation.
20. While this is the normal situation when the primary caregiver of the family is in remand, this Court is of the view that the continued remanding of the Suspect and his wife should not operate so as to inflict an additional or collateral hardship upon innocent children. In determining whether the Suspect should be granted bail or not, this Court cannot disregard the welfare and best interests of the children, who have been left without the care and support of either parent.
21. Furthermore, it is also pertinent to note that the Objections filed by the Respondents do not disclose any previous convictions or pending cases against the Suspect.
22. While the delay by itself may not constitute an exceptional circumstance, the delay of one year coupled with the concerns relating to the welfare of the Suspect's children may, in the circumstances of this case, constitute an exceptional circumstance that warrants the consideration of this Court.
23. Based on the above analysis, I am inclined to grant bail to the Suspect subject to the following conditions;
- (a) Rupees two hundred and fifty 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 Suspect shall report to the Officer-in-Charge of the Mount Lavinia Police Station on the 1st Sunday of every month between 9.00 am and 10.00 am; and
 - (e) The Suspect shall surrender his passport, if any, to the Magistrate Court of Moratuwa.

24. The Registrar of this Court is directed to communicate this Order to the Magistrate Court of Moratuwa and the Officer-in-Charge of the Crime Investigation Unit, Police Station, Mount Lavinia forthwith.

Judge of the Court of Appeal

P.Kumararatnam, J.

I agree.

Judge of the Court of Appeal