

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

Court of Appeal Bail Application No.:
CA/BAL/74/2026

-Vs-

Sivanadan Sumadi

Accused

HC (Negombo): **CRI/ 43/25**

MC (Welisara): **B 5719/23**

AND NOW BETWEEN

Ranjan Krishalan

No. 324/k/4/1/4,

Aluthakkaraya,

Uswetakeiyava.

(Temporary Residence)

Petitioner

-Vs-

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

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

Respondents

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

Counsel : Tenny Fernando with Pasindu Gamage for the Petitioner
Wishwa Wijesuriya, SC for the Respondents

Inquiry on : 23-06-2026

Decided on : 18-09-2026

Pradeep Hettiarachchi, J

Order

Background Facts

1. This is an Application for bail filed by the Petitioner named Ranjan Krishalan (hereinafter referred to as “the Petitioner”) on behalf of his mother named Sivanadan Sumadi (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. The Accused had been arrested on 29-12-2023 by the officers of the Police Narcotics Bureau in terms of Section 54A 1(b) and 54A 1(d) of the Ordinance for having in her possession and trafficking a quantity of 1kg and 5 grams of Methamphetamine.
3. According to the B-Report annexed to the Petition, a team of police officers attached to the Police Narcotic Bureau, Kandy Unit, led by SI Harsha Madushan, had apprehended a person named Naufer Jesu Thasan on 29-12-2023 for possession of 4.014 Kg of Methamphetamine. Thereafter, on the same day, based on the information received, they conducted a raid in Kerawalapitiya, consequent to which they arrested the Accused in the present case. At the time of arrest, the Accused had been standing near the

junction headed towards Thuduwa Road, carrying a black tulip bag inside of which the Police found 17 transparent packages containing Methamphetamine. It was also alleged that an individual based in Dubai and her husband are involved in this drug trafficking business.

4. The Respondents have filed their Objections dated 23-04-2026. In the Statement of Objections, it was stated that the net quantity of Methamphetamine recovered from the Accused was not a user quantity, but a commercial quantity; the Accused, if found guilty, will be served either with a death sentence or life imprisonment, and therefore, the chances of the Accused absconding after being released on bail are high.
5. It is important to note that as per the Government Analyst Report dated 28-02-2024, the net quantity of Methamphetamine recovered from the possession of the Accused was 638.8 grams.

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.”
10. 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

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

- (a) Inordinate and unreasonable delay in commencing trial violates the Accused's right to a speedy trial.
- (b) There is a fundamental discrepancy in the prosecution's case regarding the arrest.
- (c) The principle of parity has to be applied as the co-accused had been granted bail by the Court of Appeal.
- (d) There exists a grave humanitarian ground, i.e., the welfare of the Accused's children, that warrants the granting of bail to the Accused.
- (e) There is no reasonable apprehension of interference with witnesses or the course of justice.
- (f) The Accused had remained in remand custody for 26 months as at the date of the Petition and such pre-trial detention severely undermines the presumption of innocence.

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

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 Accused in the present case had been arrested on 29-12-2023, and she has been in custody for more than two and a half years as at the date of the inquiry. The indictment had been served on the Accused on 21-08-2025. It was submitted by the learned State Counsel that the pre-trial conference had been concluded on 30-10-2025 and the case was fixed for trial on 31-08-2026; therefore, there is no delay on the part of the prosecution.
20. It is important to note that the Accused had preferred a bail application to this Court under the case no. CA/BAL/394/24 and this Court had dismissed the said bail application by the order dated 29-08-2025 on the ground that there is no oppressive or inordinate delay on the part of the prosecution. When refusing the said bail application, this Court has taken into consideration the net quantity of Methamphetamine involved and the Accused's possible involvement in a much larger drug trafficking network.
21. However, even after the lapse of one year since the said order, the trial against the Accused has not yet been concluded. The Accused had spent nearly two and a half years in the remand custody as at the date of the inquiry. Such prolonged pre-conviction detention, in my opinion, is inconsistent with the principle of presumption of innocence which remains the cornerstone of criminal jurisprudence.
22. It is also stated in the Petition that there is a major discrepancy in the prosecution's version and the Accused's version regarding the manner in which the arrest took place. While the prosecution's version is that the arrest took place near Thuduwa junction, the Accused's position is that she was arrested at her residence. In my opinion, this is not a glaring discrepancy that has to be taken into consideration by this Court. Instead, it is a

trial issue to be determined by the trial judge after analyzing all the evidence placed before him.

23. Another ground advanced by the Petitioner is the concerns relating to the welfare of the Accused's children. It is stated in the Petition that the Accused is a mother of three children aged 19, 15 and 10 years, and following the Accused's incarceration, their father has deserted the family for another woman, abdicating all parental and financial responsibility. It is also stated that the eldest son resides with the Accused's brother, while the children are staying with their elderly grandmother, and this separation has also compounded the children's emotional trauma and instability. Consequently, this has left the children in a very vulnerable and helpless situation.
24. 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 Accused should not operate so as to inflict an additional or collateral hardship upon innocent children. In determining whether the Accused should continue to be deprived of her liberty pending trial, this Court cannot disregard the welfare and best interests of the children, who have been left without the care and support of either parent.
25. Furthermore, it is also pertinent to note that, as per the previous convictions report, the Accused has no previous convictions and there are no other pending cases against her, which, if had, would have gone against this Court's decision to grant bail.
26. Therefore, while this Court cannot simply disregard the commercial quantity of Methamphetamine that had been recovered from the Accused, the delay of more than two and a half years, coupled with the absence of any criminal antecedents and welfare of the Accused's children, this Court is inclined to grant bail to the Accused.
27. 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 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 Officer-in-Charge, Police Narcotic Bureau, Colombo 01 on the 1st Sunday of every month between 9.00 am and 10.00 am;
- (e) The Accused shall surrender her passport, if any, to the High Court of Negombo.
- (f) The Controller General of Immigration and Emigration shall be informed of the travel ban imposed on the Accused.

28. The Registrar of this Court is directed to communicate this Order to the High Court of Negombo and the Officer-in-Charge of the Police Narcotics Bureau of Colombo forthwith.

Judge of the Court of Appeal

P.Kumararatnam, J.

I agree.

Judge of the Court of Appeal