

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
Act as amended by Act No. 41 of 2022.

Officer-in-Charge
Police Narcotics Bureau
Colombo 01.

Complainant

Vs

Court of Appeal Bail Application:

CA/BAL/96/2025

Magistrate Court (Mahara) Case No:

B 4958/2023

Liyanage Roshani Aloma Perera
No. 301/1/B, Makola, Makola South

Suspect

AND NOW BETWEEN

Joshuva Bevan Gajendran
No. 301/1/B, Makola, Makola South

Petitioner

Vs

1) Hon. Attorney General
Attorney General's Department
Colombo 12.

2) Officer-in-Charge
Police Narcotic Bureau
Colombo 01.

Respondents

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

Counsel : Shavindra Fernando PC with Rishnie Fernandopulle for the Petitioner
Wishwa Wijesuriya, SC for the Respondents

Inquiry on : 21.10.2025

Decided on : 18.12.2025

Pradeep Hettiarachchi, J

Order

Background to the Application

1. This is an Application for bail filed by the Petitioner named Joshuwa Beven Gajendran (hereinafter referred to as “the Petitioner”) on behalf of his mother named Liyanage Roshani Aloma 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 22-10-2023, on 21-11-2023, IP C.R. Paaramullage attached to the Special Task Force of Sri Jayawardenapura has received information from a private informant that dangerous drugs are being kept at the address, i.e. 301/1/B, Makola South. Upon receiving such information, IP Paramullage and a team of police officers had proceeded to the aforesaid address and had noticed a woman (i.e, the Suspect in the present case) carrying a white color container at the backyard of the house. The police officers have examined the said white container that was in the Suspect’s hands and have discovered two parcels inside the container. IP Paramullage then examined the said parcels and identified that the illegal substance contained in the first parcel was Heroin. He further observed that Methamphetamine is contained in the second parcel. Thereafter, he arrested the Suspect on the same day, at around 15:20 hours.

3. As per the Government Analyst Report dated 24-04-2024, the net quantity of Heroin recovered from the possession of the Suspect was 68.4 grams while the net quantity of Methamphetamine recovered was 655.9 grams.
4. The Suspect was produced before the Magistrate Court of Mahara on 22-11-2023 and had been held under a detention order till 27-10-2023. She has been in remand custody since 07-11-2023 as at the date of the Petition. (One year and five months).
5. The Petitioner has also filed a bail application before this Court under the case bearing No. CA/BAL/ 49/2024 and it has been dismissed by the Order dated 16-12-2024.

Relevant Law

6. Section 83(2) of the Ordinance has introduced special provisions when a person is accused or suspected of offences under section 54A and 54B of the Ordinance. 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 Suspect 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 ***S v Peterson 2008*** (2) SACR (C) 355 the Court held that;

Generally speaking “exceptional” is indicative of something unusual, extraordinary, remarkable, peculiar or simply different but that because of varying degrees, it will therefore depend on the context and on the particular circumstances of the case under consideration.

Consideration of the Exceptional Circumstances

11. The following grounds have been urged by the Petitioner as exceptional circumstances warranting consideration for bail:
 - (a) The Suspect-Respondent was produced before the Mahara Magistrate Court on 22-10-2023 and had been held under a detention order till 27-10-2023. She has been in remand custody since 07-11-2023 as at the date of the Petition. (One year and five months).
 - (b) There seems to be no further progress in this matter. The charges have not been read to the Suspect, nor has the case been referred to the Attorney General’s advice. The proceedings appear to be stalled, as she continues to be produced in Court without substantive progress in the case.

- (c) The evidence submitted in the Petition establishes the fact that the police have reported false information to the learned Magistrate, and the version of the police cannot be believed.
- (d) The Petitioner states that after considering the photographs and facts mentioned above, it is *prima facie* established that the police cannot enter the backyard directly.
- (e) The Suspect is a 44 year old mother of four children, and the youngest two children are, 8 and 11 years respectively who are schooling, and she is the only caretaker they have.
- (f) The Suspect's two younger children, aged 7 and 10 years, have been left without a legal guardian. Their father, who was never legally married to the Suspect, has abandoned them and moved abroad, leaving them without parental care or support. As a result, these vulnerable children are now without parents, facing uncertainty and hardships with no immediate guardian to provide for their well-being.

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

13. Regarding the time period spent in remand, this Court has previously in a long line of judicial authorities have held that the period spent in remand custody alone does not suffice to grant bail to a suspect or an accused. For instance in Labukola **Ange Gedara Ashani Dhanushika** CA (PHC) APN 04/2016, Dehideniya J stated that the time spent in remand custody alone cannot be considered as an exceptional circumstance warranting the grant of bail to a suspect when the suspect has been previously convicted for similar offences. He stated;

In the present case he Petitioner has failed to establish any exceptional circumstances warranting this Court to exercise the revisionary jurisdiction. 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 heroin 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."

14. In the Petition, the Petitioner has disclosed that the Suspect has a previous conviction, and that matter had been concluded in the Magistrate's Court. However, the Petitioner has not disclosed further details pertaining to the said conviction. Even in the Statement of Objections submitted by the 1st Respondent, there is no mention of such previous conviction. Therefore, this Court is unable to take that into consideration when determining this bail application.

15. 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.

16. While it is true that the period spent in remand alone cannot be considered an exceptional ground for granting bail when a person is accused or suspected of being in possession of 10 grammes or more of a prescribed drug under Section 82(3) of the Ordinance, these stringent bail provisions should not be used to keep a person in remand for an indefinite period without taking the necessary steps to prosecute him, as it would amount to a denial of liberty due to no fault of his own.

17. The Suspect in the present case has been arrested on 21-10-2023. The Government Analyst Department has issued its Report on 24-04-2024. In the Statement of Objections, the 1st Respondent has stated that the Indictment has been forwarded under the reference no. CR3/ 261/2025 to the High Court of Gampaha on 20-08-2025. However, it has not yet

been served on the Suspect. In these circumstances, it is quite uncertain as to when the trial against the Suspect will commence.

18. As at the date of the argument, the Suspect has been living in incarceration for nearly two years without knowing the outcome of the case against her. Furthermore, no reason is forthcoming from the 1st Respondent regarding the delay in prosecuting the Suspect. Therefore, I am of the opinion that, such delay for which the reasons are not given/remains inexplicable amounts to an inordinate delay which can be considered as an exceptional circumstance that warrant the granting of bail to the Suspect.
19. Furthermore, the Petitioner challenges the place and manner in which the Suspect was arrested. It is stated in the Petition that the Suspect was apprehended while in possession of drugs in the backyard is entirely false and the police version of arrest cannot be relied on. It is further stated that the access to the backyard is limited to a single pathway, which is also secured with a permanently locked gate, while the other side is bordered by a blind wall. Given these physical barriers, it would not have been possible for the police officers to access the backyard directly and arrest the Suspect as they have alleged in the B-Report. The Petitioner has annexed several photographs of his house and its surroundings in support of this position.
20. The Petitioner's version is that on 21-10-2023, at around 11.00 am, when the Suspect was in the bathroom the police officers have arrived at her residence. The Suspect's 10 year old son has informed her that several people have come to meet her. After finishing in the bathroom, the Suspect has got dressed and proceeded to the gate, where the officers have asked her to secure the dogs inside the house. Thereafter, the officers entered the residence and conducted a thorough search. However, no illegal substances were found. While the search was ongoing, the Suspect's two eldest children-the Petitioner and his sister-had arrived home around 12 noon. The police officers have remained at the residence until about 7.00pm at which point they arrested the Suspect.
21. In my opinion, whether the police officers could have entered the backyard directly and arrested the Petitioner in the manner stated in the B-Report is a trial issue to be determined at the trial stage.

22. Furthermore, the Petitioner states that The Suspect's two younger children, aged 7 and 10 years, have been left without a legal guardian. Their father, who was never legally married to the Suspect, has abandoned them and moved abroad, leaving them without parental care or support. As a result, these vulnerable children are now without parents, facing uncertainty and hardships with no immediate guardian to provide for their well-being.
23. Thus, the aforementioned circumstances, when considered in their entirety, constitute exceptional circumstances warranting the grant of bail. Accordingly, I enlarge the Suspect on bail, subject to the following conditions:
- (a) Cash bail of Rs.200,000.00;
 - (b) There shall be two sureties and they must enter into a bond of Rs 500,000.00 each;
 - (c) The Petitioner shall be one of the sureties;
 - (d) The Suspect shall surrender her passport if any to the courts and shall not apply for a travel document without the permission of the Court; and
 - (e) The Suspect is required to report to the Officer in Charge of Police Narcotic Bureau on 1st and 30th of every month.
24. The Registrar of this Court is directed to communicate this bail Order to the Magistrate Court of Mahara, and the Officer-in Charge of the Police Narcotic Bureau, Colombo 01 forthwith.

Judge of the Court of Appeal

P.Kumararatnam, J.

I agree.

Judge of the Court of Appeal