

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 Acts No. 13 of 1984 and No. 41 of 2022.

Officer-in-Charge,
Police Station,
Kesbewa.

CA Case No: **CA/Bail/444/2025**

MC Kesbewa Case No:
B/17527/22

Complainant

Vs

Hewa Rathnappulige Dikshan
(presently in remand custody)

Suspect

AND NOW BETWEEN

H.A.Nadeeka Kumari,
Thewanuwara, Tabbowa, Puttalam.

Petitioner

Vs

1. Officer-in-Charge
Police Station,
Kesbewa.
2. Hon. Attorney General,
Attorney General's Department,
Colombo 12.

Respondents

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

Counsel : **Pradeep Hettiarachchi, J.**
Sahan Hewavissa with S. Bandara instructed by W. Herath for
the Petitioner
S. Mahboob SC for the Respondents

Inquiry on : 30-01-2026

Decided on : 27-03-2026

Pradeep Hettiarachchi, J

Order

Background to the Application

1. This is a bail application preferred by the Petitioner named H.A. Nadeeka Kumari on behalf of her husband Hewa Rathnappulige Dikshan (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, said Hewa Ratnappulige Dikshan had been named as a suspect in case No. 17527/22 before the Magistrate Court of Kesbewa on 29-11-2023.
3. As mentioned in the said B Report, the Divisional Crime Investigation Bureau of Tangalle had recovered 6 Kilograms and 228 grams of heroin and 19 rounds of 9mm live ammunition from a house located at Siddamulla, Piliyandala on 06-10-2022. When the officers entered the said house, two persons had fled the premises, and the officers were unable to apprehend them. Therefore, no person was arrested at the time of the raid. The productions were handed over to the Magistrate’s Court on 07-10-2022 by the Officer-in-Charge of the Kesbewa Police Station.
4. However, after a lapse of one year, by a further B-Report dated 29-11-2023, the Suspect was named as a suspect in the case bearing No. 17527/22. According to the said B-Report, the passport of the said Suspect had been found in the above-mentioned house during the raid. However, the Petitioner’s version is that the said passport was in fact taken by the police from her house in Putlam and not recovered from the place where the raid was conducted.

5. As per the Government Analyst Report dated 20-12-2024, the pure quantity of heroin recovered was 629.5 grams.

Relevant Law

6. Section 83(2) of the Ordinance has introduced special provisions when a person is accused or suspected of offences under sections 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 B-Report submitted to the Kesbewa Magistrate Court is inconsistent with the provisions of the Code of Criminal Procedure Act No. 15 of 1979. The Suspect was not arrested at the time of the raid. Instead, he was named as a suspect approximately one year after the date on which the facts were reported to the Court.
 - (b) The officers investigating the case had named the Suspect without any evidence, which was illegal.

- (c) The Suspect has been in remand custody for nearly two years since being named as a Suspect in the above-mentioned case.
- (d) The Suspect is the father of two daughters aged 9 and 10, both of whom are studying at Thewanuwara Primary School.
- (e) The Suspect was the sole breadwinner of the family, and all the members were dependent on him for their livelihood.
- (f) The Suspect has suffered grave prejudice due to him being named as a Suspect in the above-mentioned case and being remanded in custody without proper evidence.
- (g) The Suspect is being held in custody on false and fabricated charges, thereby unlawfully restricting his freedom.
- (h) If the Suspect is acquitted and released at the trial, the period of imprisonment will be unfair.
- (i) Restricting the freedom of the Suspect is contrary to the basic fundamental rights guaranteed under Article 13(1) of the Constitution.
- (j) No indictment has yet been filed against the Suspect in the High Court in relation to the case.

12. Accordingly, one of the main grounds advanced by the Petitioner is that the Suspect has been in remand custody for nearly two years and the Indictment has not yet been filed in the High Court in relation to his case.

13. Regarding the time period spent in remand, this Court has, 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 the 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. The suspect in the present case has been previously convicted on similar offences. Therefore, remanding itself, of a person of this caliber cannot be an exceptional circumstance to grant bail."

14. Similarly, 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.

15. Therefore, by introducing special bail provisions under Section 83(2) of the Ordinance, the intention of the legislature was to 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 quantity of the dangerous drugs involved, the sophisticated manner in which the drug trafficking operation was executed and the possibility of the suspect re-offending and evading trial if granted bail, it would, in my view, undermine the very purpose of the Act.

16. Hence, when deciding whether to grant bail or not to a suspect in an application of this nature, the Courts have to be mindful of the other attendant circumstances such as the previous conduct of the suspect, the sophisticated manner in which the drug trafficking operation was planned and executed, especially the nature of the suspect's involvement, the possibility of the suspect re-offending and evading trial if granted bail and also the overall impact that the suspect's release on bail may have on the society.
17. Therefore, in deciding whether the Suspect should be granted bail or not, this Court should not lose the sight of the fact that the Suspect in the present case has one pending case in the High Court of Colombo under the case bearing No. 4650/ 2023 (Magistrate Court Case No. M/C B 2807/2023) for trafficking and keeping in his possession 1254 grams of heroin.
18. Moreover, as per the Government Analyst Report dated 20-12-2024, the pure quantity of heroin detected in the present case was 629.5 grams. Therefore, the weight of the heroin is far beyond what could be intended for personal consumption and is undoubtedly meant for commercial purposes. In *Abdul Quideer Aboobucker v. AG* CA/PHC/APN 42/2011 (Decided on 31-08-2011), this Court has rejected the application for bail, considering the fact that the alleged quantity of drugs recovered from the suspect is of a commercial nature.

19. Therefore, in the event of a conviction, the likely sentence would be either the death penalty or life imprisonment. Given the seriousness of the offence and the severity of the possible punishment, the likelihood of the suspect absconding if enlarged on bail is also very high.
20. It is also mentioned in the Petition that the Suspect is the primary caregiver and the sole breadwinner of the family, and his continued absence due to the prolonged detention in remand custody will cause severe hardships on the family, as the entire family is dependent on him for support. However, this cannot, in my view, be considered as an exceptional circumstance warranting the Suspect's release on bail. In the majority of cases, this is often the situation, especially when the sole breadwinner of the family is in remand.
21. In the aforesaid circumstances, this Court is of the view that the aforesaid grounds adduced by the Petitioner cannot be considered as exceptional circumstances warranting the grant of bail to the Suspect. In other words, the previous conduct of the Suspect, the quantity of heroin recovered, his propensity to re-offend, and the likelihood of him absconding if released on bail, when considered cumulatively, dissuade this Court to grant bail to the Suspect.
22. Accordingly, the bail application of the Petitioner is dismissed. The Registrar of this Court is directed to transmit a copy of this Order to the Registrar of the Magistrate Court of Kesbewa and the Officer-in-Charge of the Kesbewa Police Station forthwith.

Judge of the Court of Appeal

P. Kumararatnam, J.

I agree.

Judge of the Court of Appeal

