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

The Officer in Charge,
Police Narcotic Bureau,
Colombo 01.

Complainant

Vs.

Shakthi Pramod Samarawikrama
No B/F/10U/7,
Randiya Uyana, Modara,
Colombo 15.

(presently in remand custody)

Accused.

And Now Between

Mahipala Musalige Don Isahara Hansika,
No B/F10U/7,
Hemamulla, Rndiya Uyana, Modara,
Colombo 15

Petitioner

Vs.

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

Court of Appeal Case No.

CA/BAL/0030/2023

Magistrate's Court of Maligakanda

Case No. B 19619/2022

Complainant-Respondent

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

Respondent

Shakthi Pramod Samarawikrama
No B/F/10U/7,
Randiya Uyana, Modara,
Colombo 15.

(presently in remand custody)

Accused.

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

Pradeep Hettiarachchi, J.

Counsel : Shamindra Rodrigo with Eranga Sirisena for the Petitioner

Vishwa Wijesuriya SC for the Respondents

Inquiry on : 29.04.2025

Decided on : 05.06.2025

Pradeep Hettiarachchi, J

ORDER

1. This is a bail application preferred under Section 83(2) of Poisons, Opium and Dangerous Drugs Ordinance by the petitioner on behalf of the accused Shakthi Pramod Samarawikrama. He had been arrested on 04.08.2022. At the time of the arrest, it is alleged that he had in his possession 52 grammes of Heroin of which the pure quantity according to the Government Analyst Report is 32.02 grammes.

2. According to the B Report dated 05.08.2022, filed by the Police Narcotic Burau, a detention order had been obtained by the PNB and the suspect was kept in detention till 10.08.2022.

3. Thereafter, the suspect was produced before the Magistrate of Maligakanda on 05.08.2022, and was remanded. He has been in remand since that date.

4. The petitioner urged the following grounds to be considered as exceptional circumstances for releasing the suspect on bail.

    a. The suspect was arrested without a justifiable reason in order to keep the suspect in remand for a lengthy period of time.
    b. No illegal substance was recovered from the suspect's possession.
    c. The gross weight of the substance as mentioned in the B report differs from the weight of the parcel received by the Government Analyst Department.
    d. The suspect is the sole bread winner of the family and the family members of the suspect are currently undergoing severe hardships as the suspect is still in remand.

5. Opposing the bail application, the State Counsel submitted that the petitioner had failed to demonstrate the existence of exceptional circumstances and had suppressed material facts, warranting the dismissal of the application.

6. At the inquiry, it transpired that the suspect has several previous convictions for similar offences. Furthermore, the suspect has two pending cases for offences of a similar nature—one in the Magistrate's Court of Maligakanda and the other in High Court No. 05 of Colombo. These facts were never disclosed in the petition, with no apparent reason for their omission.

7. However, in the petition and affidavit, the petitioner clearly averred that the suspect had never been involved in drug trafficking or possession as alleged by the complainant, which, in my view, amounts to a clear suppression of material facts. Therefore, it is apparent that the suspect was taken into custody for the present offence, while being on bail for similar offences.

8. 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."

9. What constitutes exceptional circumstances is not comprehensively defined in the Act and must be determined based on the context and circumstances of each case.

10. One of the grounds advanced by the suspect is that he is suffering from a kidney ailment and requires constant medical care. In support of this claim, the accused submitted copies of several medical reports related to his condition.

11. For the suspect's health condition to be considered an exceptional circumstance warranting the grant of bail, it must be of a serious nature—one that cannot be treated while in remand and would likely endanger the suspect's life. However, no evidence has been presented to demonstrate that the suspect cannot receive appropriate treatment at the Prison Hospital or that his life would be at risk while in remand. Therefore, I am not inclined to consider the suspect's health condition as a valid ground for granting bail.

12. The petitioner further submitted that at the time of the arrest, no illegal substance was recovered from the suspect's possession and that the alleged parcel was introduced to him by the respondents.

13. Needless to say, if there is an inherent improbability or an obvious contradiction in the initial B Report regarding the circumstances of the arrest or recovery, it may be considered as an exceptional circumstance. However, a suspect being arrested in front of his own house is not unusual, and the fact that such a person is found in possession of a packet of narcotics does not, in itself, amount to an improbability.

14. Therefore, I see no apparent improbability in the respondents' version of events in this matter. The suspect alleges that the item was introduced to him. This constitutes a competing version to that of the Police, and is, at most, a matter to be determined at the trial stage. Accordingly, the circumstances averred by the petitioner are far from satisfactory and cannot be relied upon at this stage.

15. The petitioner also submitted that the suspect has been in remand for the past three years. However, this Court has consistently held that the remand period alone does not constitute an exceptional circumstance warranting the grant of bail. For delay to be recognized as an exceptional ground, it must be oppressive, inordinate, and unexplainable. In this regard, the following authorities would be of considerable assistance.

16. 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…".*

17. Similarly, in ***Cader (on behalf of Rashid Khan) Vs OIC Narcotic Bureau [2006] 3 SLR 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. At the inquiry, the learned State Counsel informed the Court that the indictment has been dispatched and that the trial against the accused has been scheduled for 26.05.2025.

19. Therefore, there is little reason to suggest that the suspect has been in remand without any prospect of the trial concluding, nor can it be alleged that there has been an oppressive delay in the proceedings.

20. Furthermore, the suspect's prior conduct strongly militates against the granting of bail. He has several previous convictions and two pending cases involving offences of a similar nature. More importantly, the sheer quantity of heroin involved in this case cannot, by any means, be considered for personal consumption; it clearly indicates a commercial purpose. Therefore, given his previous convictions and pending cases, there is a significant risk that the suspect may reoffend if released on bail.

21. Moreover, given the pure quantity of heroin, the suspect faces either a death sentence or life imprisonment upon conviction. Therefore, there is a very high risk that the suspect may abscond if released on bail at this stage.

22. It is submitted on behalf of the suspect that the gross weight of the substance stated in the B Report differs from the weight of the parcel received by the Government Analyst Department. Upon perusal of the Government Analyst's Report, it is observed that the gross weight of the parcel at the time of receipt by the Government Analyst Department was 51.13 grammes, whereas the B Report states the gross weight as 52 grammes. Thus, I find no significant discrepancy between the two figures that would persuade this Court to disbelieve the contents of the B Report in their entirety.

23. It is also submitted that the suspect is the sole breadwinner of the family, and that his incarceration causes severe hardship to other family members. However, I find it difficult to regard this as an exceptional circumstance for the reasons stated below.

24. It is evident that when a person is held in remand, their family is likely to experience hardship, regardless of the extent of their contribution to the household, as such circumstances invariably affect the family in one way or another. This situation is not unique to the present case; it is a common consequence faced by any family when one of its members is in remand. Therefore, in my view, the mere fact that the suspect is the sole breadwinner cannot, by itself, be regarded as an exceptional circumstance.

25. In the circumstances, I do not find that the petitioner has established any exceptional circumstances in support of the application for bail for the suspect, Shakthi Pramod Samarawikrama.

26. Since the trial has already commenced and the first prosecution witness has testified, it is not appropriate to release the suspect on bail at this stage, particularly in light of his previous convictions and two pending cases.

27. Upon consideration of the above, the petitioner's bail application is dismissed.

28. The Registrar of this court is directed to transmit this bail Order to the Magistrate Court of Maligakanda and Police Narcotic Burau, Colombo forthwith.

Judge of the Court of Appeal

P.Kumararatnam, J.
I agree.

Judge of the Court of Appeal