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 as amended by Act No. 41 of 2022.

Democratic Socialist Republic of Sri Lanka

Complainant

Vs

Piyadigamage Ruwan Prasanga

Accused

AND NOW BETWEEN

Suhaudeen Asha Banu
485/H/1, Avissawella Road
Sirinivasa Street
Angoda

Petitioner

Vs

1) Officer-in-Charge
   Police Narcotic Bureau
   Colombo 01

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

Respondents

Court of Appeal Bail Application**:**
CA/BAL/318/2024

High Court of Colombo Case:
HC/2776/21

MC (Colombo): **B12363/19**

Before	:	**P Kumararatnam, J.**
		Pradeep Hettiarachchi, J.
Counsel	:	Tenny Fernando with Himashi Silva for the Petitioner Wishwa Wijesuriya SC for the Respondents
Inquiry on	:	05.08.2025
Decided on	:	26.09.2025

Pradeep Hettiarachchi, J

Order

Background

1. This is an Application for bail filed by the Petitioner named Subaudeen Asha Bhanu (hereinafter referred to as "the Petitioner") on behalf of her husband named Piyadigamage Ruwan Prasanga (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. As per the B-Report dated 15-06-2019, the Accused had been arrested on 14-06-2029 by SI Aruna Sampath attached to the Police Narcotic Bureau subsequent to a raid conducted by him near the junction on the Angoda Old Road directs to the Mahawela Road with a team of police officers. It is stated in the B-Report that the Accused was arrested for trafficking and keeping 620 grams and 900 milligrams of Heroin in his possession, an offence punishable under section 54A1 (b) and 54A1(d) of the Ordinance. Thereafter, the Accused was produced before the Magistrate Court of Colombo on 15-06-2019. The Accused has been in remand custody since the date of his arrest.

3. Thereafter, the Government Analyst has issued his report dated 03-01-2020 and as per the Government Analyst Report, the net quantity of Heroine recovered from the Accused was 369. 532 grams. The Indictment dated 28-04-2021 was served on the Accused on 07-10-2021. The trial against the Accused has commenced on 06-10-2022 after postponing it on several times mostly due to the reasons attributable to the Prosecution.

Relevant Law

4. 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.*

5. It is important to note that even if section 83 of the Ordinance mentions of exceptional circumstances, what actually amounts to an exceptional circumstance is 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.

6. 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.

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

   (a) The Prosecution has failed to conclude the evidence of PW1 even after two years of presenting the indictment and this delay in the proceedings amounts to an oppressive delay.

   (b) Even after 8 months from the date of filing the previous bail application, the Prosecution was unable to conclude the evidence of PW1 and the Accused has been languishing in remand for over 5 years.

   (c) The Court of Appeal in exercising its original jurisdiction under the present amendment brought to the Poison, Opium and Dangerous Drugs Act No. 41 of 2022, with its vast jurisdiction to appreciate any material concerning the liberty of a subject, including false reasoning by PW1 not to appear before the Court to testify on 12-01-2022 stating that he is testifying in the Homagama High Court in HC/62/20 on the same date but reporting sick to the said Court, thereby misleading the High Court and preventing the case to be taken up for trial.

   (d) The State's decision to appoint a special prosecutor to conduct the Prosecution at a later stage has also caused an unreasonable delay in taking up the case for trial.

   (e) The Accused is a father of three young female children. Prolonged absence of a father figure due to being in remand for over 5 years has had a negative impact on the emotional, psychological and the social well-being of the Accused's daughters. Since the Court is the upper guardian of children, it is important to consider that each child's experience can be unique and their individual circumstances may differ.

   (f) The Accused is the sole bread winner of the family. The children are facing social pressure affecting their right to be normal citizens. As a result of the arrest of the children's father, the eldest daughter is now going through a traumatic situation and dislikes attending school due to bullying by fellow students. The aforesaid situation

attracts the intervention of this Court as the Court is the upper guardian of children according to the established laws of this country.

8. In the Petition, the Petitioner has stated that the Petitioner has invoked the jurisdiction of this Court under the cases bearing No. CA/BAL/51/2023 and CA/BAL/695/2023 wherein this Court has refused to grant bail to the Accused. In CA/BAL/ 695/2023, bail has been refused by this Court due to the Petitioner's failure to disclose the previous convictions of the Accused and for providing false information to government authorities.

9. The Respondents have filed their Statement of Objections dated 15-01-2025. The Respondent has taken up two preliminary objections. It is stated that the Petitioner has failed to establish any acceptable exceptional circumstances and that the instant application is misconceived in law as the Petitioner has filed a new application for bail instead of challenging the previous orders given by this Court in similar applications bearing No. CA/BAL/51/2023 and CA/BAL/695/2023, filed on behalf of the Accused, in a higher forum. It was also stated that the reasons such as the covid pandemic, economic crisis, absence of PW1 in Court on a few occasions and the absence of productions on the trial date, caused the delay in taking up this case for trial.

10. The main ground advanced by the Petitioner was the delay in prosecuting the Accused and various repercussions arising as a consequence of such delay.

11. 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 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." 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.

12. 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.

13. 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 this would amount to a denial of liberty through no fault of his own.

14. In the present case, the Accused had been arrested on 14-06-2019. The Government Analyst Report had been issued on 03-01-2020. The Indictment was filed on 28-04-2021 and served on the Accused on 07-10-2021. Thereafter, the Accused was further remanded till 17-11-2021 until the finger print report of the Accused is received. Subsequently, the case had been postponed on numerous occasions due to the absence of PW1, the main witness of the case and the police officer who conducted the raid on 14-06-2029 and arrested the Accused.

15. More importantly, when the case was called for trial on 12-01-2022, the Counsel for the Prosecution has informed the Court that PW1 is unable to present before Court because he was testifying in Homagama High Court in the case bearing No. HC/62/20. As such, the Court has refixed the matter for trial on 20-06-2022. However, as per the proceedings of the case bearing No. HC/62/20 dated 12-01-2022, it is clear that PW1 has not appeared before Homagama High Court, but has reported sick to Homagama High Court.

16. Thereafter, on several occasions, the trial proceedings have been interrupted due to the unavailability of the productions. When the case was called on 22-05-2023, the State Counsel has informed the High Court of their decision to appoint a special prosecutor to the case and moved for a date on that basis.

17. The reason for this delay, as explained by the Prosecution was the unavoidable circumstances that occurred during this period such as the Covid 19 pandemic and the economic crisis. It was submitted in the Statement of Objections that the evidence of PW1 was partially concluded. However, the learned State Counsel has not been able to indicate this Court on a possible time frame within which the trial against the Accused can be concluded.

18. When considering the reasons advanced by the Prosecution for the delay, it is significant to emphasize that the irresponsible and inexcusable conduct of the official witness, PW1, has been the primary cause of the delay in prosecuting the Accused. In my view, such conduct cannot be lightly disregarded as a mere delay arising from unavoidable circumstances, as is sometimes encountered in other cases.

19. Furthermore, a careful examination of the chronology of events clearly demonstrates how the irresponsible conduct of the relevant authorities has occasioned undue delay in the proceedings before the High Court, thereby compelling the accused to live in trepidation without any certainty as to when his trial would be concluded. These circumstances, in themselves, constitute exceptional grounds which, in my considered opinion, justify the enlargement of the accused on bail.

20. While this Court has not lost the sight of the fact that the Accuse had been previously convicted for a similar offence under section 78(5) (a) of the Ordinance for keeping in his possession 120 milligrams of Heroin and was imposed a fine of 5000/- by the learned

Magistrate of Welisara in the case bearing No. B 4663/15, the delay of more than six years, when considered in conjunction with the failure to provide a justifiable reason for the delay in prosecuting the Accused, may be regarded as exceptional. It is important to emphasize that when a person is deprived of their liberty and held in detention; those responsible for such deprivation must consciously and diligently take the necessary steps to conclude legal action. If no reasonable explanation is provided for any delay, such delay will be deemed excessive or oppressive.

21. Accordingly, I enlarge the Accused on bail subject to the following conditions:

    a. Rupees two hundred thousand cash bail with three sureties;
    b. The Petitioner shall 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 of the Police Narcotic Bureau, Colombo on the 1st Sunday of every month between 9.00 am and 10.00 am; and,
    e. The Accused shall surrender his passport, if any, to the High Court of Colombo.

22. The Registrar of this Court is directed to communicate this bail Order to the High Court and the Magistrate Court of Colombo, 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