IN THE COURT OF APPEAL OF THE DEMOCRATIC SOCIALIST

REPUBLIC OF SRI LANKA

In the matter of an application in terms of section 83(2) of Poisons, Opium and Dangerous Drugs Act as amended by Act No. 41 of 2022.

Democratic Socialist Republic of Sri Lanka.

1. Officer-In-Charge
   Police Station
   Athurugiriya
2. Honourable Attorney General,
   Attorney General's Department,
   Colombo 12.

Complainant

Vs

Gurusami Chandrakumar *alias* Kumara

Accused

And now between

Kurukulasuriya Deepika Niroshani,
No 127/A, Bekkegama Road,Walana
Panadura.

Petitioner

On Behalf of

Gurusami Chandrakumar *alias* Kumara
(Presently in remand custody)

Vs

Honourable Attorney General,
Attorney General's Department,
Colombo 12.

Complainant-Respondent

Court of Appeal Application No:

CA/BAL/0368/24

High Court of Homagama Case No:
HC 92/2022

Magistrate Court Kaduwela Case No:

B 39367/20

Before	:	**Hon. P Kumararathnam, J.**
		Hon. Pradeep Hettiarachchi, J.
Counsel	:	Shanaka Ranasinghe, PC with Anushika Ranasinghe for the Petitioner instructed by Sandamali Peiris.
		Wishwa Wijesuriya, SC for the Respondent.
Inquiry on	:	15.05.2025
Decided on	:	27.06.2025

Pradeep Hettiarachchi, J

ORDER

1. This bail application has been filed by the Petitioner seeking to have the Accused, Gurusamy Chandrakumar alias Kumara, enlarged on bail. The Petitioner is the wife of the Accused. According to the Petition, the Accused was arrested on 28.09.2020 by a team of officers attached to the Athurugiriya Police Station for the alleged possession of 500 grams of heroin, contained in 20 sachets.

2. Thereafter, he was produced before the Magistrate's Court of Kaduwela on 29.09.2020 and was remanded. Since then, the Accused has remained in remand custody.

3. Subsequently, the items recovered from the Accused were sent to the Government Analyst for the analysis. According to the report submitted by the Government Analyst, the substance contained a pure quantity of 256.4 grams of Diacetylmorphine (Heroin). On 03.11.2022, the Indictment was served on the Accused before the High Court of Homagama for possession and trafficking of heroin.

4. The pre-trial hearing was originally scheduled for 15.12.2022, but was not taken up as the Attorney-at-Law representing the Accused had not received the relevant investigation notes.

5. Thereafter, the trial was postponed on several occasions due to various reasons. In the meantime, the Accused made a bail application to the High Court, which was dismissed for want of jurisdiction in light of the pure quantity of heroin involved. Following are

the grounds urged by the Petitioner for this Court's consideration in support of granting bail to the Accused.

a. The Accused has been in remand for four years without trial been taken up;
b. The Accused is a father of two children and the sole breadwinner of the family;
c. The Accused's family is in great financial difficulties as the accused has been in remand custody;
d. The Accused was self-employed and was carrying a business under the name and style of ''Dinushi Traders"; and,
e. The Accused has no previous or pending cases connected with narcotic substances.

6. Upon receiving the notices, the Respondents filed their Objections. In the Objections, it is stated that the petitioner has failed to establish the existence of exceptional circumstances and, as such, the bail application should be dismissed. It is further stated that there has been no oppressive or excessive delay in prosecuting the Accused. Moreover, it is asserted that, given the net weight of the heroin allegedly recovered from the Accused, it was intended for commercial purposes and, therefore, the Accused should not be released on bail.

7. It is Section 83 of the Poisons, Opium and Dangerous Drugs Ordinance, as amended by Act No. 41 of 2022 that governs the granting of bail for persons accused or suspected of committing offences of this nature.

Section 83 reads:

> *83(1). Subject to the provisions of section 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 offence under subsection (1) of Section 54A and Section 54B 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 77; and,*

b. which is punishable with death or life imprisonment shall not be released on bail except by the Court of Appeal in exceptional circumstances.

8. Nevertheless, exceptional circumstances are not defined in the Statute. Therefore, whether the grounds advanced by a Petitioner when seeking bail can be considered exceptional circumstances must be determined based on the facts and circumstances of each individual case.

9. As stated in ***Ramu Thamodarampillai vs The Attorney General*** [2004] 3 Sri. LR 180**,** "the decision must in each case depends 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.

11. In the present case, the Petitioner primarily requests this Court to consider the period of remand as an exceptional circumstance warranting the grant of bail to the Accused. However, there are several authorities which support the position that the remand period alone does not constitute exceptional circumstances as required under Section 83 of the Poisons, Opium and Dangerous Drugs Ordinance, as amended by Act No. 41 of 2022.

12. More importantly, when the net weight of drugs involved is indicative of a commercial quantity, Courts are generally reluctant to grant bail, as doing so would undermine the very purpose of Section 83. The legislature, in its wisdom, has enacted such stringent provisions with the aim of preventing the recurrence of crimes of this nature and to deter suspects or accused persons from absconding, given that a conviction carries a mandatory sentence of either death or life imprisonment. Accordingly, the duration of remand, by itself, does not constitute an exceptional circumstance warranting the grant of bail.

13. However, it must be emphasized that where the delay is oppressive and lacks reasonable justification, a suspect or accused arrested under this Act ought not to be detained in remand as a means of punishment.

14. It is also significant to note that delay is a relative term, which must be assessed in light of the specific circumstances of each case. Factors such as the quantity of illegal drugs involved, the complexity of the investigation, the inherent difficulties faced by the prosecution in handling complex cases, and the *modus operandi* of the Accused, which may necessitate further investigation, particularly when they are aided and funded by foreign sources or linked to international drug networks may justifiably cause delays in forwarding the indictment.

15. Therefore, a delay of four years in commencing a trial in a case with the above-mentioned characteristics may not amount to an exceptional circumstance warranting the grant of bail. Conversely, a delay of even two years may constitute an exceptional circumstance where the offence is of a simpler nature, lacking the aforementioned complexities, although still punishable under the same Act.

16. In the instant application, the Accused has been in remand since 28.09.2020. It took nearly one year to obtain the Government Analyst's Report, which is dated 13.09.2021. The Indictment was signed on 27.06.2022 and served on the Accused on 26.09.2022.

17. Upon perusal of the journal entries of the High Court of Colombo, it is observed that the case was postponed on multiple occasions due to the non-availability of productions and investigation notes. Although the Prosecution had undertaken to provide the necessary documents required by the Accused on 17.01.2017, 03.11.2022, 15.12.2022, 26.01.2023, and 13.02.2023, they failed to do so.

18. Thereafter, from 31.07.2023 to 07.02.2024, the Prosecution sought further time to furnish the relevant documents. Even on 08.07.2024, the trial was postponed due to the absence of Prosecution Witness No. 1. Only on 29.03.2023 was the trial postponed due to a personal reason of the Defense Counsel. Thus, it is evident that the delay in commencing the trial was primarily attributable to the Prosecution.

19. In their Objections, the Respondents have failed to provide any satisfactory explanation for the delay. The cumulative effect of the manner in which the Accused was taken into custody, the period he has already spent in remand, and the unexplained and inordinate

delay on the part of the respondents constitutes exceptional circumstances warranting the grant of bail.

20. Upon consideration of the above, the Accused is hereby ordered to be released on bail, subject to the following conditions:
    a) A cash bail of Rs. 200,000.00 with two sureties;
    b) Each surety shall enter into a bond of Rs. 1,000,000.00;
    c) The Accused shall surrender his passport, if any, to the High Court, and the Controller of Immigration shall be informed accordingly; and
    d) The Accused shall report to the Officer-in-Charge of the Grandpass Police Station on the 1st and 3rd Sunday of every month.

21. Violation of any of the above bail conditions shall result in the cancellation of bail. The Registrar of this Court is directed to communicate this bail order to the High Court of Homagama and the Officer-in Charge of Police Station Athurugiriya.

Judge of the Court of Appeal

P.Kumararatnam, J.

I agree.

Judge of the Court of Appeal