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.

1. The Officer in Charge
   Harbor Police Station
   Galle.
2. Officer in Charge,
   Divisional Anti-Corruption Unit
   Galle.

Complainant

Vs.

Raigam Koralge Asanka Dinesh Chathuranga

Suspect

Court of Appeal Bail Application**: CA/BAL/425/2024**

Magistrate Court of Galle Case No: **B 00691/2022**

AND NOW BETWEEN

Raigam Koralge Jayanthi
No 35, Matara Gedara Watta,
Ahangama

Petitioner

Vs.

1. The Officer in Charge,
   Harbor Police Station
   Galle.
2. Officer in Charge,
   Divisional Anti-Corruption Unit,
   Galle.

Complainant-Respondents

3. Hon. Attorney General,
   Attorney Generals' Department,
   Colombo 12.

Respondent

Raigam Koralage Asanka Dinesh Chathuranga

(Presently detained in Remand Prison)

Suspect

Before	:	**P. Kumararatnam, J.**
		Pradeep Hettiarachchi, J.
Counsel	:	S. Vindya Ekanayake for the Petitioner
		Vishwa Wijesuriya SC for the Respondents
Inquiry on	:	08.05.2025
Decided on	:	20.06.2025

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 Suspect Raigam Koralage Asanka Dinesh Chaturanga (hereinafter referred to as "the Suspect"). The Suspect had been arrested on 07.03.2022, by the 2nd Complainant at Nugadoowa area in Galle for possession of 758 grams of gross quantity of Heroin and later handed over to the 1st Complainant.

2. It is alleged that, at the time of his arrest, the Suspect was in possession of a gross quantity of 758 grams of Heroin. On 08.03.2022, he was produced before the Magistrate of Galle and was remanded. Since that date, the Suspect has remained in remand.

3. 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."

4. 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 grammes or more, is required to be kept in remand, unless such person satisfies this Court as to the existence of circumstances that are exceptional. So, the burden is on the Suspect to establish the existence of exceptional circumstances.

5. Exceptional circumstances are not defined in the Act. 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 vs 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:
    - The Suspect denies all allegations levelled against him;
    - The Suspect is in remand custody for more than 2 years and 7 months now;
    - The Suspect is 33 years old and unmarried and;
    - Father of the Suspect has passed away and mother is separated from them.

8. Denial of the allegations leveled against the Suspect cannot be considered an exceptional circumstance, as it is a matter to be determined at trial after evaluating the

evidence—unless there exists an inherent improbability in the facts presented in the 'B' Report.

9. Furthermore, the Suspect's age, unmarried status, and the passing of his father do not constitute exceptional circumstances within the context of this case. It is true that the Suspect has been in remand for the past two and a half years. However, the duration of remand alone cannot be considered an exceptional ground warranting the grant of bail.

10. Furthermore, for delay in prosecuting the Suspect to be considered an exceptional ground for granting bail, it must amount to an oppressive and inordinate delay that cannot be reasonably explained by the prosecution. In the instant case, it was submitted on behalf of the Respondents that the Hon. Attorney General received the IB extracts on 12.01.2024, and the Indictment was signed after 14.03.2025. The delay in preparing the Indictment was attributed to difficulties in obtaining photocopies. Therefore, there is little reason to infer that there was any oppressive or inordinate delay on the part of the Respondents.

11. 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…".*

12. In the present case, according to the Government Analyst's Report, the pure quantity of heroin is 150.3 grams. Therefore, it cannot, in any event, be considered a user quantity, but rather a commercial quantity, and there exists a risk of absconding since the punishment prescribed in the Poisons, Opium and Dangerous Drugs Ordinance is either death or life imprisonment.

13. Furthermore, it was revealed that the Suspect has four previous convictions of a similar nature during the period from 2014 to 2018, which further demonstrate that he has gradually become a trafficker. Needless to say, given the Suspect's prior conduct, there is a significant risk that he would reoffend if granted bail.

14. Therefore, the period of one year and seven months in remand cannot be regarded as an exceptional circumstance in the context of the present case, given the Suspect's prior conduct and the net quantity of heroin involved.

15. When granting bail, the Court must be satisfied that the Suspect will comply with the bail conditions and appear before the Court when required. Otherwise, the entire purpose of the Act would be undermined. For the reasons stated above, there is no assurance that the Suspect's presence in Court can be secured if bail is granted. Therefore, I find that this is not an appropriate case for granting bail to the Suspect.

16. Accordingly, the bail application stands dismissed.

17. The Registrar of this Court is directed to communicate this Order to the Magistrate Court of Galle and the Officer-in-Charge of the Harbor Police Station Galle forthwith.

Judge of the Court of Appeal

P.Kumararatnam, J.

I agree.

Judge of the Court of Appeal