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.

Ranawaka Arachchige Charith Tharanga Perera, No 13/65D, Jampata Street, Colombo 13.

(presently incarcerated at the Colombo Magazine prison)

Petitioner

Vs.

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

2. The Hon. Attorney General,
   Attorney Generals' Department
   Colombo 12.

Respondents

Court of Appeal Bail Application:
CA/BAL/0514/2024

Magistrate Court of: Welisara
Case No B 1102/23

Before	:	**Hon. P Kumararathnam, J.**
		Hon. Pradeep Hettiarachchi, J.
Counsel	:	Harith Hettiarachchi with Buddhi Udara for the Petitioner
		Tharaka Kodagoda, SC for the Respondents.
Inquiry on	:	21.05.2025
Decided on	:	20.06.2025

Pradeep Hettiarachchi, J

ORDER

1. This is an Application for bail filed on behalf of the Suspect-Petitioner named Ranawaka Arachchige Charith Tharanga Perera (hereinafter referred to as "the Petitioner") under Section 83(2) of the Poisons, Opium and Dangerous Drugs Ordinance.

2. According to the Petition, the Petitioner was arrested on 21.03.2023 by officers attached to the Police Special Task Force and later was handed over to the Police Narcotic Burau for allegedly possessing and trafficking 1.06 Kg of Methamphetamine, an offence punishable under section 54(1) (b) and (d) of the Poisons, Opium, and Dangerous Drugs Ordinance as amended by the Act No 41 of 2022.

3. Subsequently, the Petitioner was produced before the Magistrate of Welisara, and a detention order was obtained. On 27.03.2027, the Petitioner was produced again before the Magistrate's Court of Welisara, where he was remanded. He has been in remand since that day.

4. The provisions of Section 83(2) of the Poisons, Opium and Dangerous Drugs Ordinance as amended by the Act No 41 of 2022, decrees that a person accused or suspected of being in possession of 10 grammes or more of the prescribed drugs, is required to be kept in remand, unless such person satisfies the Court as to the existence of exceptional circumstances.

5. 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.*
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> *(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,*
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> *b. which is punishable with death or life imprisonment shall not be released on bail except by the Court of Appeal in exceptional circumstances.*

6. 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.

7. 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."

8. 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.*

9. The Petitioner has urged following grounds as exceptional circumstances:

   a. The Petitioner has been in remand custody since 21.03.2023, and no Indictment has been filed against him yet;
   b. There exists a glaring discrepancy between the gross weight of the Methamphetamine mentioned in the B report and the weight of the substance received by the Government Analyst, which questions the truth of the B report;
   c. The Petitioner has no previous convictions for large scale drug related offences except for possessing a cannabis cigar.
   d. The Petitioner's mother has experienced a cerebrovascular accident, has partially paralyzed, has high blood pressure and is at high risk of getting a stroke and is actively seeking medical treatment and needs supervision.
   e. The Petitioner has also challenged the place of the alleged arrest and the manner in which he was arrested, and the chain of custody of the substance allegedly recovered from the possession of the Petitioner. However, I do not delve into those facts as they are to be tested at the trial.

10. One of the grounds advanced by the Petitioner in support of his bail application is the length of time he has spent in remand custody, as he has been in remand since 21 .03. 2023.

11. 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 Poisons, Opium and Dangerous Drugs Ordinance.

12. However, these provisions should not be used to keep a person in remand for an indefinite period without taking the necessary steps to charge him, as this would amount to a denial of liberty through no fault of his own.

13. In the present case, no explanation has been provided by the Respondents to justify the delay in prosecuting the Petitioner. The Indictment has not yet been filed, despite the Petitioner having been arrested in March 2023. Furthermore, the necessity for any further investigation is not apparent, given the circumstances under which the alleged arrest was made. Therefore, the failure of the Respondents to indict the Petitioner for nearly two years after his arrest may be considered an exceptional ground warranting the grant of bail.

14. It is also worth noting the difference in the gross weight of the substance at the time of arrest and upon its receipt by the Government Analyst Department. According to the 'B' Report, the weight of the substance recovered from the suspect is 1 kg and 6 grams, whereas the gross weight mentioned in the Government Analyst's Report is 929.2 grams. This results in a difference of 76.8 grams, which remains unexplained.

15. Generally, the facts of the case are not a consideration for bail and are matters to be determined at trial. However, when the Petitioner has disputed those facts in his bail application—particularly the very arrest itself and the recovery of the alleged quantity—and when a doubt is created due to the discrepancy in the gross weight recorded on the two occasions, there is nothing improper in treating these as exceptional circumstances.

16. It is also pertinent to note that the Petitioner has no previous convictions and no pending cases against him. When the period of remand and the abovementioned facts are considered in their totality, they give rise to exceptional circumstances warranting the granting of bail.

17. Accordingly, I enlarge the Petitioner on bail subject to the following conditions:

    a. Rupees two hundred thousand cash bail with two sureties;
    b. The sureties must enter into a bond amounting to Rupees one million each;
    c. The Petitioner shall report to the Officer-in Charge of the Police Narcotic Bureau, Colombo on the 1st Sunday of every month between 9.00am and 10.00am; and,
    d. The Petitioner shall surrender his passport, if any, to the Magistrate Court of Colombo.

18. The Registrar of this Court is directed to communicate this bail Order to the Magistrate Court of Colombo, and the Officer-in Charge of the Police Narcotic Burau, Colombo 01 forthwith.

Judge of the Court of Appeal

P.Kumararatnam, J.

I agree.

Judge of the Court of Appeal