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.

Officer in Charge
Terrorist Investigation Division, 1st Floor, No 149, Kirullapone, Avenue, Colombo. 05.

Complainant

Vs.

Wattegedara Chandana Asanka Wijesinghe
No 475, Eriyavatiya, Kelaniya.
(presently in remand custody)

Accused

And Now Between

Wattegedara Chandana Asanka Wijesinghe,
No 475, Eriyavatiya, Kelaniya.

Accused-Petitioner

Vs.

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

Respondent

2. Officer in Charge
   Terrorist Investigation Division, 1st Floor, No 149, Kirullapone, Avenue, Colombo. 05.

Complainants-Respondent

Court of Appeal Bail Application No:
CA/BAL/59/2024

High Court of Gampaha Case No:
HC 227/21

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

Pradeep Hettiarachchi, J.

Counsel : Neranjan Jayasinghe with **S.** Ariyadasa, R. Heelage, and Imangsi Senarath for the Petitioner.

Tharaka Kodagoda, S.C. for the Respondent

Inquiry on : 29.04.2025

Decided on : 16.06.2025

Pradeep Hettiarachchi, J

ORDER

1. The Accused-Petitioner (hereinafter referred to as 'the Petitioner') has filed this bail application seeking to be enlarged on bail, as he has been in remand for the past six years.

2. The Petitioner was arrested on 30.01.2019 by officers of the Terrorist Investigation Division for allegedly committing an offence under the Poisons, Opium, and Dangerous Drugs Ordinance. Subsequently, he was indicted in the High Court of Gampaha for the possession and trafficking of 2 kg, 303 g, and 900 mg of heroin. The trial before the High Court of Gampaha commenced following the service of the Indictment on the Petitioner on 17·11. 2021.

3. When the charges were readout to the Petitioner, he pleaded not guilty to the 1st and 2nd amended charges of the Indictment. The trial before the High Court of Gampaha commenced on the 17.07.2023. At the trial, PW1 namely, W.S.L.Gunawardhana, the Chief Inspector of the Police Terrorist Investigation Unit testified.

4. However, his evidence has not yet been concluded. Upon perusal of the proceedings of the High Court of Gampaha reveals that the trial has been postponed on several occasions due to the non-availability of the Defense Counsel, and on some instances, due to the prosecution not being ready. The further trial has been fixed for 17.06.2025.

5. The Petitioner was charged under 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, for possessing and trafficking of Heroin.

6. According to the Government Analyst Report, dated 25.05.2019, the net weight of Heroine is 2kg 303g 900mg, which cannot in any manner be considered as a user quantity. It is trite law that in an application of this nature, bail would be granted only in exceptional circumstances. Therefore, the burden is on the Petitioner to establish the existence of exceptional circumstances to the satisfaction of the Court.

7. Bail with regard to persons suspected or accused of offenses involving the manufacturing, trafficking, importing or exporting or possession of Heroin, Cocaine, Morphine or Opium is set out in section 83 of the Poisons, Opium and Dangerous Drugs Ordinance as amended by Act 13 of 1984.

8. Section 83 reads:

> *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*.

9. The main ground advanced on behalf of the Petitioner is that, even after six years since his arrest, the trial has not yet been concluded, and hence, the period of six years spent in remand alone may be considered an exceptional ground to enlarge the Petitioner on bail.

10. The State Counsel objected to the bail application and submitted that there is no oppressive delay on the part of the prosecution, although the trial has not yet been concluded. While explaining the instances in which the case was postponed, the State Counsel emphasized that, on several occasions, the trial was adjourned due to applications made on behalf of the Petitioner. Hence, it was submitted that the delay in the trial cannot be attributed solely to the prosecution.

11. In the present application, apart from the period spent in remand, the Petitioner has failed to advance any other ground that could be considered an exceptional circumstance.

12. 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…".*

13. In ***Ramon C Tan v. People of the Philippine*** G.R. No. 134298 August 26 1999, the Court discussed the accused's right to a speedy trial and how delays may constitute a violation of that right as follows:

> *The right of the accused to a speedy trial and to a speedy disposition of the case against him was designed to prevent the oppression of the citizen by holding criminal prosecution suspended over him for an indefinite time, and to prevent delays in the administration of justice by mandating the courts to proceed with reasonable dispatch in the trial of criminal cases. Such right to a speedy trial and a speedy disposition of a case is violated only when the proceeding is attended by vexatious, capricious and oppressive delays. The inquiry as to whether or not an accused has been denied such right is not susceptible by precise qualification. The concept of a speedy disposition is a relative term and must necessarily be a flexible concept.*

14. Thus, the right to a speedy trial as well as the right to the speedy disposition of cases should be understood as a relative and flexible concept, such that a mere mathematical calculation of the time elapsed is not sufficient. Notably, this right is deemed to be violated only when the proceedings are marked by vexatious, capricious, or oppressive delays; when unjustified postponements of the trial are requested and granted; or when, without any justifiable reason, an extended period is allowed to elapse without the case being brought to trial.

15. Therefore, in determining whether the Petitioner has been affected or prejudiced by the delay, and thus denied their right to a speedy trial, the following factors may be considered and weighed:

    a. the length of the delay;
    b. the reasons for the delay;
    c. the prejudice caused by the delay;
    d. the Accused's assertion or failure to assert this right;
    e. the gravity of the offence and the possible punishment if convicted; and'
    f. the likelihood of absconding if released on bail.

16. As can be observed from the case record, the Indictment was served on the Petitioner, and the charges were read over to him on 17.11. 2021, at which point he pleaded not guilty. The trial against the Petitioner has already commenced in the High Court of Gampaha.

17. It can be observed that the trial was taken off from the trial roll on two occasions because the prosecution was unable to provide the defense with copies of the investigation notes. The proceedings dated 23.06.2022, 28.11.2022, and 26.01.2023 demonstrate the reasons for the prosecution's inability to hand over the said documents to the defense.

18. Therefore, I am not inclined to conclude that unjustified postponements of the trial were requested and secured by the prosecution. Apart from these two instances, there was no failure on the part of the prosecution to conduct the trial. Hence, it is difficult, if not impossible to construe that proceedings were attended by vexatious, capricious, and oppressive delays.

19. It is noteworthy, that the trial was also postponed on three occasions due to the non-availability of the Defense Counsel. Therefore, the delay of the proceedings cannot in my view be solely attributed to the prosecution.

20. 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…".

21. This Court is also mindful of the net quantity of heroin said to have been recovered from the possession of the Petitioner. In ***Abdul Quideer Aboobucker v. AG*** [CA/PHC/APN 42/2011 (CAM 31.08.2011)], this Court has rejected the application for bail, considering the fact that the alleged quantity of drugs recovered from the suspect is of a commercial nature.

22. Needless to say, a conviction would result in either the death penalty or life imprisonment. Given the gravity of the offense and the severity of the probable punishment, the risk of the accused absconding if released on bail is extremely high.

23. Furthermore, the special bail provisions under Section 83(2) establish a stringent framework for certain types of narcotics offences, primarily to prevent suspects from absconding or re-engaging in similar criminal activities. This is due to the unique nature of drug-related offences, which are often committed in a highly organized and sophisticated manner. Therefore, if courts grant bail solely on the ground of delay, without giving due consideration to the surrounding circumstances and the nature of the offences, it would, in my view, undermine the very purpose of the Act.

24. As stated in ***Labukola Ange Gedara Ashani Dhanishika*** CA (PHC) APN 04/2016, 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 expresses the intention of the Legislature. It was 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.*

25. Similarly, in ***Cader (on behalf of Rashid Khan) v. 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.*

26. In the same case, while focusing the attention on the nature and gravity of the offences falling under the Act, Eric Basnayake J. further stated as follows:

> *Heroin has become a menace in our society. It is not easily detectable. Due to the fact alone, the tendency to commit this kind of crime repeatedly has become feasible. The repetitive factor prevalent in this sort of crime and the difficulty of detection are significantly strong reasons for refusing bail in this type of cases.*

27. We have carefully considered the submissions made by both parties and have found no exceptional circumstances which persuade this court to grant bail for the accused. Since the trial has already commenced and the prosecution witness is giving evidence, it cannot be observed any inordinate or unexplainable delay of the Respondents. Hence, the grounds advanced in support of the bail application of the Petitioner are far from satisfactory and cannot be accepted.

28. For the reasons stated above, we are not inclined to release the Petitioner on bail at this juncture. Accordingly, the bail application stands dismissed.

29. The Registrar of this Court is directed to communicate this bail Order to the High Court of Gampaha and the Officer-in-Charge of the Terrorist Investigation Division, 1st Floor, No 149, Kirullapana Avenue, Colombo 05.

Judge of the Court of Appeal

Hon. P. Kumararatnam,J (CA)

I agree,

Judge of the Court of Appeal