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 section 04 of the Act No. 41 of 2022.

Officer in Charge,
Police Narcotic Bureau,
Colombo 01.

Complainant

Vs

1. Kaluhennadige Nilupul Udayanga
2. Widanagamage Nuwan Sameera
3. Suwada Hennadige Dil Keshan
4. Waniga Baduge Jayan Shiral
5. Batheegama Gamacharige Dushan Thilina
6. Loku Yakdehige Piyum Wisitha
7. Warnakula Kattadige Ashan Wimuth Suranjan *alias* Warnakula Kattadige Ashan Pamunman Suranjan

Suspects

AND

Suwada Hennadige Dil Keshan
(Presently at Colombo-Remand Prison)

Petitioner

Vs.

1. Officer in Charge,
   Police Narcotic Bureau,
   Colombo 01.

Court of Appeal Bail Application No:
96/2024

Colombo Magistrate Court Case No:

B 90115/01/23

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

Respondents

1. Kaluhennadige Nilupul Udayanga
2. Widanagame Nuwan Sameera
4. Waniga Baduge Jayan Shiral
5. Batheegama Gamacharige Dushan Thilina
6. Loku Yakdehige Piyum Wisitha
7. Warnakula Kattadige Ashan Wimuth Suranjan *alias* Warnakula Kattadige Ashan Pamunman Suranjan

(All of; presently in the remand custody at Colombo-Remand Prison)

Suspect-Respondents

Before : **Hon. P. Kumararatnam, J. (CA)**
Hon. R. P. Hettiarachchi, J. (CA)

Counsel **:** Naveen Maharachchi with Chandeeka Balasuriya for the Petitioner.
Malik Azeez for the Respondents.

Inquiry on : 07.05.2025

Decided on : 13.06.2025

Hon. R. P. Hettiarachchi, J. (CA)

ORDER

1. This is an Application for bail filed by the Petitioner-Suspect named, Suwanda Hennedige Dil Kishan (hereinafter referred to as "Petitioner") under Section 83(2) of the Poisons, Opium and Dangerous Drugs Ordinance as amended by Section 04 of

Act No 41 of 2022. The Petitioner was arrested on 15.04.2023 along with some other suspects.

2. At the time of their arrest, the suspects were on board a vessel bearing Registration No. MUL-A-1472-MTR along the west coast of Sri Lanka. According to the Petition, the Petitioner was arrested on 15.04.2023, along with the 1st, 2nd and 4th to 6th suspects, for importing, possessing, and trafficking 179 kg and 654 g of heroin. The arrest was made by a team of naval officers led by Lt. Com. M. Salinda.

3. On 17.04.2023, a team of investigators from the Police Narcotic Bureau visited the Naval Command in Galle and arrested the suspects at 9:30 a.m. On 18.04.2023, the suspects were produced before the Magistrate of Colombo, who issued a detention order until 23.04.2023. Since then, they have been held in remand.

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.*
>
> *(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*
>
> 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 77; and,*
>
> b. *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. However, exceptional circumstances are not defined in the Statute. Therefore, whether the grounds advanced on behalf of the Petitioner 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 depend on its own particular facts and circumstances."*

8. As held in ***Attorney General v. Ediriweera S.C. Appeal No. 100/2005*** [2006 BLR 12];

> *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 [….].*

9. 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.

10. In the instant Application, the Petitioner mainly averred following grounds as exceptional circumstances;

    a. The Petitioner is married with an infant few months old at the time of filing this Application;

    b. The Petitioner was engaged in the fishing industry as a fisherman and is the sole breadwinner of the family;

    c. Without the Petitioner's assistance his family is currently struggling and is in need of his presence to make ends meet; and,

    d. In view of the rising cost of living, the Petitioner's wife is unable to attend the needs of the family; and,

    e. In view of the above circumstances there is no risk of the Petitioner absconding the court.

11. The Petitioner also averred that the prosecution has not forwarded any compelling evidence to justify the continued incarceration of the Petitioner.

12. This Court cannot lightly disregard the net quantity of heroin reportedly recovered by Navy personnel during the search of the vessel on which the Petitioner was on board. According to the Government Analyst Report dated 28.02.2024, the pure quantity of heroin is 56.631 Kg.

13. Clearly, the net weight of the heroin is far beyond what could be intended for personal consumption and is undoubtedly meant for commercial purposes. Therefore, in the event of a conviction, the likely sentence would be either the death penalty or life imprisonment. Given the seriousness of the offence and the severity of the possible punishment, the likelihood of the accused absconding is also very high.

14. It was submitted on behalf of the Petitioner that there exists a significant discrepancy between the gross weight and the net weight of the heroin seized, thereby casting

doubt on the credibility of the raid. It is true that there is a discrepancy between the net weight and the gross weight of the drugs recovered by the Navy.

15. However, it is common knowledge that when heroin or any other illegal drug is transported by sea, it is typically wrapped in several layers of polypropylene and concealed in bags to prevent contamination by seawater. The gross weight of the heroin includes the weight of these wrappings and bags. Therefore, the net weight will, quite obviously, be less than the gross weight.

16. Apparently, the main grounds advanced by the Petitioner in support of his bail application are personal in nature, particularly the hardships faced by his family due to his incarceration. It must be noted that the Petitioner must satisfy the Court that there are exceptional circumstances which, in the interest of justice, warrant his or her release on bail.

17. In ***S v Peterson*** 2008 (2) SACR (C) 355 the Court held that;

> *Generally speaking "exceptional" is indicative of something unusual, extraordinary, remarkable, peculiar or simply different but that because of varying degrees, it will therefore depend on the context and on the particular circumstances of the case under consideration.*

18. The fact that the Petitioner is the sole breadwinner of the family and has two children cannot, in my view, be considered an exceptional circumstance warranting his release on bail. In the majority of cases, this is often the situation when the husband is in remand.

19. More importantly, exceptional circumstances cannot be considered in isolation; they must always be assessed in conjunction with the alleged offence for which the suspect has been remanded.

20. Undoubtedly, the seriousness of the charges and the possible sentence can serve as an incentive for an accused to evade trial. These factors have been addressed in various cases, and the Court will not grant bail where there is a likelihood that the accused may abscond. Pointers for the Court's consideration include the seriousness of the offence, the probability of a conviction, and the likely nature of the sentence.

21. 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 the Court grants 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.

22. 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 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 Petitioner 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.

23. 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 […]*

24. 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.*

25. It is also pertinent to note that the suspect had previously been convicted and fined Rs. 5,000 by the Magistrate's Court of Tangalle in Case No. 42447/2020 for possession of 135 mg of heroin, a fact that was never disclosed by the Petitioner in his Petition. This omission certainly calls into question the Petitioner's *uberrima fides* in making this bail Application.

26. It has also been revealed that the investigation dossier has been forwarded to the Hon. Attorney General and is currently under consideration. Hence, it can be inferred that the Petitioner will be charged without undue delay and that the trial may soon commence. Accordingly, there is no indication of any undue or oppressive delay on the part of the Respondents in the investigation process. Given the quantity of heroin detected and the manner in which it was imported into Sri Lanka, the time taken to conclude the investigation cannot be considered unreasonable or excessive.

27. In light of the facts of the present Application and the aforementioned authorities, this Court is not persuaded that the grounds urged by the Petitioner constitute exceptional circumstances warranting his release on bail.

28. Accordingly, the bail Application of the Petitioner is dismissed. The Registrar of this Court is directed to transmit a copy of this order to the Officer-in-charge, Police Narcotic Bureau, Colombo-01.

Judge of the Court of Appeal

Hon. P. Kumararatnm,J (CA)

I agree,

Judge of the Court of Appeal