# 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.

The Democratic Socialist Republic of Sri Lanka.

**Complainant**

**Court of Appeal Case No.**
**CA/BAL/0268/2024**
**High Court of Colombo**
**Case No. 4448/2023**

**Vs.**

Hewage Rusith Thilina Perera.

**Accused**

**AND NOW BETWEEN**

Hewage Rusith Thilina Perera.

**Accused-Petitioner**

**Vs.**

1. The Hon. Attorney General,
   Attorney General's Department,
   Colombo 12.

**Complainant-Respondent**

2. Officer-in-Charge,
   Police Station,
   Panadura South.

**Respondent**

**BEFORE : P. KUMARARATNAM, J**
**K.M.G.H. KULATUNGA, J**

**COUNSEL :** Nihara Randeniya for the Accused-Petitioner.
Jehan Gunasekara SC., for the Respondents.

**INQUIRY ON :** 29.01.2025

**DECIDED ON :** 28.02.2025

**K.M.G.H. KULATUNGA, J.**

1. This application for bail is preferred under Section 83(2) of the Poisons, Opium and Dangerous Drugs Ordinance Seeking bail for the accused-petitioner, Hewage Rusith Thilina Perera. According to the petitioner, this suspect was arrested on 17.07.2021 and at that point it was alleged that he was in possession of 460mg of heroine. However, prior to that, on

14.04.2021 officers from Panadura South Police Station had recovered an assortment of Narcotics upon searching his house but the suspect has been absconding since then and had been apprehended on 17.07.2021. The narcotics recovered from his house is as follows; 74.82g of heroine, 376g of cannabis and 6.332g of Methamphetamine. The said quantities are pure quantities as per the Government Analyst's Report.

2. The said recovery was made from the house of the petitioner on 14.04.2021 and the petitioner was arrested on 17.07.2021 by officers from the same police station. Mr. Nihara Randeniya AAL., submitted that as there were several other occupants namely wife, children and the brother of the petitioner in that house, proof of exclusive possession is in doubt. The learned Counsel however conceded three previous convictions and one pending case reported against this petitioner.

3. As for the respondents, State Counsel Mr. Jehan Gunasekara vehemently objected and submitted that this accused was indicted in the High Court of Panadura in July 2023. He had been previously enlarged on bail on 01.11.2022. However, upon the receipt of the indictment and service of notices on the petitioner he had failed to attend Court. Upon issuing summons on him and serving notices on the sureties on several dates and as the petitioner did not appear warrant was issued and he was arrested and produced before the High Court Judge on 23.01.2024. On this day bail was cancelled and he had been remanded. Subsequently, petitioner had made an application for bail when the learned Trial Judge refused the application as the High Court does not have jurisdiction to consider bail as the law stood amended. The petitioner thus has preferred this application seeking bail from this Court.

4. He has three similar previous convictions and one pending case. To cap it all, he had violated his previous bail condition and not appeared in Court.

The petitioner concedes that his sureties had appeared on notice but submits that as he did not have notice he failed to appear in Court. The main ground of exceptionality is the apparent lack of exclusive possession. He concedes that the police did recover a bag containing the assortment of Narcotics from the house where he resides as stated above. There have been certain of his personal documents namely birth certificate and the marriage certificate in that bag. However, the petitioner appears to have not been present at home when the said recovery was made.

5. In the normal course of events, if a person is informed or hears that the police have searched and taken certain items from one's house you expect such person go to the police and make an inquiry. This would especially be so if he was innocent and is unaware of the existence of narcotics. In this instance the petitioner was absconding for three months until he was apprehended and arrested by chance with heroin on 17.07.2021. This conduct is very consistent with a person acting with a guilty mind and gives rise to a strong inference that he knew what was in the bag and it was probably his own. Therefore, the submission of *prima facia* lack of exclusive possession cannot succeed in this instance.

6. The prosecution has concluded the investigation and instituted criminal proceedings. The delay for a great part has been due to the absconding and absence of the petitioner himself. Therefore, he cannot be heard to complain of the delay for which he himself is primarily responsible. Further, considering his previous pending matters and convictions, he seems to be quite familiar with the process of Court. The fact of he not responding to summons, previous conduct and not being present in court clearly indicates that there is a great propensity of the Accused absconding if released on bail.

7. In the above premises and in the absence of exceptional circumstances, the Accused-Portioner is not entitled to bail in his matter. Accordingly, this court is left with no option but to refuse and reject this application for bail.

8. Applications is refused and dismissed.

**JUDGE OF THE COURT OF APPEAL**

P. Kumararatnam, J

I agree.

**JUDGE OF THE COURT OF APPEAL**