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 as amended by the Poisons, Opium and Dangerous Drugs (Amendment) Act No. 41 of 2022.

Naidu Handige Lahiru Manoj Sanjeewa
No. 225/50, Ferguson Road
Colombo 15.
(Presently incarcerated at the CRP-Welikada Remand Prison)

Accused - Petitioner

Vs

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

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

Respondents

Court of Appeal Bail Application:
CA/BAL/0130/2025

High Court of Negombo Case No:
HC/15/24

Magistrate Court of Welisara Case:
B/2038/22

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

Pradeep Hettiarachchi, J.

Counsel : Gayal Kalatuwawa for the Petitioner
Wishwa Wijesooriya, SC for the Respondents.

Inquiry on : 01.09.2025

Decided on : 07.11.2025

Pradeep Hettiarachchi, J

Order

1. This is an Application for bail filed by the Accused-Petitioner named Naidu Hennadige Lahiru Manoj Sanjeewa (hereinafter referred to as "the Petitioner") under section 83(2) of the Poisons, Opium and Dangerous Drugs Ordinance (hereinafter sometimes referred to as "the Ordinance").

2. According to the "B" Report dated 20.06.2022, Sergeant of Police S.I. Matharaarachchi, attached to the Police Narcotics Bureau, had received information regarding a drug trafficking incident in Dehiwala. Thereafter, S.I. Matharaarachchi and other police officers proceeded to a house in Dehiwala and recorded statements from the residents of that house. However, at about 7.30 p.m., the said S.I. Matharaarachchi received further information from an informant regarding another drug trafficking incident expected to take place in Hunupitiya, Wattala, on the following day.

3. On the next day, i.e., 19.06.2022, S.I. Matharaarachchi and other police officers attached to the Police Narcotics Bureau, accompanied by the informant, went to Hunupitiya. They observed the Petitioner standing near a shrine room at the junction turning towards Wedikanda on the Wattala–Hunupitiya–Enderamulla Road. Upon searching the Petitioner, they found in his possession 52 grams and 200 milligrams of heroin. The Petitioner was thereafter arrested by the police for trafficking in and possessing 52 grams and 200 milligrams of heroin.

4. The Petitioner was produced before the Magistrate Court of Welisara on 20-06-2022 and has been kept in remand since the date of his arrest. The Petitioner vehemently denies the allegations levelled against him and states that on the date of his arrest, i.e., 19.06.2022, he was at a rented house in Delgoda with his girlfriend, one Nimesha Harshani, when several police officers in civil attire arrived at the premises and arrested him.

5. According to the Government Analyst Report dated 17-08-2022, net quantity of Heroin recovered from the Petitioner was 12. 34 grams.

6. According to the Petitioner, although the Indictment was forwarded to the High Court of Negombo by letter dated 04.04.2023, the case was not taken up, and the Indictment was not served on him for reasons unknown to the Petitioner. On 03.04.2024, he was finally produced before the High Court, at which point the Indictment was served on him, and Counsel was assigned for his representation. Thereafter, the pre-trial was held on 08.08.2024, and the trial was fixed to commence on 25.02.2025. However, as the case was not taken up for trial on that date, the learned High Court Judge rescheduled the matter for trial on 26.06.2025.

Relevant Law

7. Under section 83(2) of the Ordinance, 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.

8. It is important to note that even if section 83 of the Ordinance mentions of exceptional circumstances, what actually amounts to an exceptional circumstances are not defined in the Ordinance. Therefore, whether the grounds advanced by the Petitioner constitute exceptional circumstances must be determined based on the specific facts and circumstances of each case.

9. As stated in ***Ramu Thamodarampillai v The Attorney General*** [2004] 3 Sri. LR 180, "the decision must in each case depend on its own particular facts and circumstances.

Consideration of Exceptional Circumstances

10. The following grounds have been urged by the Petitioner as exceptional circumstances warranting consideration for bail:

    (a) The Petitioner has been kept in remand custody for a period of 33 months (2 years and 9 months) from the date of his arrest.

    (b) The inordinate delay in prosecuting the Petitioner which amounts to excessive or oppressive delay in the High Court case.

    (c) The Petitioner is 28 years old and a businessman. The Petitioner's family is affected due to him being incarcerated for a long period of time.

    (d) The Petitioner's mother suffers from recurring pyelonephritis, and she is facing difficulties in life due to the loss of assistance of the Petitioner.

    (e) The weaknesses in the prosecution case which may be resulted in an impossibility to secure a conviction.

11. The Respondents have filed their Statement of Objections on 25-08-2025. In the Statement of Objections it is stated that, the Petitioner has failed to establish exceptional circumstances warranting the release of the Petitioner on bail; the quantity of Heroin recovered from the possession of the Petitioner is a commercial quantity; the Petitioner has one pending case in the High Court of Colombo for a similar offence; the credibility, the truthfulness and the probability of the evidence of the officer-in-charge of the raid should be tested and determined by the trial court and are not exceptional grounds for bail and; the case bearing No. HC/ 15/24 has been instituted against the Petitioner and it is fixed for trial, therefore, the Petitioner will be tried without any delay.

12. The main ground advanced by the Petitioner is the delay in prosecuting him. The Petitioner has spent nearly two years and nine months in remand custody as at the date of this Petition.

13. Regarding the time period spent in remand, this Court has previously in a long line of judicial authorities have held that the period spent in remand custody alone does not suffice to grant bail to a suspect or an accused. For instance in in ***Labukola Ange Gedara Ashani Dhanushika*** CA (PHC) APN 04/2016, Dehideniya J stated that the time spent in remand custody alone cannot be considered as an exceptional circumstance warranting the grant of bail to a suspect when the suspect has been previously convicted for similar offences. He stated;

> *In the present case he Petitioner has failed to establish any exceptional circumstances warranting this Court to exercise the revisionary jurisdiction. The Petitioner's first point is that the suspect is in remand nearly for two years. 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 express 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 suspect 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.

14. It is pertinent to note that, the Petitioner has disclosed in the Petition that he has two previous convictions and one pending case in the High Court of Colombo for a drug related offence. It is stated in the Statement of Objections that the Petitioner has been arrested on 14-03-2021, by the Colombo Crime Division for the possession and trafficking of 51.319 grams of Heroin and the Petitioner was produced before the Magistrate Court of Maligakanda under the case bearing No. B 4775/2021. Thereafter, the Indictment was forwarded to the High Court of Colombo under the case bearing No. HC/3900/2022.

15. Therefore, the Petitioner's previous conduct is suggestive of the fact that he has been dealing with commercial quantities even in the past and that there is a possibility of the Suspect re-offending if granted bail.

16. Also, in ***Cader (on behalf of Rashid Khan) v OIC Narcotic Bureau*** [2006] 3 Sri. LR 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.

17. In the same case, while focusing the attention on the nature and gravity of the offences falling under the Ordinance, 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.

18. 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 Courts grant bail solely on the ground of delay, without giving due consideration to the surrounding circumstances such as the previous conduct of the suspect/ accused concerned and the manner in which the crime was committed, it would, in my view, undermine the very purpose of the Act.

19. Another ground advanced by the Petitioner is that his family is facing severe hardships and was adversely affected due to the prolonged detention in remand custody. It is also stated that the Petitioner's mother suffers from recurring pyelonephritis and is facing difficulties since there is no one to assist her. This cannot, in my view, be considered as an exceptional circumstance warranting his release on bail. In the majority of cases, this is often the situation especially when the sole bread winner of the family is in remand.

20. The Petitioner has also stated in the Petition that it is impossible to secure a conviction due to weak nature of the prosecution case. Furthermore, the Petitioner's version is that, on the date of his arrest, i.e. 19-06-2022, the Petitioner was at a rented house in Delgoda with his girlfriend called Nimesha Harshani when several police officers in civil attire came to his house and arrested him and that no illegal substance was recovered from his possession. However, the Petitioner has not made any attempt to substantiate this position other than merely stating so. As per material available before us, we see no glaring discrepancies inconsistencies in the prosecution's versions of events which invite the consideration of this Court.

21. In view of the foregoing, I hold that the Petitioner has failed to establish the exceptional circumstances warranting his release on bail. More importantly, the fact that the Petitioner has two previous convictions and has been dealing with commercial quantities of drugs even prior to the present case, when considered cumulatively, do not persuade this Court to grant bail to the Petitioner.

22. 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 Registrar of the High Court of Negombo and the Magistrate Court of Welisara and the Officer-in-Charge of the Police Narcotic Bureau forthwith.

Judge of the Court of Appeal

P.Kumararatnam, J.

I agree.

Judge of the Court of Appeal