

**IN THE COURT OF APPEAL OF THE DEMOCRATIC SOCIALIST**  
**REPUBLIC OF SRI LANKA**

In the matter of an application for Bail in terms of Section 83 (2) of the Poisons, Opium and Dangerous Drugs Ordinance No. 13 of 1984 as Amended Act No. 41 of 2002 of the Constitution of the Democratic Socialist Republic of Sri Lanka.

**CA Case No: BAL/0336/2023**

HC Panadura  
Case No: HC 4312/22  
Magistrate's Court Horana  
Case No. 58296/20

Pitigala Liyanage Avishka Heshan  
Madubhashana.

**Accused**

**AND NOW BETWEEN**

Pitigala Liyanage Janu Kasun  
Gimmana,  
No. 237/8 Ward Place,  
Borella.

**Petitioner**

**Vs**

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

**Respondent**

Before : P. Kirtisinghe J  
&  
R. Gurusinghe J

Counsel : Eranga Sirisena for the Petitioner  
Jehan Gunasekera, S.C. for the Respondent

Argued on : 20.09.2023

Decided on : 02.11.2023

## **ORDER**

R. Gurusinghe J

The petitioner is the father of the accused, namely, Pitigala Liyanage Avishka Heshan Madubhashana (Accused), in the case bearing no. HC 4312/2022 in the High Court of Panadura. The petitioner filed this bail application in terms of the provisions of Section 83 (2) of the Poisons, Opium, and Dangerous Drugs Ordinance as Amended by Act No. 41 of 2022.

The accused was arrested on 11-10-2020 by the Officers of Moragahahena police station at Beruketiya junction for allegedly having in possession of 47.78 grams of heroin, which is an offence punishable under Section 54A(d) of the Poisons, Opium, and Dangerous Drugs Ordinance as Amended.

The petitioner has pleaded the following facts as exceptional circumstances for consideration of Court to grant bail.

- a. The accused has been in remand since 12-10-2020 for more than two and a half years.
- b. The daughter of the accused is four and a half years old and is in need of the care and maintenance of the accused.

The respondents have filed objections and stated that the petitioner has failed to establish exceptional circumstances to invoke the jurisdiction of Court as stipulated by Section 83 of the Poisons, Opium, and Dangerous Drugs Ordinance. The respondents have also submitted that there is a probability and great likelihood of the accused absconding or repeating the same offence.

Section 83 of the Poisons, Opium, and Dangerous Drugs Ordinance, as amended by Act No. 41 of 2022, states;

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 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 in ten grams 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 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”.

What constitutes exceptional circumstances is not defined in the statute. Our Superior Courts have considered various situations as exceptional circumstances to grant bail for suspects in terms of the Ordinance.

In **Ramu Thamodarampillai v. The Attorney General [2004] 3 SriLR 180** the court held that:

*“the decision must in each case depend on its own peculiar facts and circumstances”.*

The accused has been in remand for more than 36 months. The daughter of the accused was only four years old at the time of his arrest. The accused has no previous connections or other pending cases. Even though the accused was indicted in the High Court, so far the trial has not been commenced. It was submitted on behalf of the accused that the prosecution witness no. 1, had been absent on the last three trial dates and the trial was re-fixed for 24-01-2024 and these facts were not disputed by the respondent.

In the Bail Application of CA Bail/0109/22, P. Kumararatnam, J., quoting from the judgment of the Supreme Court of Victoria stated as follows:

*In Nasher v. Director of Public Prosecution [2020] VSCA 144 the court held that: “a combination of delay, onerous custodial conditions, and the relative weakness of the prosecution case may when considered with all*

*relevant circumstances, compel the conclusion that exceptional circumstances have been established”*

Taking into consideration the time period the accused has been in remand, the quantity of the dangerous drugs, delay in commencement of the trial and other circumstances, I consider this is an appropriate case to grant bail to the accused. Hence, I order the accused to be released on the following conditions:

1. Cash bail of Rs. 200,000/-.
2. To provide two sureties. They must sign a bond of Rs. 1.0 million each.
3. To surrender his passport, if any, to the Court. An overseas travel ban is imposed on the accused until conclusion of the case.
4. To report to the Moragahahena Police Station on the last Sunday of every month between 9.00 a.m. and 1.00 p.m.
5. The permanent residing address of the accused should be provided to the High Court and such residence should not be changed without leave of the High Court, until conclusion of the case.

The Registrar of this court is directed to send copies of this order to the High Court of Panadura, and to the Officer-in-Charge of the Police Station in Moragahahena.

Judge of the Court of Appeal

Pradeep Kirtisinghe J.

I agree.

Judge of the Court of Appeal.