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,
Police Narcotics Bureau,
Colombo 01.

Court of Appeal Case No.
CA/BAL/0658/2023 **Complainant**
Magistrate's Court of Awissawella **Vs.**
Case No. B 6679/2022

Gamage Sunil
No.210, Udumulla, Padukka.

1st Suspect

Mahabalage Don Sachini Dilanjika,
No. 163/B, Kanyketiya,
Angamuwa, Padukka

2nd Suspect

Amarathunga Arachchige Kavithra
Ruwan Kumara.

3rd Suspect

AND NOW BETWEEN

Mahabalage Gunapala,
No. 169/D11, Kanuketiya,
Angamuwa, Padukka.

Petitioner

Gamage Sunil,
No. 210, Udumulla, Padukka

Suspect - Respondent

Vs.

Officer in Charge,
Police Narcotics Bureau,
Colombo 01.

Complainant – Respondent

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

Respondent

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

COUNSEL: Shavindra Fernando, PC, with Amanda Imbulana
for the Petitioner.
Malik Azeez, SC, for the Respondent.

INQUIRY ON: 28.02.2025

DECIDED ON: 26.03.2025

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

ORDER

1. This application is preferred under Section 83(2) of the Poisons, Opium and Dangerous Drugs Ordinance seeking bail for the suspect-respondent, Gamage Sunil. According to the petitioner, the suspect was arrested on 19.05.2022 on the pure quantity of heroin alleged to have been found in his possession is 1.891kg. The indictment had been sent out on 12.04.2024 to the High Court of Avissawella with two counts for possession and trafficking of the said amount of heroin. The grounds of exceptionality as urged by the learned President's Counsel for the petitioner are as follows:
    i. that the manner of arrest is challenged by two affidavits, P-6 and P-7 and it is alleged that the version of the Police as to the manner of arrest is false;
    ii. the improbability of a person standing on the road with 3kg of heroin in a cloth bag;
    iii. the alleged health issue of the petitioner as depicted by X-1; and
    iv. delay.

2. The petitioner is challenging the details and the manner of the arrest as stated in the B Report, P-4. According to the B Report, P-4, a team of Police Officers from the Police Narcotics Bureau has received information and arrested a person opposite the Cargills Food City at Godagama, Athurugiriya. On information obtained from the said suspect, the petitioner had been then arrested opposite house bearing No. 169/D, Kanuketiya, Angamuwa at Padukka. It is reported that the petitioner was seeing and pointed out along the road opposite the said house. At the point of arrest, the petitioner is alleged to have had a white-coloured bag made out of cloth, and inside the said bag the narcotics of a gross amount of 3.3kg had been found.

3. The petitioner appears to deny that he was arrested at this location but appears to take up the position that he was arrested elsewhere near his house at Udumulla, Padukka. According to the petition, it is alleged that the officers of the Narcotics Bureau arrived at the suspect-respondent's house around 11.30am with another civilian. The unknown civilian had pointed out and identified the suspect and the house has been searched. It is submitted that nothing was found in upon the said search. It is alleged that the Narcotics Bureau officers have introduced the said heroin and falsely implicated the suspect. In support of this position, affidavits P-6 and P-7, claimed to be by two neighbours, have been tendered.

4. The sum total of this ground is that the version of the Police is false and the narcotics were an introduction. Connected to this ground the petitioner also submitted as ground No. 02 that it is highly improbable for a person to be standing on a road in front of his house with a bag containing over 3kg of heroin. The petitioner is putting forward a competing version to that presented by the police. No doubt in support the petitioner has tendered two affidavits, both of which depose to the fact that the petitioner was apprehended in his house at Udumulla, Padukka upon an unsuccessful search.

5. As opposed to this, the version of the Police is that the arrest was made opposite the house bearing No. 169/D, Kanuketiya, Angamuwa at Padukka. The learned President's Counsel's main ground of improbability is that a person would not be found standing on a road with such a quantity of heroin and alleges that it was an introduction. The learned State Counsel, Mr. Azeez submitted that it is not probable to expect the police to falsely introduce over 3kg of heroin, and argued that these competing versions should be determined at the trial.

6. Prior to considering the probability of the Police version, it is relevant to consider the background and the arrest of several other suspects.

According to P-4. After the arrest of this suspect on his information, the Police had searched the house in the proximity where the suspect was found, namely, the house bearing No.169/D. This search had been carried out upon information revealed by the suspect-respondent. Upon the said search, the Police had found Rs.17,936,500.00 in cash, concealed in an almirah in that house, and had arrested a woman named Sachini Dilanjika. Then, IB Extracts have been forwarded to the Hon. Attorney General. The Attorney General has decided to indict the suspect and instructed the Police to conduct further investigations to ascertain if any offence under the Money Laundering Act is made out.

7. Now, to consider the probability, it is relevant to note that introducing 3kg or 1.8kg of pure heroin is not realistic in the normal course. Secondly, the Police had searched and arrested another female suspect from the house near which the accused was found. According to the B Report, there is no allegation of any heroin or other narcotics found from the said woman or the house but Rs. 17 million in cash. If this Police party intended to falsely implicate, one would expect them to also introduce some heroin to the lady suspect from whose possession Rs. 17 million was recovered. These circumstances do *per se* defeat the allegation of an introduction.

8. On a holistic consideration of the contents of the B Reports, the submission that the version of the Police is improbable, is to my mind misconceived and *prima facie* not acceptable.

9. As to the ground based on ill-health, according to document X-1, it is reported that the suspect is being treated for high blood pressure, diabetes and some heart condition, and that necessary treatment and required medication are provided for from the Kuruwita Prison Hospital as well as the Ratnapura Teaching Hospital. In support of providing treatment, the relevant clinic records had also been made available. As

held by Justice Tilakawardane in **A.G v Prabath Ediriweera** (SC Appeal No. 100/2005 – SCM 04.08.2006), has held as follows:

> *"The Accused-Respondent who seeks bail must not only show ill-health, but must prove it by medical reports, which reflects his or her current and existing state of health relevant to the time of the application for bail. He must additionally show that the illness was not only a present one but that continued confinement would imperil life or cause permanent impairment of his physical condition. There must be evidence of the nature of the illness and the probable effect of sustained incarceration on his condition."*

Accordingly, health conditions and considerations may be considered as exceptional if continued incarceration leads to an aggravation of the condition and becomes life threatening. However, if necessary, treatment is provided and it suffices, then such health condition will not become exceptional for the purposes of considering bail. It is apparent from the Prison Report X-1 and the annexed clinical and treatment records that the suspect is receiving necessary treatments and medical attention whilst in remand. Therefore, this ground urged is not become exceptional for the purposes of considering bail.

10. Though it was not directly urged, the issue of delay certainly was commented upon the learned State Counsel. On the consideration of the pleadings, it is apparent that the petitioner has been in remand since 19.05.2022 for almost two years and nine months. The indictment according to the petitioner is yet to be dispatched. According the State Counsel, the indictment had been dispatched on 02.12.2024. That is almost two years and seven months after the arrest. The Government Analyst's Report is dated 26.09.2024 and the Attorney General's Reference of this matter is CR3/88/2023. There is an apparent delay in sending out indictment which if not explained may be considered exceptional.

11. According to the State Counsel, this matter involves a much larger investigation which also includes money laundering charges. There were other suspects who were produced in the Magistrate's Court and the recovery of Rs. 17 million in cash. The advice letter dated 02.12.2024 directing further investigations is tendered marked 2R2, according to which the said letter refers to the previous letter dated 30.03.2023 and a report dated 04.04.2024. This clearly supports the submissions of the learned State Counsel that the Attorney General has directed further investigations and this process has taken time.

12. Section 83(2) clearly requires a suspect to be remanded until the conclusion of the trial. The law specifically provides so and the delay is relative and depends on the circumstances of each case. If certain investigations are required and such investigations take time, the lapse of time for such steps and processes will not and cannot be considered as being a delay of an undue, oppressive or excessive nature. In the context of this matter, the totality of the material placed clearly appears to require additional investigations and time. Accordingly, the delay is not excessive or oppressive in nature.

13. Accordingly, in the circumstances as the delay is explained, we are of the view that there is no inordinate delay. Also, the issue of improbability is misconceived and in any event is a trial issue to be considered during the trial. However, in view of the commercial quantity it is apparent that there is a propensity of the suspect reoffending if enlarged on bail. In this regard, it is relevant to note that though the previous convictions appear to be in respect of user quantity, it has now advanced to a commercial quantity. 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.

14. As I see the Legislature has by special bail provisions in Section 83(2) established an effective bail system for specific narcotic offences, for

which the normal bail regime would not suffice and allow the continuity of the criminal behaviour and the risk of absconding. This is primarily in view of the unique nature and attributes of the narcotics offences. Unlike most other offences, large scale narcotics offences are committed in a very different context. For instance, trafficking in narcotics occurs systematically, usually in a highly sophisticated and organised manner that is extremely lucrative. This by itself is a huge incentive for an offender to continue with the criminal behaviour even after arrest and release on bail. Then, in view of the serious penal sanctions that may entail there is also the appreciable and real danger that such accused or suspect absconding.

15. Thus, we see no basis in law or otherwise to allow this application at this juncture. Accordingly, this application is refused and rejected.

16. The application is accordingly dismissed and the Registrar of this Court is directed to transmit a copy of this Order to the Registrar of the Magistrate's Court of Avissawella.

JUDGE OF THE COURT OF APPEAL

P. Kumararatnam, J

I agree.

JUDGE OF THE COURT OF APPEAL