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

In the matter of an application for bail in terms of the Section 83 of the Poisons, Opium and Dangerous Drugs Ordinance as amended by the Act No.41 of 2022.

Court of Appeal

Application No.

CA Bail 0339/2024

The Officer-in-Charge

Police Narcotics Bureau,

Colombo-01.

MC Maligakanda

Case No: B 48697/2023

COMPLAINANT

Vs.

1. Abdul Azees Mohomed Ramzeen
2. Manikku Arachchige Madusanka
3. Mohomed Rizvi Mohomed Ishak
4. Thuwan Raheem Amirdeen
5. Mohomed Gani Mohomed Farsil
6. Mohomed Zaheem Mohomed Jakeen

SUSPECTS

AND NOW BETWEEN

Mohomed Zaheem Mohomed Jakeen

No. 109/16, Manning Place,

Colombo-06.

(Presently in remand prison)

PETITIONER

Vs.

1. Th Officer-in-Charge
   Police Narcotics Bureau,
   Colombo-01.
2. The Attorney General
   Attorney General's Department,
   Colombo-12.

RESPONDENTS

BEFORE : **P. Kumararatnam, J.**
R.P.Hettiarachchi, J.

COUNSEL : **Kalinga Indatissa,PC with Rashmini Indatissa,Razana Salih and Gardiniya Jayasundara, instructed by Sajini Wickramasuriya, for the Petitioner.**
Malik Azeez, SC for the Respondents.

ARGUED ON : **09/05/2025.**

DECIDED ON : **13/06/2025.**

****

ORDER

P.Kumararatnam,J.

The Petitioner is the 6th Suspect named in the Magistrate Court of Maligakanda bearing case No. B 48697/2023. According to the B report submitted, the Suspect was arrested upon an investigation carried out

in consequent to a tip off received by the officers attached to the Police Narcotics Bureau from the Customs' Narcotics Unit. As per the information, the officers to the Police Narcotics Bureau had gone to Trico Maritime (Pvt) Ltd and took in charge a package numbered BL-176-86861176. Two parcels which had been marked as 'A' and 'B' were found inside the package mentioned above. The parcel 'A' contained 5 tins labelled "Delmont" with 2356 grams of suspected Kush (One variety of Cannabis Saliva L) and three parcels labelled "MOM Coffeemate" with 511 grams of substance suspected to be Cocaine.

In the parcel "B" contained 6 tins labelled "DELMONT" with 2805 grams of substance suspected to be Kush (One variety of Cannabis Sativa L).

As per the B Report, 1st Suspect had tried to clear the contraband with the assistance of 2nd, 3rd, and 4th Suspects using a forged consent letter purportedly issued by one Ms. Sujatha Dias. Investigation revealed that letter falsely authorised the dispatch of the package to the Petitioner on her behalf without the knowledge of Sujatha Dias. The 5th Suspect is the driver of the jeep used for the transportation.

The 1st Suspect was arrested at the Lanka Hospital car park on 04.07.2024 for aiding and abetting to the offences of importing 5.161 kilograms of Kush and 511 grams of Cocaine to Sri Lanka.

Upon a Court order, the contraband had been sent to the Government Analyst Department and according the Government Analyst Report dated 21.11.2024, 374.4 grams pure Cocaine had been detected in the parcels sent for analysis. Further, Cannabis Sative L was identified in the sample of Kush.

The Suspect was produced in the Magistrate Court of Maligakanda and facts were reported under Section 54A (d), (c) and (b) of the Poisons, Opium and Dangerous Drugs Ordinance as amended by the Act No.13 of 1984.Upon a Court order, the Suspect was placed under a detention

order to facilitate the Police Narcotics Bureau to conduct further investigation with regard to the detection.

The Petitioner alleges that he was taken into custody by the police on a mere conjecture without any reasonable suspicion. The Petitioner further alleges that no prohibited contraband had been detected from the him.

The Petitioner submit that the Suspect has been in remand for little over 09 months. Indictment has not been filed in the High Court.

The Petitioner has pleaded following exceptional circumstances in support of this Bail Application.

1. The Petitioner was not found in possession of any prohibited substances.
2. Even during the subsequent investigations no prohibited substances have been recovered from the possession or control of the Petitioner.
3. The allegation against the Petitioner is one of abetment and there is no material reflected in proceeding before the learned Magistrate of Maligakanda that the Petitioner has committed any positive overt act towards the abatement of an offence.
4. The arrest of the Petitioner was based on purportedly on a statement made by the 4th Suspect.
5. The 4th Suspect was employed as a wharf clerk and represented the Petitioner in his business transactions.
6. Accordingly, the arrest of the Petitioner is based on inadmissible evidence.
7. That the Petitioner has never had any deals with 1st, 2nd, and 3rd Suspects.

The State Counsel submits that the dossier of the investigation is being prepared to be forwarded to the Attorney General's Department to consider institution of criminal action against the Suspects including the Petitioner.

The exceptional circumstances are not defined in the statute. Hence, what is exceptional circumstances must be considered on its own facts and circumstances on a case by case.

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

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

The Section 83 of the Poison, Opium and Dangerous Drugs Act which was 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 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,

shall not be released on bail except by the Court of Appeal in exceptional circumstances.

In this case, the pure quantity of Cocaine detected in the production by the Government Analyst is 374.4 grams. Hence, this court has jurisdiction to consider granting of bail as per the new amendment.

The Counsel for the Petitioner submits that without any legal action keeping the Petitioner in remand custody is a clear violation of his human

rights and is against the presumption of innocence guaranteed under the Article 13(5) of the Constitution.

The Petitioner had committed the offence while he was on bail for a similar offence. The Petitioner was indicted in the High Court of Colombo and the case is pending at present. The Petitioner has disclosed this pending case in the Petition.

The Petitioner has one previous conviction for possession of 70 mg of Kush. This has not been disclosed in his Bail Application.

The learned State Counsel very correctly submitted that the Petitioner had not come before this Court with clean hands, as he suppressed the information regarding his previous conviction.

In this case the Accused alleged to have committed Offences under Section 54A(d), (c) and (b) of the Poisons Opium and Dangerous Drugs Ordinance as amended by the Act No.13 of 1984.

I agree with the learned State Counsel that this is not appropriate case to consider the factual and evidentiary matters pertain to the investigations at this stage. It can only be tested at the trial upon the witnesses being cross examined and re-examined.

In **Ranil Charuka Kulatunga v. Attorney General CA (PHC) APN 134/2015** the court held that:

> *"The quantity of cocaine involved in this case is 62.847 grams, which is a commercial quantity. If Petitioner is convicted, the punishment is death or life imprisonment. Under these circumstances, it is prudent to conclude the trial early while the Petitioner is kept in* custody*."*

In this case the pure quantity of Cocaine detected is 374.4 grams. Further 5.161 Kilograms of Kush also recovered by the police. Considering the seriousness of the sentence prescribed under the Poison, Opium and Dangerous Drugs Ordinance, there is a high risk of

absconding. Further, the Suspect has committed these offences while a case is pending before Court, which is a clear testament of his propensity in committing drug related offences.

Hence, I do not consider the delay little over 09 months in remand falls into the category of excessive and oppressive delay considering the circumstances of this case.

Considering all these factors into account, especially the pure quantity of Cocaine detected, the charges going to be framed against the Suspect, the pending case, and other circumstances of the case, I consider this is not an appropriate case to sanction bail to the Suspect at this stage. Hence, I refuse to release the Suspect on bail.

Hence, this Bail Application is dismissed.

The Registrar of this Court is directed to this Bail Order to the Magistrate Court of Maligakanda and Officer-in-Charge of the Police Narcotics Bureau, Colombo-01.

JUDGE OF THE COURT OF APPEAL

R.P. Hettiarachchi, J.

I agree.

JUDGE OF THE COURT OF APPEAL