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 Officer-in-Charge,
Police Narcotics Bureau,
Colombo 01.

Court of Appeal Case No.
CA/BAL/0002/2024

Complainant

Magistrates Court of Maligakanda
Case No. B 24430/2023

Vs.

Mohamed Anver Mohamed Ilham.

4th Suspect

AND NOW BETWEEN

Mohamed Anver Ahmed Asker.
No. 97/14, Kumaradasa Place,
Wellampitiya.

Petitioner

Vs.

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

2. Officer in Charge,
   Police Narcotics Bureau,
   Colombo 01.

Respondents

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

COUNSEL: Shamindra Rodrigo with Eranda Sinharage for the Petitioner.
Jehan Gunasekara, SC with Tharaka Kodagoda, SC for the Respondents.

INQUIRY ON: 07.02.2025

DECIDED ON: 11.03.2025

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

ORDER

1. This is an application for bail made under Section 83(2) of the Poisons, Opium and Dangerous Drugs Ordinance seeking bail for the 4th suspect Mohommed Anwar Mohomed Ilham. This suspect was arrested on 17.01.2023. According to the submission of the learned Counsel for the petitioner, Mr. Shamindra Rodrigo, the 4th suspect had been arrested in the course of an investigation in which a detection of 8.8052 kg of heroine (pure) was found in a container at the Colombo Port. According to the Counsel for the Petitioner, the 4th suspect has no connection or link to

this importation or the clearance of this container in which the narcotics were found.

2. According to the State Counsel as depicted in the B Reports, the basis of connecting the 4th suspect to this detection is that the suspect was at an earlier point of time involved importing potatoes from this company. The said company is alleged to have imported this particular container. According to the respondents, this container has been shipped through a company named Z.S. International (Pvt) Ltd and was cleared by the clearing company named Nazrin Clearing Agency. It is alleged that the 4th suspect had helped a Pakistani national named Ahamed Raza to establish and incorporate the aforesaid Z.S. International (Pvt) Ltd. However, apart from the alleged assistance rendered to incorporate the said company some time ago there is no other link or connection established between the 4th suspect and the said company Z.S. International (Pvt) Ltd as at the date of importing the container found with drugs.

3. The learned State Counsel submitted that apart from assisting Ahamad Raza to incorporate a company the 4th suspect himself on previous occasions had been engaged in importation of potatoes and distribution. Apart from these items of evidence, there is nothing to connect the 4th suspect to the container issue in which the narcotics were found either as importer or in any other manner in clearing of the said container. The suspect is not a director or otherwise an employee of the said company either. The Counsel for the Petitioner submitted that except the previous assistance rendered to incorporate the company there is no connection whatsoever to the impugned container in which the narcotics were found.

4. The learned State Counsel was unable to draw the attention of this Court to any other item of evidence apart from the previous assistance rendered to incorporate the said company and subsequent dealings with Ahamed Raza in importing potatoes. The IB Extracts had been forwarded to the Hon. Attorney General on 15.01.2025. The matter is now under consideration by Hon. Attorney General.

5. Upon considering the totality of the submissions, it is apparent that the investigation has not revealed any evidence of an appreciable nature to connect with 4th suspect to the narcotics detected in this investigation or to the importation of the container. The only material placed before this Court is the anterior assistance rendered to incorporate a company and previous importations of potatoes from the Pakistani national Ahmed Raza.

6. On an objective evaluation, the said past acts or the other legitimate business transactions in the normal course of business by the 4th suspect does not establish any reasonable connection between the 4th suspect and the narcotics detected in this instance. There exist no more a mere suspicion or speculation which is totally insufficient to justify the continuous remanding of this suspect in a matter of this nature.

7. In **Kariyakarawanage Sithum Shamika Fernando vs. Officer-in-Charge, Police Station, Kuliyapitiya & Hon. Attorney General** [CA (PHC) APN 107/2018] decided on 19.03.2019] the court held that;

> "*In a bail inquiry when the petitioner brings to the notice of the Court the circumstances which could be capable of shaking the prosecution case, the Court has the discretion to tentatively look to the facts and circumstances of the case to ascertain whether a reasonable ground exists or not either to grant or refuse bail. The Court should not probe into the merits of the case, but restrict itself to the material placed before it. But, even for the purpose of bail any benefit of doubt arising in the case must accrue to the suspect."*

8. Thus, the total absence of any material to connect or link the suspect to the subject matter of this investigation amounts to a circumstance that can be considered exceptional for the purpose of bail under Section 83(2) of the Poisons, opium and Dangerous Drugs Ordinance.

9. Accordingly, the suspect is granted on bail subject to the following conditions:
    1. cash bail in a sum of Rs. 500,000.00;
    2. to provide two sureties who should execute bonds to the value of Rs. 1,000,000.00 each;
    3. the sureties should provide certificates from the Grama Sevaka of their respective residential areas;
    4. to surrender the passport or any travel document of the suspect, if he has any, to the Registrar of the Magistrate's Court of Colombo; and;
    5. report to the Officer-in-Charge of the Police Narcotics Bureau on every last Sunday of the month before 12 noon.

6. This Application is accordingly allowed and the Registrar of this Court is directed to transmit a copy of this order to the Registrar of the Magistrate's Court of Colombo.

JUDGE OF THE COURT OF APPEAL

P. Kumararatnam, J.

I agree.

JUDGE OF THE COURT OF APPEAL