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

Court of Appeal Case No.
CA/BAL/0238/2024

Complainant

High Court of Gampaha
Case No. 15/2022

Vs.

Mohamed Ikram Halaldeen.

Accused

AND NOW BETWEEN

Gnei Sabrina Nazeer.

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: I.B.S. Harshana for the Petitioner.
Tharaka Kodagoda, SC for the Respondents.

INQUIRY ON: 04.03.2025

DECIDED ON: 28.03.2025

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

ORDER

1. This is an application for bail filed on behalf of the accused, Mohamed Ikram Halaldeen under Section 83(2) of the Poisons, Opium and Dangerous Drugs Ordinance. According to the petitioner, the accused had been arrested on 29.01.2021 and the pure quantity of heroin alleged to have been in his possession is 34.4 grammes.

2. The accused now stands indicted in the High Court of Gampaha under case No. HC/15/2022. When this was taken up for argument, it was brought to our notice that further trial is due. It is to lead the evidence of PW-6. The main ground of exceptionality urged is delay. The learned Counsel for the petitioner submits that there had been an inordinate delay in the heading and concluding of the trial. The delay is attributed to obtaining of dates by the prosecution. The indictment signed on 10.12.2021 had been registered in the High Court in January 2022.

Action had been instituted within one year of the arrest, which is quite reasonable.

3. The trial has commenced on 10.11.2022, on which day the evidence in chief of PW-1 had been concluded but the defence then sought time. It is also relevant to note that the successive trial day too was cancelled on the request of the defence Counsel and further trial had been scheduled for 16.02.2023. On which day witness No. 1 had been subjected to lengthy cross-examination and further, cross-examination had been scheduled for 02.05.2023. However, in the interim several applications had been made for documents and further information.

4. On 02.05.2023, the defence Counsel had informed that they are yet to receive further material and the trial had been postponed for 26.09.2023 on which day the trial had proceeded. Next on 01.02.2024, the trial has been postponed as PW-6 had been indisposed. Similarly on 30.04. 2024 the defence had moved for a date; and on 25.07.2024 there had been a trial-at-bar scheduled; then on 03.02.2025, the High Court Judge had been on leave. This sequence of events bears out that the postponements have been due to the applications made by both the defence as well as the prosecution.

5. Thus, it is not possible to apportion, a greater responsibility to the prosecution for the postponements. It appears that the defence is also responsible for not obtaining the necessary information diligently which they ought to have done well before the commencement of the trial. Delay is always a relative fact. What may be exceptional is not the mere lapse of time or the *per se* lapse of time but it being undue, excessive or oppressive. This was so held in **Attorney General v. Ediriweera** (S.C. Appeal No. 100/2005), "*Delay is always a relative term and the question to be considered is not whether there was mere explicable delay, as when there is a backlog of cases, but whether there has been excessive or oppressive delay and this always depends on the facts and circumstances of the case...*".

6. It is now settled law that the time spent in remand due to the lack of exceptional circumstance cannot by itself create a circumstance that is exceptional which otherwise would not have been there. This, in effect, is that the period of remand due to the absence of exceptional circumstances, will not, by itself, amount to or be converted to an exceptional circumstance.

7. No doubt, the accused has been in remand for over four years as at today. The mere lapse of time does not become exceptional unless. Such lapse is excessive or oppressive or to that matter undue. It is evident that successive dates have been assigned the outset but the defence Counsel have not diligently pursued to continue with the trial as scheduled. Therefore, on a holistic consideration the defence is also responsible for the delay. It appears in assigning dates towards the latter period somewhat long dates have been assigned. According to the State Counsel this is due to the backlog of cases in that court.

8. On the face of it, this Accused has been in remand since his arrest, for over four years. However, the provisions of Section 83 (2) as amended by Act, No. 41 of 2022, decrees that a person accused or suspected of being in possession of 10 grammes or more, is required to be kept in remand, unless such person satisfies this Court as to the existence of circumstances that are exceptional.

9. Now to consider if the accused in this matter is entitled to any benefit or if there be any ground that may be considered in his favour to grant bail. Being in remand for over four years is by itself an appreciable and a considerable time period. In the normal course one would reasonably expect a trial to conclude during such a period. However, it appears that in view of the backlog of cases and the workload in the High Court of Gampaha, time taken to conclude a trial is somewhat longer. It may not be a satisfactory state of affairs but can that by itself be considered exceptional? Objectively viewed this is a circumstance which is common

to all Accused indicted and facing trials in that Court. So, this time lapse by itself is not unusual, out of the ordinary or extraordinary. The provisions of Section 83 (2) of the Poisons, Opium, and Dangerous Drugs Ordinance requires that be some unusual or uncommon circumstance before a court is justified in releasing a suspect on bail.

10. Getting back to the facts of this application, the trial judge has made every attempt to commence and proceed with the trial. A great part of the subsequent delay is attributable to applications made on behalf of the Accused himself. One cannot by his own volition and conduct cause a delay and then demand that the delay so caused be considered as the basis for him to be granted bail.

11. The trial appears to have come to the end of the prosecution case. In the above circumstances, we are of the view that the petitioner had failed to satisfy this Court as to the existence of circumstances that may be considered as being exceptional. Accordingly, we are left with no option but to refuse and reject this application.

12. The application is accordingly rejected.

JUDGE OF THE COURT OF APPEAL

P. Kumararatnam, J.

I agree.

JUDGE OF THE COURT OF APPEAL