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/0258/2024

Complainant

Magistrate Court of Welisara
Case No. B/4296/23

Vs.

Senanayake Mudiyanselage Kapila Prasanna Senanayake.

Suspect

AND NOW BETWEEN

Senanayake Mudiyanselage kapila Prasanna Senanayake.

Suspect-Petitioner

Vs.

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

Complainant-Respondent

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

Respondent

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

COUNSEL: Sandamal Rajapaksha for the Petitioner.
Malik Azeez, SC for the Respondents.

INQUIRY ON: 24.01.2025

DECIDED ON: 19.02.2025

K.M.G.H KULATUNGA, J.

1. This application for bail is made under Section 83(2) of the Poisons, Opium and Dangerous Drugs Ordinance seeking bail for the Suspect-Petitioner, Senanayake Mudiyanselage Kapila Prasanna Senanayake. According to the petitioner he was arrested on 20.09.2023 on the allegation that at the time of the arrest, he was in possession of 102 grammes of Methamphetamine of which the pure quantity according to the Government Analyst's Report is 33.18 grammes. Further, it is also alleged that 250 rounds of live ammunition were also recovered from the suspect on that occasion.

2. The petitioner concedes that he has a pending case. However, the nature of the charge is unclear. The only ground of exceptionality urged by the learned Counsel for the petitioner is the delay of one year and four months. It was submitted that the suspect is yet to be indicted or charged and the lapse of one year and four months without preferring a charge or indictment is excessive and amounts to an exceptional circumstance.

3. In response, the learned State Counsel Mr. Malik Azeez objecting to this application submitted that the Attorney General has received the relevant Information Book Extracts and the matter is under consideration by the Attorney General. The learned State Counsel submitted that the Attorney General has directed the Police Narcotics Bureau to obtain and submit the Government Analyst's Report of a Ballistics Expert in respect of live ammunition recovered during this incident. It is his submission that the Attorney General is now awaiting this further information to finalize on the indictment and that time taken for this further investigation cannot be considered as excessive. It is the position of the learned State Counsel that the time taken is not in any way excessive or oppressive in nature.

4. The period in remand due to the absence of exceptional circumstances, will not, by itself, amount to or become a circumstance that is exceptional. This was succinctly expounded by Justice Ranjith Silva in **CA (PHC) APN 64/2009** (decided on 07.08.2009) as follows;

> *"…If an accused cannot assign exceptional circumstances he will have to be kept on remand and when an accused had been on remand for 03 years because he had no exceptional circumstances will that by itself constitute exceptional circumstances. If that is treated as an exceptional circumstance, in my view it would be an anomaly because the fact that there aren't any exceptional circumstances finally mature into exceptional circumstances. The fact that he had no exceptional circumstances becomes a qualification after 03 years. If that was the intention of the legislature, the section itself would have stated the exceptional circumstances should not be insisted after 03 years and*

there is no such qualification, no such jurisdiction found in the particular provision dealing with bail…".

5. Accordingly, the relevant and critical determining factor of a delay is the reasonableness of the explanation. In the present application it is common ground that the petitioner has been in remand for one year and four months. Objectively viewed in isolation, this may appear to be a long lapse of time. However, it is apparent that the recovery of live ammunition in this instance has necessitated the obtaining of a Ballistic Expert's opinion on the said ammunition to finalize the preparation of the indictment. Now, steps are diligently been taken to obtain this additional material which requires further time. In view of these circumstances the lapse of one year and four months as I see is not unreasonable or excessive.

6. Apart from the time lag the learned Counsel for the petitioner mentioned certain personal circumstances of the petitioner as an additional ground. These personal circumstances which is common to any suspect who is incarcerated cannot be considered as being exceptional. Therefore, we are of the view that petitioner had unfortunately failed to satisfy this Court as to the existence of any ground or circumstance that may be considered exceptional. Thus, we are left with no option but to reject and refuse this application.

Application is accordingly refused.

JUDGE OF THE COURT OF APPEAL

P. Kumararatnam, J

I agree.

JUDGE OF THE COURT OF APPEAL