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,
Colombo Crime Division,
Dematagoda.

Court of Appeal Case No.

CA/BAL/0281/2024 **Complainant**

Magistrate Court of Mount Lavinia Vs.

Case No. B 20644/23

Hussain Mohommed Jaufer.

Suspect

AND NOW BETWEEN

Abdeen Fauzil Mileeda,
No.22/A/3, Kreeda Mawatha,
Shri Saranankara Road,
Kalubovila,
Dehivala.

Petitioner

Vs.

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

2. Officer-in-Charge,
   Colombo Crime Division,
   Dematagoda.

Respondents

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

COUNSEL: Lelani Sirisena for the Petitioner.
Wishva Wijesuriya, SC for the Respondents.

INQUIRY ON: 05.02.2025

DECIDED ON: 14.02.2025

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 suspect Hussain Mohommed Jaufer. He had been arrested on 20.08.2023 with 102.3 grammes of Methamphetamine. According to the Government Analyst, the pure quantity is 26.9 grammes.

2. The main ground exceptionality in seeking bail is the delay. According to the learned Counsel for the petitioner, the respondents have failed to institute actions or file charges up to date and the suspect had been in remand for a period of one year and five months as at the date of this inquiry. It was also submitted that the Government Analyst's Report is

dated 08.01.2024. However, the learned Counsel conceded that the petitioner has two previous convictions in 2022 in the Magistrates Court for small quantities of heroin and cannabis.

3. The learned State Counsel for the respondents submitted that the IBs had been forwarded to the Attorney General on 20.12.2024 and the Attorney General is considering the material to institute action against the suspect. It was further submitted that the petitioner did not initially disclose the previous convictions and it was brought to light by the respondents in their objections. According to the State Counsel the previous convictions are in respect of possessing 310 milligrammes of heroin and 2 grammes of cannabis in the Magistrate Court of Maligakanda and Nugegoda respectively.

4. As decreed by Section 83(2) of the Poisons, Opium and Dangerous Drugs Ordinance, if an accused is unable to satisfy this Court of the existence of a circumstance that is exceptional, he or she will have to be kept in remand until the conclusion and the determination of the matter. The continued incarceration due to the absence of exceptional circumstances will not by itself convert such period of remand into an exceptional circumstance (Vide (CAPHC) APN 64 of 2009. CAM 07.08.2009 Justice Ranjith Silva). Similarly, the lapse of time should be excessive and oppressive in nature for it to be considered exceptional for the purposes of granting bail. Time lapse beyond the normal time required to process and conclude matters if unexplained may well be considered to be excessive. Similarly, if the relevant authorities responsible for holding in custody, investigating and instituting action appear to be taking their own time and exhibiting lackadaisical attitude that may well be oppressive in the circumstances. It's a matter of evidence and fact to be determined by Court.

5. In this application, the learned State Counsel informed that the consideration and preparation of the indictment is in progress upon receiving the IB Extracts on 20.12.2024. In the normal course of events, the time taken in this matter cannot by itself be considered undue or excessive. The suspect has two previous convictions may be for small

quantities as far back as 2022. The pure quantity of Methamphetamine is 26.9 grammes. This on the face of it appears to be a commercial quantity. In these circumstances, the ground urged to my mind cannot be considered as being exceptional. Accordingly, this Court is reluctantly compelled to dismiss this petition and refuse this bail application.

Application is accordingly refused.

The Registrar of this Court is directed to convey this order to the Registrar of the Magistrates' Court of Mount Lavinia and the Officer-in-Charge of the Colombo Crime Division, Colombo 09.

JUDGE OF THE COURT OF APPEAL

P. Kumararatnam, J

I agree.

JUDGE OF THE COURT OF APPEAL