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/0316/2024

Complainant

Magistrates Court of Negombo
Case No. M/41585/21

Vs.

Don Sankha Randima Ramzy
Kodagoda.

3rd Suspect

AND NOW BETWEEN

Don Chinthaka Jatila Mhaneela
Kodagoda.
No. 167, Wasala Road,
Kotahena.

Petitioner

Vs.

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

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

Respondents

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

COUNSEL: Shamangi Silva for the Petitioner.
Jehan Gunasekara SC., and Tharaka Kodagoda SC., for the Respondents.

INQUIRY ON: 06.02.2025

DECIDED ON: 03.03.2025

K.M.G.H KULATUNGA, J.

ORDER

1. The application bearing no's CA-BAL-316-24 and CA-BAL 317-24 are connected in that they are in respect of the 3rd suspect Don Sankha Randima Ramzy Kodagoda and the 2nd suspect Wickramasuryia Mudalige Nuwan Danushka Fernando respectively in MC Negambo case No. M/41585/21 of which the 1st suspect is a Tunisian national named Hamidi Mounir. The learned Counsel appearing for petitioners in both these applications is Shamangi Silva and the learned State Counsel agreed to have these applications considered together and to be determined by a single order.

2. These applications for bail made under the Provision of Section 83(2) of Poisons, Opium and Dangerous Drugs Ordinance. According to the petitioner, the 3rd suspect was arrested on 15.11.2021 by the officers of the Police Narcotic Bureau (PNB). The circumstances that lead to the arrest of 3rd suspect are as follows; on 15.11.2021 the said Tunisian national Hamidi Mounir had arrived in Sri Lanka and was about to embark through the customs at the Bandaranaike International Airport. However, the customs officers caused his bags to be searched and a substance similar to cocaine was detected and the suspect along with the recovered item was handed over to the PNB.

3. A total gross quantity of 3.989kg of cocaine is alleged to have been recovered from the 1st suspect of which the pure quantity is 3.7658kg. The immediate investigations had revealed that a person was due to meet the said Mounir (hereinafter referred to as the 1st suspect) at a hotel in Colombo to collect said narcotics. Messages to this effect were found on the phone of the 1st suspect. The details of the room number and the hotel were available in the said messages. Acting on this information, the 2nd and the 3rd suspects were arrested around 7.35pm at the designated hotel room.

4. The learned State Counsel submitted that the drugs were found in the possession of the 1st suspect and the evidence that links the 2nd and 3rd suspects to the 1st suspect and of abetment to traffick emanates from telephone details and the messages along with the immediate investigations conducted by the PNB leading to the arrest of the 2nd and 3rd suspect.

5. The Attorney General has sent out indictment an against all three suspects under AG's reference No. CR3/70/2023. The main ground of exceptionality urged on behalf of the 2nd and the 3rd suspects is the delay in instituting action. It was submitted that the prosecution has taken over two and half years to send out the indictment and also that there is no exclusive possession of the narcotics.

6. Now let's consider the issue of delay. The mere lapse of time will not by itself be exceptional unless such effluxion of time is excessive or oppressive. As 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…*".

7. No doubt it has taken almost three years for the indictment to have been dispatched to the High Court of Negombo. Three years certainly is a long period of time. According to the learned State Counsel, in view of the nature of the detection it was necessary to conduct further investigations to obtain telephone details and collect and collate the incriminating evidence against the 2nd and the 3rd suspects. Further investigations have been conducted on the advice of the Attorney General. The collection and tabulating this further material is the explanation for the time lapse.

8. As stated above it is well settled that the lapse of time by itself does not convert such effluxion of time in to a circumstance that is exceptional. It is relative to the circumstances. If there be a lapse of time over and above the normal time requirements to conduct investigations, process and institute action then it is incumbent upon the respondents to explain the reasons for such lapse of time. In the absence of which time so taken may be deemed to be undue and considered as being excessive or oppressive.

9. In the present matter, a foreign national had been nabbed and apprehended with narcotics at the airport and the 2nd and the 3rd suspects appear to be the local contacts and couriers who were due to collect and traffick the said narcotics. It is quite normal and necessary in such circumstances for the investigators to collect sufficient evidence to establish the link between the 2nd and the 3rd Accused. It takes time. That exactly is what had happened in the present instance. Therefore,

considered in context, the time taken is by no means excessive or oppressive.

10. The indictment is now before the High Court of Negombo. The learned Counsel for the 2nd and 3rd suspects submitted that the trial at Negombo High Court may take a long time. As stated above, the time lag is a relative term depending on the circumstances of each case. However unpalatable it may be, it is a notorious fact that due to the backlog of cases delays in the judicial process is prevalent. This is a circumstance common to all cases pending in such Courts. A circumstance common to all similar cases cannot become or be considered as being exceptional in this context.

11. Let's consider what "exceptional" means. "Exceptional" is a word commonly used in legislation. One definition of it in the New Shorter Oxford English Dictionary is: "*Of the nature of or forming an exception, unusual, out of the ordinary, special*" (see vol. 1 p.872). Websters Dictionary contains the following definition: "*Relating to or forming an exception, out of the ordinary course, unusual, uncommon, extraordinary*". Whatever may be the definition one chooses to adopt to my mind the intention of the legislature is clear that any person charged with an offence falling within the provisions of Section 83 (2) of the Poisons, Opium, and Dangerous Drugs Ordinance bears the onus of establishing and satisfying that there is some unusual or uncommon circumstance in his case before a court is justified in releasing him on bail.

12. In the above premises, it is our view that the petitioners in these two applications have not been able to satisfy this Court as to the existence of any circumstance that is exceptional. Accordingly, we are left with no option but to refuse and reject the applications bearing Nos. CA-BAL-316-24 and CA-BAL 317-24. These applications are refused and rejected.

13. The applications CA-BAL-316-24 and CA-BAL 317-24 are accordingly dismissed.

JUDGE OF THE COURT OF APPEAL

P. Kumararatnam, J.

I agree.

JUDGE OF THE COURT OF APPEAL