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.

Officer in Charge,
Police Narcotics Bureau,
Colombo 01.

Court of Appeal Case No.
CA/BAL/0360/2024 **Complainant**

Magistrate's Court of Maligakanda **Vs.**
Case No. B 33089/2023

1. Seminano Jhon Gerry Javier.
2. Inatha Pulige Sumith.

Suspects

AND NOW BETWEEN

Seminano Jhon Gerry Javier.

1st Suspect-Petitioner

Vs.

1. 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: Nihara Randeniya for the Petitioner.
Jehan Gunasekara, SC for the Respondents.

INQUIRY ON: 20.02.2025

DECIDED ON: 19.03.2025

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

ORDER

1. This is an application for bail preferred under Section 83(2) of the Poisons, Opium and Dangerous Drugs Ordinance. The 1st suspect-petitioner, Seminano Jhon Gerry Javier is a Filipino National and has filed this petition by himself seeking bail.

2. He was apprehended on 16.08.2023 and has been in remand since that day. The main ground of exceptionality urged is the delay. The delay which the petitioner claims to be excessive or oppressive is 18 months without any reasonable prospect of being charged or indicted. It was also urged that according to document P-6 annexed to the petition, his wife is an acute kidney patient who had suffered renal failure and the petitioner's care and attention is urgently required.

3. State Counsel Mr. Jehan Gunasekara vehemently objecting to this application submitted that time taken is not excessive or undue in the context and the circumstances of this investigation. This petitioner had been apprehended on information whilst residing at the Janaki Hotel, Colombo and three parcels of cocaine weighing 2.229kg had been recovered from his possession. According to the Government Analyst's Report dated 08.04.2024, the pure quantity of the said cocaine is 1.255kg. Since the suspect-petitioner is a foreign national, further investigations have been conducted and this has taken some time. The State Counsel concedes the IB Extracts are yet to be received by the Attorney General.

4. The main ground thus is the delay. 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…*". The respondents attempt to account for and justify the lapse of time on the basis that further investigations are necessary. The suspect is a Filipino national and it is apparent that investigations have been conducted to ascertain the local partners or courier and investigation had progress along certain mobile phone details as well. Further arrests had also been made. Accordingly, to my mind, time taken for further investigation is not excessive or unreasonable.

5. The suspect has urged ill-health of his wife as a further ground. It is apparent that the wife is resident in the Philippines. This is not a circumstance that may be considered in this application.

6. The suspect being a foreign national and the complicated nature of the investigation required certainly provide sufficient and reasonable explanations for the time lapse. Therefore, the 18-month time lapse

cannot be considered as being exceptional for the purpose of granting bail under Section 83(2) of the Poisons, Opium and Dangerous Drugs Ordinance. There is also the flight risk which is relevant in this instance. Accordingly, we see no merit in this application for bail and the application is accordingly refused and rejected.

7. Application is dismissed and the Registrar of this Court is directed to transmit a copy of this order to the Registrar of the Magistrate's Court of Maligakanda and the Officer in Charge of the Police Narcotics Bureau.

JUDGE OF THE COURT OF APPEAL

P. Kumararatnam, J.

I agree.

JUDGE OF THE COURT OF APPEAL