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 Station,
Wellawatte.

Court of Appeal Case No.
CA/BAL/0373/2024

Complainant

Magistrates Court of Mount Lavinia Vs.

Case No. B 28796/24

Sadurdeen Mohamed Faris Sajiudeen.

Suspect

AND NOW BETWEEN

Sadurdeen Mohamed Faris Sajiudeen.

Suspect-Petitioner

Vs.

1. The Officer-in-Charge,
   Police Station,
   Wellawatte.

Complainant-Respondent

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

Respondent

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

COUNSEL: Saliya Pieris PC., with Lakshitha Edirisinghe and Susil Wanigapura istructed by Praveen Premathilaka for the Petitioner.
Jehan Gunasekara, SC and Tharaka Kodagoda for the Respondents.

INQUIRY ON: 06.02.2025

DECIDED ON: 27.02.2025

K.M.G.H KULATUNGA, J.

ORDER

1. This application for bail is made on behalf of the suspect Sadurdeen Mohamed Faris Sajiudeen, under Section 83(2) of the Poisons, Opium and Dangerous Drugs Ordinance. It is common ground that the suspect was arrested on 09.01.2024. According to the respondents, he was apprehended whilst walking along a road and a quantity of 932.8 grammes of cocaine had been seized from him which according to the Government Analyst's Report dated 26.03.2024 contains 567 grammes of pure cocaine. The petitioner advances two grounds of exceptionality namely; the mode of arrest as stated by the respondents is false and secondly his serious health condition. The learned State Counsel in response submitted that the dispute as to the place of arrest is a trial

issue to be determined by the trial judge on evidence. As for the health reason, it is the submission of the State Counsel that according to the report that this is not a life-threatening condition and that he can be treated and is in fact being treated in the remand hospital.

2. Further, IBs have been received by the Attorney General and the indictment had been finalized under Attorney General's reference CR3/08/2025 and it would be dispatched within the coming week or two.

3. For the petitioner to be successful in this application, this Court should be satisfied as to the existence of circumstance that is exceptional. For a medical ground or a health condition to be considered exceptional, the petitioner should satisfy this Court that it is a life-threatening condition and that he cannot obtain necessary medical care and attention whilst in remand. Mr. Saliya Peiris, PC., submitted that, as evident from document 'Y' the medical reference note, the suspect is suffering from an extremely rare skin condition known as 'Dermis Psoriasis' According to him, to keep this condition under control an optimum clean environment is necessary. If not this condition, is prone, to exacerbate and may become critical and life-threatening. It was also submitted that the conditions in the remand prison are far from being hygienic.

4. In response, the learned State Counsel submitted that as seen from the pleadings the suspect had been afflicted by this condition since he was 18 years and that necessary treatment is being provided by the prison hospital. In support of which she referred to document P-9A, P-9B and in particular to document P-12.

5. P-12, does confirm the peculiar health and skin condition of the suspect and in similar vein it also confirms that the suspect had received and is receiving necessary medical care and attention and also the skin condition has improved and is under control. Therefore, it is the learned

State Counsel's submission that this is far from a life-threatening condition and it has been effectively treated whilst in remand.

6. At this juncture, it is relevant to note the following dicta of Justice Thilakawardana, in ***Attorney General Vs. Ediriweera Arachchige Prabath Ediriweera*** (SC Appeal No. 100/2005. decided on 04.08.2006).

> *"The Accused-Respondent who seeks bail must not only show ill-health but must prove it by medical reports, which reflects his or her current and existing state of health relevant to the time of the application for bail. He must additionally show that the illness was not only a present one but that continued confinement would imperil life or cause permanent impairment of his physical condition. There must be evidence of the nature of the illness and the probable effect of sustained incarceration on his condition."*

7. The material placed before this Court especially P-12 clearly shows otherwise and does not satisfy the criteria as laid down in the above dicta.

8. As for the challenge made to the circumstances of his arrest apart from an affidavit from the suspect's driver there is nothing more to prove that the arrest was made at a different place from that as urged by the respondents. In any event this is a trial issue and a question of fact to be determined by the Trial Judge. Certainly, if there was some apparent improbability or a glaring inconsistency in the version of the respondents that is a circumstance which may be considered as being exceptional in an application of this nature. However, the competing versions of the two parties as urged in this instance is far from such a circumstance.

9. There appears to be no delay of any appreciable nature and the indictment is now under consideration. Thus the circumstances urged unfortunately cannot be considered and does not amount to

exceptional. The pure quantity of 567 grammes is significant and is of a commercial nature. In the light of these circumstances, there is no basis in law or otherwise to grant bail to the suspect of this application.

10. Accordingly, I am reluctantly compelled to refuse and reject this application for bail.

Application is dismissed.

JUDGE OF THE COURT OF APPEAL

P. Kumararatnam, J.

I agree.

JUDGE OF THE COURT OF APPEAL