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 Democratic Socialist Republic of Sri Lanka.

Complainant

Court of Appeal Case No.
CA/BAL/0451/2024

High Court of Balapitiya
Case No. 2992

Vs.

Induwadura Nuwan Chamara De Silva.

Accused

AND NOW BETWEEN

Weligodage Nadeeka De Silva.

Petitioner

Vs.

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

Respondent

Induwadura Nuwan Chamara
De Silva.

Accused-Respondent

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

COUNSEL : Shanaka Ranasinghe, PC with Yasas Wijesinghe for the Petitioner.
Malik Azeez, SC for the Respondent.

INQUIRY ON : 12.03.2025

DECIDED ON: 25.03.2025

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

ORDER

1. This application for bail is made on behalf of the accused-respondent Induwadura Nuwan Chamara De Silva (herein after also referred to as the Accused) by virtue of Section 83(2) of the Poisons, Opium and Dangerous Drugs Ordinance.

2. The accused had been arrested on 11.09.2021 allegedly with a gross quantity of 600 grammes of heroin along with Rs. 500,000.00 in cash. According to the Government Analyst's Report dated 20.12.2021, the pure quantity is 205.6 grammes. The Attorney General has indicted the accused in the High Court of Balapitiya by indictment dated 26.01.2023. The accused has now been in remand for three and half years and the main ground urged as being exceptional is the delay and

also the alleged discrepancy in the weight of the gross quantity between the Police and the Government Analyst.

3. Mr. Shanaka Ranasinghe, President's Counsel for the petitioner, submitted that the delay has occurred firstly in forwarding the productions to the Government Analyst (74 days), and then during the trial due to the absence of PW-01 on three trial dates, namely, 12.03.2024, 15.06.2024 and 28.07.2024. It was urged that further trial is now set for 17.07.2025. Apart from these two grounds, reference was also made to a health issue, namely, that of hypertension.

4. In opposition to this application, learned State Counsel, Mr. Azeez submitted that the discrepancy in the weight is a matter to be considered by the Trial Court and that the weighing by the Police had been with the wrapping and bag whereas the Government Analyst had weighed the powder by itself. This he said along with the inherent and explainable differences between the scales affords a satisfactory and sufficient explanation for the said discrepancy.

5. As for the delay and the absence of PW-01 on two days was due to PW-01 attending to a training course and then due to a sickness. As for 28.07.2024, the matter has been postponed due to the sickness of the prosecutor. In these circumstances, three trial dates had passed by due to the said reasons. However, the trial has commenced and is in progress.

6. As for the previous convictions, there is one for being in possession of 5 grammes of cannabis. The State Counsel alleged that the petitioner had not disclosed this in the petition and it is a relevant matter. Accordingly, he moved that this application be dismissed as the delay

is not undue and the indictment had been sent out expeditiously. As for the 74 days to forward the production to the Government Analyst, it is submitted that due to the Covid pandemic there was a restriction and limitation in accepting productions by the Government Analyst.

7. Section 83(2) directs in the mandatory form and requires that the such accused or suspects should not be releases on bail except in exceptional circumstances. This simply means that remand is the rule and bail is the exception. This does not mean that establishing exceptional circumstances will *ipso facto* lead to granting of bail. Even if exceptional circumstances are made out if there be plausible reasons adduced by the prosecution justifying pre-trial detention then bail may yet be denied in certain circumstances (i.e., the propensity of reoffending or absconding).

8. Section 83(2) applies only to a very limited category of narcotic offences, where bail is denied unless the persons who are suspected or charged with these offences are able to demonstrate exceptional circumstances. As I see it, the Legislature has by special bail provisions in Section 83(2) established an effective bail system for specific narcotic offences, for which the normal bail regime would not suffice, and allow the continuity of the criminal behaviour and the risk of absconding. This is primarily in view of the unique nature and attributes of the narcotics offences. Unlike most other run of the mill type of offences, most narcotic offences are committed in a very different context. For instance, trafficking in narcotics occurs systematically, usually in a highly sophisticated and organised manner that is extremely lucrative. This by itself is a huge incentive for an offender to continue with the criminal behaviour even after arrest and release on bail. Then in view of the serious penal sanctions that may

entail, there is also the appreciable and real danger that such accused or suspects absconding.

9. Accordingly, in the circumstances as the delay is explained we are of the view that there is no inordinate delay, and the issue of the weight discrepancy is somewhat explained and in any event is a trial issue to be considered during the trial. However, in view of the previous conviction and the commercial quantity, it is apparent that there is a propensity of the suspect reoffending if enlarged on bail. In this regard, it is relevant to note that though the previous convictions appear to be in respect of user quantity, now it has advanced to a commercial quantity. In **Abdul Quideer Aboobucker v. AG** [CA/PHC/APN 42/2011 (CAM 31.08.2011)], this Court has rejected the application for bail, considering the fact that the alleged quantity of drugs recovered from the suspect is of a commercial nature.

10. The trial has commenced and is now in progress. Thus, we see no basis in law or otherwise to allow this application at this juncture. Accordingly, this application is refused and rejected.

11. Application is accordingly dismissed and the Registrar of this Court is directed to transmit a copy of this Order to the Registrar of the High Court of Balapitiya.

JUDGE OF THE COURT OF APPEAL

P. Kumararatnam, J.

I agree.

JUDGE OF THE COURT OF APPEAL