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,
Kalpitiya.

Court of Appeal Case No.
CA/BAL/0075/2024

Complainant

Magistrate Court of Puttalam
Case No. B 24346/23

Vs.

1. Kanapathi Nagarajah Wasantha Kumar.
2. Don Seeman Ralalage Manoj Maduwantha.
3. Nagarajah Viayakumar.
4. Arokiyapar Linton Antonimuttu.
5. Gammedda Liyanage Dinesh Manjula.
6. Lama Warage Prema Janaka.
7. Annakarage Chamila Nandana.
8. Gangadaran Jesdudasan alias Gajan.

Suspects

AND NOW BETWEEN

Madanasingha Arachchilage
Sanjeewani,
Paniadiya,
Norochcholai.

Petitioner

Vs.

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

Complainant-Respondent

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

Respondent

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

COUNSEL: Waruna Weerasuriya for the Petitioner.
Jehan Gunasekara, SC for the Respondents.

INQUIRY ON: 28.01.2025

DECIDED ON: 25.02.2025

K.M.G.H KULATUNGA, J.

1. This application for bail is made under Section 83(2) of the Poisons, Opium and Dangerous Drugs Ordinance seeking bail for the 1st suspect, Wasantha Kuma. It is common ground that the 1st suspect was arrested on 01.06.2023 and it is alleged that he was in possession of 3.18kg of Methamphetamine of which according to the Government Analyst, the pure quantity is 780.8 grammes. The learned Counsel for the petitioner advanced three grounds on which he claims to be entitled for bail. The said grounds of exceptionality urged are as follows;

    A. that the B Report is not in accordance with Section 115 of the Code of Criminal Procedure Act, as it does not contain a summary of the evidence,
    B. delay in preferring charges or indictment, and
    C. the absence of exclusive possession.

2. The learned State Counsel in objection thereto submitted that the B Report dated 01.06.2023 does in fact contain the necessary details and is in compliance with Section 115 of the Code of Criminal Procedure Act. Then it was also submitted that this suspect was arrested whilst travelling in a public bus and exclusive possession was in doubt. However, the narcotics were found in a bag which was in the hand of suspect. To that extent, there is *prima facia* evidence of exclusive possession as such the above arguments advanced on behalf of the petitioner are misconceived and baseless. However, learned State Counsel Mr. Gunasekara did reluctantly concede that the IB Extracts are yet to be received by the Attorney General to consider criminal action against the suspect. The learned State Counsel as for the reason for the non-receipt of the IB Extracts since 01.06.2023 up until now merely stated that, the Kalpitiya Police is required to forward the said extracts through the PNB and it takes time. The learned Counsel for the petitioner quite passionately attempted to impress this Court that the delay remains unexplained and the reason is not acceptable.

3. The critical and the determinate issue in this application is the lapse of time of almost 19 months and if it is excessive and/or oppressive. As for the learned State Counsel, the said period is normal and not exceptional. The only reason advanced is following the normal process so to speak, and the fact that it is said to be a commercial quantity. The quantity being commercial or otherwise has no direct bearing on the time taken to process, perfect and forward the IB Extracts to the Attorney General. It may be so if any further investigation was required. In the instant case, the said substance is claimed to have been detected in the personal possession of the suspect. This requires no further investigation of any appreciable nature. As this Court has time and again echoed that when the statute mandates the holding of suspects or accused in remand pending trial, there is correspondingly a duty and an obligation upon those who are responsible in denying the liberty and holding such person in remand or detention to diligently and consciously take steps to expeditiously conclude the investigation and institute criminal action. Preparation of the IB Extracts and forwarding it to the Attorney General entails such an obligation.

4. Notwithstanding the lapse of 19 months, the State Counsel is not in a position to inform this Court with any degree of certainty as to the precise date when the Attorney General may receive the investigation notes. This is a very sad and serious state of affairs. There is a strong inference that some officers of the Kalpitiya Police are taking their own time in compiling and forwarding the IB Extracts. The respondents had notice of this application at least in August 2024. Five months hence, the Attorney General is yet to receive the IB Extracts. This further confirms that the relevant officers have been acting in a lackadaisical manner with absolute disregard to the fact that a person is languishing in remand. Whilst the 19-month period remains unexplained, the fact that the respondents have not got activated at least after receiving notice of this application confirms the non-chalent attitude. In these circumstances, the delay so unexplained by such conduct becomes oppressive and excessive which is a circumstance that is exceptional.

Therefore, we are of the view that the suspect in this case is entitled for bail as prayed for.

5. Accordingly, the suspect is granted bail subject to the following conditions:
    1. cash bail in a sum of Rs. 500,000.00;
    2. to provide two sureties who should execute bonds to the value of Rs. 1,000,000.00 each;
    3. the sureties should provide certificates from the Grama Sevaka of their respective residential areas;
    4. to surrender the passport or any travel document of the suspect, if he has any, to the Registrar of the Magistrate's Court of Puttlam; and;
    5. further, we impose a travel ban until the final determination of this matter and the Registrar is directed to inform the Controller of Immigration and Emigration of this order for necessary action;
    6. report to the Officer-in-Charge of the Police Station of Kalpitiya on every second and fourth Sunday of the month before 12 noon.

6. This Application is accordingly allowed and the Registrar of this Court is directed to transmit a copy of this order to the Registrar of the Magistrate's Court of Puttlam.

JUDGE OF THE COURT OF APPEAL

P. Kumararatnam, J

I agree.

JUDGE OF THE COURT OF APPEAL