IN THE COURT OF APPEAL OF THE DEMOCRATIC SOCIALIST REPUBLIC OF SRI LANKA

In the matter of an application for Bail as under and in terms of Section 83(2) of the Poisons, Opium and Dangerous Drugs Ordinance of 17 of 1929 as amended by section 04 of the Act No.41 of 2022.

Court of Appeal Bail Application: The Officer-in-Charge
CA Bail/0057/25 Police Narcotics Bureau,
Bandaranayake International
Airport Unit,
Katunayake.

Complainant

MC Negombo **Vs.**
No. B 8188/2024 Mohideen Naushad Saifullah

Suspect

AND NOW BETWEEN

Mohammed Nifsha Naushad
A/F3/U9, Ranmuthu Sewana,
Pangnananda Mawatha,
Colombo-15.

Petitioner

ON BEHALF OF

Mohideen Naushad Saifullah

(In remand custody)

Suspect

Vs.

1. The Officer-in-Charge
   Police Narcotics Bureau,
   Bandaranayake International
   Airport Unit,
   Katunayake.

2. The Attorney General
   Attorney General's Department
   Colombo-12.

Respondents

BEFORE : **P. Kumararatnam, J.**
R.P.Hettiarachchi, J.

COUNSEL : **Tenny Fernando with Himashi Silva for the Petitioner.**
Tharaka Kodagoda, SC for the Respondents.

ARGUED ON : **21/05/2025.**

DECIDED ON : **17/06/2025.**

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ORDER

P.Kumararatnam,J.

The Petitioner is the brother of the Suspect named in the B Report filed in the Magistrate Court of Negombo case bearing No. B 8188/2024.The Petitioner has filed this bail application under Section 83(2) of the Poisons, Opium and Dangerous Drugs (Amendment) Act No. 41 of 2022.

According to the B Report filed by the police, the Suspect was arrested on 21.05.2024 by officers attached to the Police Narcotics Bureau, Katunayake branch upon an information received for importation, possession and trafficking of Cocaine. It is alleged that the Suspect had come and collected the parcel from Colombo Cargo Express. A gross quantity of 448.91 grams of Cocaine was recovered in the parcel.

The production was sent to the Government Analyst and according to the report dated 30.09.2024, the pure quantity of Cocaine that detected was 322.83 grams.

The Accused was produced in the Magistrate Court of Negombo under Sections 54A (b) (c) and (d) of the Poisons, Opium and Dangerous Drugs Ordinance as amended by Act No. 13 of 1984.

The Petitioner has pleaded following exceptional circumstances in support of her Bail Application.

1. That the Government Analyst Report dated 30.09.2024 pertaining to the instant matter was filed before the learned Magistrate on 28.11.2024 no indictment has been forwarded to the High Court by the Attorney General.

2. The Police narcotics Bureau submitted a detailed report indicating that the Suspect has no connections to the sender of the package or the individual named Dedunu. Telephone analysis supports this finding, confirming that the Suspect has no established role or prior communication with individuals linked to the importation of narcotics, which further bolsters the arguments for his innocence.

The Learned State Counsel submitted that the delay is not an exceptional circumstance to be considered to enlarge the Suspect on bail. Further, the time spent for preparing the indictment does not constitute an exceptional circumstance. According to the State, indictment has not been filed against the Suspect.

Exceptional circumstances are not defined in the statute. Hence, what is exceptional circumstances must be considered on its own facts and circumstances on a case by case.

In **Ramu Thamodarampillai v. The Attorney General [2004] 3 SLR 180** the court held that:

> *"the decision must in each case depend on its own peculiar facts and circumstances".*

In **CA(PHC)APN 107/2018** decided on 19.03.2019 the court held that remanding for a period of one year and five months without being served with the indictment was considered inter alia in releasing the Suspect on bail. According to the Petitioner, at present his family is going through untold hardship without proper income and care.

The Section 83 of the Poison, Opium and Dangerous Drugs Act which was amended by Act No. 41 of 2022 states:

83. (1) Subject to the provisions of sections 84, 85 and subsection (2) of this section, a person suspected or accused of an offence under sections 54A and 54B of this Ordinance, shall not be released on bail by the High Court except in exceptional circumstances.

(2) Notwithstanding the provisions of sections 84 and 85, a person suspected or accused of an offence under subsection (1) of section 54A and section 54B-

(a) of which the pure quantity of the dangerous drug, trafficked, imported, exported, or possessed is ten grammes or above in terms of the report issued by the Government Analyst under section 77A; and

(b) which is punishable with death or life imprisonment, shall not be released on bail except by the Court of Appeal in exceptional circumstances.

shall not be released on bail except by the Court of Appeal in exceptional circumstances.

In this case the pure quantity of Cocaine detected in the production by the Government Analyst is 322.83 grams. Hence, this court has jurisdiction to consider granting of bail as per the new amendment.

According the Petitioner, at the very outset the Suspect had revealed circumstances under which he had gone to collect the parcel. With the information provided by the Suspect, the police now conducting further investigation to arrest another person called "Dedunu."

The Counsel for the Petitioner urged this Court to consider that detaining a Suspect without any legal action for an extended period of time amounts to a violation of his fundamental rights which can be considered as an exceptional ground.

In **Nasher v. Director of Public Prosecution [2020] VSCA 144** the court held that:

*"**a combination of delay**, onerous custodial conditions, and the relative weakness of the prosecution case may, when considered with all relevant circumstances, compel the conclusion that exceptional circumstances have been established".* [Emphasis added]

The Petitioner states that, although the Government Analyst Report was received on 28.11.2024, up to now the investigation dossier has not been received by the Attorney General. The Suspect was arrested on 20.05.2024 and he is in remand to date.

Offences under Section 54A (b) (c) and 54A(d) of the Poisons Opium and Dangerous Drugs Ordinance as amended by the Act No.13 of 1984 is no doubt serious offences but seriousness of the offence alone cannot form a ground to refuse bail.

Bail attempts to balance the requirement of necessity of ensuring the appearance in court of persons charged with criminal offences and the fundamental doctrine that all persons are presumed innocent until proven guilty and are entitled to their freedom unless and until they have been found guilty by a court of competent jurisdiction.

Further, bail should never be withheld as punishment. Granting of bail is primarily at the discretion of the Courts. The discretion should be exercised with due care and caution taking into account the facts and circumstances of each case.

Considering all these factors into account, especially the period in remand, the pure quantity Cocaine detected, not finalizing charges in the High Court and the other circumstances of the case, I consider this an appropriate case to grant bail to the Suspect. Hence, I order the Suspect be granted bail with following strict conditions.

1. Cash bail of Rs.100,000/=.
2. To provide 02 sureties. They must sign a bond of one million each.
3. The Petitioner should be one of the sureties.
4. The Suspect and the sureties must reside in the address given until conclusion of his case.

5. Not to approach any prosecution witnesses directly or indirectly or to interfere with.
6. To surrender his passport if any, to court and not to apply for a travel document. The Controller of the Immigration and Emigration is informed of the travel ban on the Suspect.
7. To report to the Officer-in-Charge, Police Narcotics Bureau, Colombo-01 on the second and last Sunday of every month between 9am to 1pm.
8. Any breach of these conditions is likely to result in the cancellation of his bail.

The Bail is allowed and the Learned Magistrate Negombo is hereby directed to enlarge the Suspect on bail on the above bail conditions.

The Registrar of this Court is directed to send this Bail Order to the Magistrate Court of Negombo and the Officer-in-Charge, Police Narcotics Bureau, Colombo-01.

JUDGE OF THE COURT OF APPEAL

R.P.Hettiarachchi, J.

I agree.

JUDGE OF THE COURT OF APPEAL