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

In the matter of an application for bail in terms of Section 83(2) of the Amended Act No.41 of 2022 to the Poisons, Opium and Dangerous Drugs Ordinance No.17 of 1929.

Court of Appeal Bail Application No.CA Bail/0042/23

HC/Colombo Case No. HC 5036/24

The Officer-in-Charge
Police Narcotics Bureau
Colombo-01.

COMPLAINANT

MC Colombo Case No. B 74998/5/22

1. W.V.Upul Tensil Fernando
2. P.Neel Wasantha Perera
3. A. Suranga Sampath Suraweera
4. Buddhika Janapriya
5. Jude Prasanna

SUSPECTS

AND NOW BETWEEN

Senaderanahalage Kamala Gunsili Menike
Kapukotuwa,
Aragoda, Polgahawela.

PETITIONER

Vs

1. The Officer-in Charge
   Police Narcotics Bureau
   Colombo-01.
2. The Attorney General
   Attorney General's Department,
   Colombo-12.

RESPONDENTS

A. Suranga Sampath Suraweera

3rd-SUSPECT-RESPONDENT

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

COUNSEL : **Anuja Premaratne, PC with Ramith Dunusinghe, Nayana Dissanayake and Senal Mathugama for the Petitioner.**
Wishva Wijesooriya, SC for the Respondents.

ARGUED ON : **05/08/2025.**

DECIDED ON : **26/09/2025.**

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ORDER

P.Kumararatnam,J.

The Petitioner filing this Application has invoked the jurisdiction of this Court to grant bail to her son who is the 3rd Suspect (Hereinafter referred to as the Suspect) in this case upon suitable condition as this Court considers appropriate.

The Suspect was arrested on 28.08.2022 by the Police officers attached to the Police Narcotics Bureau, Colombo-01. He was produced before the Magistrate of Colombo in the case bearing No. B/74998/05/2022.

According to the Petitioner, the Suspect is the diver of 1st Suspect who is a businessman involving in the concreate production in the Naththandiya and owns and runs a restaurant and a hotel in the Negombo area.

On the day of the arrest, early in the morning the 1st Suspect had left for Colombo with the 3rd Suspect in this case to purchase some spare parts to effect repairs to his excavators. On their way, the 1st Suspect had noticed an altercation between some persons who had come in a three-wheeler and some police officers who were on mobile duty. Being curious and noticing the police assaulting the passengers in the three-wheeler, the 1st Suspect got down from his vehicle and went up to the place of altercation. At that time two persons who have been named as 4th and 5th Suspects in this case had run away from the scene. As such 1st Suspect along with the Suspect were severely reprimanded by the police for interfering with police duty as the police alleged that they had apprehended a large quantity of Narcotics from the three-wheeler. At

that time, the 1st Suspect and the Suspect were taken to Peliyagoda Police custody along with the vehicle and the three-wheeler with the 2nd Suspect.

According to the police, 1.142 kilograms of Cocaine, 12.288 kilograms of Kush and 27.257 kilograms of Hashish had been recovered from the 1st, 2nd, and the Suspect. The 4th and 5th Suspects surrendered to court on 23.09.2022 and have been released on bail.

In the first B Report filed in court on 28.08.2022, the Respondents reported that they recovered a bag from the 1st Suspect's vehicle bearing No. NW KH 1374 and the bag included three parcels containing a narcotics known as 'Kush' a drug that is made using Cannabis. The Suspect was the drive of the vehicle mentioned above.

The Suspect and the 1st and 2nd Suspect were produced and facts were reported to the Colombo Magistrate under Sections 54A (d) and (b) of the Poisons, Opium and Dangerous Drugs Ordinance as amended by the Act No.13 of 1984.

The production had been sent to the Government Analyst Department and after analysis, the Government Analyst had forwarded the report to the Colombo Magistrate Court. According to the Government Analyst, 834.1 grams of pure Cocaine had been detected from the substance sent for the analysis. Further, cannabis had been identified in other two drugs namely Kush and Hashish.

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

1. The Suspect has been in remand custody little more than three years.
2. The Suspect is the sole breadwinner of the family.
3. The Suspect is a freelance driver.

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 already been forwarded to the High Court of Colombo and served on the Suspect 05.11.2024 under case No. HC 5036/24.

The suspect is in remand little more than three years. According to Government Analyst Report the pure quantity of Cocaine detected is 834.1grams.

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 basis.

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 in indictment was considered inter alia in releasing the suspect on bail. According to the Petitioner, at present her family is going through untold hardship without proper income and care.

The Section 83 of the Poisons, 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 834.1 grams. Hence, this court has jurisdiction to consider granting of bail as per the new amendment.

The Learned President's 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.

The Government Analyst Report pertaining to this case has been received by the Magistrate Court of Colombo on 22.08.2023. The

indictment was sent to the High Court of Colombo after one year of the receipt of the Government Analyst Report by the Magistrate Court.

Although more than three years passed after the arrest of the Suspect, the trial has not commenced in the High Court of Colombo. Only Pre-trial conference has been concluded.

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 right to trial without undue delay is found in numerous international and regional human rights instruments; for example, the International Covenant on Civil and Political Rights (Article 14(3)(c), the American Convention on Human Rights (Article 8(1), the African Charter on Human and People's Rights (Article 7(1)(d), and the European Convention for the Protection of Human Rights and Fundamental Freedoms (Article 6(1).

When a person is kept in remand without taking his or her case for trial for a considerable period of time, he or she should be released on bail pending trial. Otherwise, this will lead not only to prison overcrowding but also violates his or her fundamental rights which have been guaranteed under the Constitution.

Hence, I consider the delay more than three years in remand falls into the category of excessive and oppressive delay considering the circumstances of this case. Hence, considering all the circumstances of this case, the Suspect has very good exceptional circumstances to

consider this application in his favour. Further, remanding a suspect without commencing his or her trial will prejudice his or her rights and family as well.

Offences under Section 54A(d) and 54A(b) 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. In considering these matters, the court must bear in mind the presumption of innocence.

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 first B Report filed, and the circumstances of the case, I consider this is 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.50,000/=.
2. To provide 02 sureties. They must sign a bond of two million each. The Petitioner should be one of the sureties.
3. The Suspect and the sureties must reside in the address given until conclusion of his case.
4. Not to approach any prosecution witnesses directly or indirectly or to interfere with.
5. 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.
6. To report to the Naththandiya Police Station on the 2nd and last Sunday of every month between 9am to 1pm.
7. Any breach of these conditions is likely to result in the cancellation of his bail.

The Bail Application is allowed and the Learned High Court Judge of Colombo 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 High Court of Colombo and Officer-in-Charge, the Police Station, Naththandiya.

JUDGE OF THE COURT OF APPEAL

R.P.Hettiarchchi, J.

I agree.

JUDGE OF THE COURT OF APPEAL