

**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 Narcotics Bureau,
Colombo 01.

Court of Appeal Case No.

CA/BAL/0401/2023

Complainant

Magistrate Court of Colombo

Case No. B 88240/03/2023

Vs.

Yapa Mudiyanseelage Bimal Pasindu
Dilshan.

Suspect

AND NOW BETWEEN

Illegei Don Ayesha Sonali,
No.45/7D/48,
Kalaniganga Mills Road,
Mattakkuliya,
Colombo 15.

Petitioner

Vs.

1. The Officer-in-Charge,
Police Narcotic Bureau,
Colombo 01.

Complainant-Respondent

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

Respondent

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

COUNSEL: Asela Seresinghe for the Petitioner.
Malik Azeez, SC for the Respondents.

INQUIRY ON: 03.12.2024 and 17.01.2025

DECIDED ON: 17.01.2025

K.M.G.H KULATUNGA, J.

1. When this matter was first taken up for inquiry on 03.12.2024 the bench consisted of two Judges. However, with the elevation of Justice Menaka Wijesundera the bench now consists only a single Judge (when mentioned today). As this application is considered in the exercise of the original jurisdiction of this Court there is no legal bar or impediment for a single Judge to consider and determine an application of this nature. Both parties upon being appraise of this development agreed and consented to have this matter considered and determined by a single Judge.

2. This application is made under Section 83(2) of the Poisons, Opium and Dangerous Drugs Ordinance seeking bail for the suspect, Mudiyanseelage Bimal Pasindu Dilshan. The suspect had been arrested on 14.03.2023 on the allegation of aiding and abetting another to possess and traffic 200 grammes of methamphetamine of which the pure quantity is 173.32 grammes.
3. According to the petitioner, the suspect hires his vehicle for a fee. In support of this, an affidavit from Prasanna Fernando and two others were tendered deposing to the fact that vehicle bearing No. AW-9217 driven by the suspect had been previously hired by them.
4. The main exceptional grounds as urged by the petitioner are the delay in instituting criminal action, the fact that he was a mere driver of a hired vehicle and also the improbability of the prosecution version. The improbability alleged is the assertion in the B report that the passenger tossed or threw the parcel when the Police approached the vehicle. I see no apparent improbability in this reactionary conduct.
5. It was submitted that the suspect is 22 years of age and was a regular hiring vehicle driver who used to hire his vehicle as and when people required his services. In support of this affidavits as aforesaid were tendered from three persons.
6. In opposition, the State Counsel submitted that there is a pending indictment against the Suspect for a similar offence at the Negombo High Court bearing No. HC 136/2022 for the possession and trafficking of 17.996 grammes of pure heroine and the present detection had been made whilst on bail in that case. This fact had not been disclosed in the petition. It is also submitted that in the present instance the methamphetamine was recovered from the passenger in the vehicle who was also arrested along with him. It was submitted that IBEs have now been received by the Attorney General and steps are taken to indict without delay.

7. Recovery of the 200 grammes of methamphetamine was made from the passenger who was occupying the front passenger seat. However, no specific recovery was made from the suspect and the allegation against him is that he was abetting the passenger to traffick the said substance. On the face of it, the position taken up by the suspect seems to be possible. However, as at the date of arrest, the suspect had been on bail in respect of a similar offence of which the indictment was pending in the High Court of Negombo for trafficking in and possession of 17.9 grammes of heroine. Therefore, it appears that the suspect has now been apprehended for a similar offence when he was on bail. The petitioner did not disclose this pending matter which is a very relevant fact.
8. He had been in remand for a period of one year and eight months. The indictment is yet to be forwarded. There is also a Medical Report submitted from the Prison Hospital dated 06.08.2024 according to which the suspect had complained of a chest pain and has been referred to the National Hospital for cardiac assessment. However, there is nothing conclusive in that report except that the suspect was due to undergo certain tests.
9. Upon the consideration of the totality of the material, certainly no criminal proceeding has been instituted even after the lapse of one year and eight months however the State Counsel intimated that the Attorney General has received the IBEs and the indictment will be forwarded shortly. It is not the lapse of time that is relevant and critical in this matter. It is the probable defence of the lack of knowledge and conscious joint possession *qua* driver of a hiring vehicle. Suspect claims to be hiring his vehicle for a fee and the defence is that the other person was merely a passenger who was travelling for a fee. This defence considered in conjunction with the fact that nothing was found in his possession appears to be a presentable defence that may have the

propensity of creating a doubt as to conscious possession. This considered with the delay which remains not fully explained create the circumstances which can be considered as being exceptional and the suspect is thus entitled to be enlarged on bail.

10. Accordingly, this application for bail is allowed and the suspect is granted on bail subject to the following conditions:

1. cash bail in a sum of Rs. 500,000.00;
2. should provide two sureties who should execute bonds to the value of Rs. 1,000,000.00 each;
3. the sureties should also provide certificates for the Grama Sevaka from the respective residential areas of such sureties;
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 Colombo;
5. further, we inform a travel ban until the final determination of this matter and the Registrar is directed to inform the Director of Immigration and Emigration of this order for necessary action; and;
6. to report to the Officer-in-Charge of the Police Narcotics Bureau on every second and fourth Sunday of the month before 12 noon.

11. 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 Colombo.

JUDGE OF THE COURT OF APPEAL