

**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/0402/2023**

**Complainant**

**Magistrate Court of Colombo**

**Case No. B 88240/03/2023**

**Vs.**

Mahamarakkalage Tharindu  
Madushanka.

**Suspect**

**AND NOW BETWEEN**

Aththatunamage Ruban Nisanshala  
Lakshani,  
No.162/209,  
Madampitiya Road,  
Colombo 15.

**Petitioner**

**Vs.**

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

**1<sup>st</sup> Respondent**

2. Officer -in -Charge,  
Police Narcotics Bureau,  
Colombo 01.

**2<sup>nd</sup> Respondent**

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

**COUNSEL:**        Asoka Weerasooriya, Kithsiri Liyanage, Pasan  
Karunarathne, A. Weerasooriya instructed by B. Priyanga  
for Petitioner.  
Malik Azeez, SC for the Respondents.

**INQUIRY ON:**      10.12.2024 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 10.12.2024 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, Mahamarakkalge Tharindu Madushanka who had been arrested on 14.03.2023. He is suspected of aiding and abetting another to possess and traffic 200 grammes of methamphetamine of which the pure quantity is 173.32 grammes.
3. The main ground urged is that the CCTV footage does not support the manner of arrest as described by the arresting officers. According to the B Report, this suspect was occupying the passenger seat when the Police Officers in civil clothing approached the car the suspect is alleged to have tossed and thrown the packet containing the narcotics. We have been provided with certain still frames of the CCTV footage in which the throwing of the packet is not seen. This means and just that the printed frames do not include the initial tossing of the packet. It was also submitted that no indictment had been preferred and this delay of one year and eight months amounts to an exceptional circumstance.
4. The petitioner does take up the position that there were two others in the vehicle. However, the learned State Counsel opposing this application submitted that according to the CCTV footage, the presence of a third person is not evident and this contradicts the said position taken up by the petitioner.
5. In opposition to this application, the learned State Counsel informed that the Attorney General has received the IB extracts and the indictment is now under consideration. He also informed that steps will be taken to institute action and indict without delay. He further submitted that the still images taken from the CCTV footage clearly corroborates the respondent's version that the suspect is seen in the front passenger seat of the car and also the Officers are seen conducting

the raid. As a matter of fact, the petitioner's version is contradicted by the CCTV footages. The petitioner claims the presence of a third person in the car; however, the CCTV footage depicts otherwise and only two persons. In any event, it is the submission of the State Counsel that delay is not undue or oppressive.

6. As submitted by the State Counsel, there is an inconsistency between the CCTV footage and the position taken up by the petitioner as to the number of occupants in the vehicle. Further, the respondents are taking meaningful steps to forward an indictment. The time taken to process and progress, in the context of this case, does not appear to be excessive. The pure quantity is 173 grammes, which is a commercial quantity. This substance appears to have been in the personal and exclusive possession of the suspect. The lapse of time *per se* does not become exceptional and exceptionality arising upon the lapse of time is always relative to the circumstance.
7. The legislature has fixed time frames in relation to quantities less than 10 grammes. However, when it exceeds 10 grammes, there is no such time frame. The law thus contemplates holding such a suspect in custody until the conclusion of the trial or otherwise determining the matter. This is certainly due to the seriousness and the prevalence and the appreciable increase of such offences. In short, the object is deterrence even at this stage. Therefore, unless a suspect is successful in establishing circumstances which may be considered as exceptional, this Court is not empowered to enlarge such suspect on bail. Accordingly, I am of the view that the petitioner had failed to make out any exceptional circumstance and this Court is left with no option but to refuse and reject this application. The application is accordingly dismissed.

**JUDGE OF THE COURT OF APPEAL**