

**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/0603/2023

Complainant

Magistrate Court of Maligakanda Vs.

Case No. B 33089/2023

Inantha Pulige Sumith.

Suspect

AND NOW BETWEEN

Rajendran Patricia,
No.60/2, Kalinga Road,
Kirulapone,
Colombo 05.

Petitioner

Vs.

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

Respondents

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

COUNSEL: Neranjana Jayasinghe with Hariguptha Rohanadheera and
 R. Heellage for Petitioner.
 Jehan Gunasekara, SC for the Respondents.

INQUIRY ON: 29.01.2025

DECIDED ON: 29.01.2025

K.M.G.H KULATUNGA, J.

1. This application for bail is made on behalf of the suspect, Inantha Pulige Sumith. The petitioner is the wife of the suspect and this application is made under Section 83(2) of the Poisons, Opium and Dangerous Drugs Ordinance. The suspect had been arrested on 16.08.2023 at the Janaki Hotel, Colombo by officers of the Police Narcotics Bureau. It appears that on the previous day, the said officers had apprehended a Pilipino national residing in the said hotel and recovered from him 2.294kg of cocaine. Upon this detection, the officers have remained in the Janaki Hotel expecting a dealer or buyer to arrive. Accordingly, on the following day the suspect had arrived and according to the learned State Counsel, certain information found on the mobile phone confirms this intended

transaction. Thus, the position of the respondent is that the accused was the intended buyer or the courier of this substance. A photograph of the Pilipino national is said to have been in the phone of the suspect. The State Counsel also submitted that the investigations are still pending to ascertain and retrieve certain information from the suspect's phone which they believe was deleted. According to the nature of the material placed before this Court, it appears that the investigation is progressing on the lines of conspiracy or abetment against the suspect. The Government Analyst's Report had been received on 29.02.2024 according to which the pure quantity of cocaine is 1.2557kg.

2. The main thrust of petitioner's argument is that there is no material retrieved from the phones to confirm the allegations made by the respondents. Further, it is also submitted that one year and four months have lapsed and there is no reasonable prospect of action been instituted soon and moves that these circumstances thus be considered exceptional.
3. There had not been any recovery from the suspect. There is neither pending matters nor previous convictions. Though, the learned State Counsel was optimistic that the investigation will reveal and it will be possible to retrieve the deleted data, Mr. Niranjan Jayasinghe with equal force and gusto submits that the B Reports state that the data on the phone had been deleted and it is very unlikely that the contents of such deleted communications could be retrieved.
4. The respondents certainly have had time since August 2023 up to December 2024 to retrieve this data if it was so possible. However, they have failed. When a suspect is held in remand it is the duty of the investigative authorities to expedite the process and conclude the investigation without undue delay. If there is a delay a plausible and a reasonable explanation should be forthcoming. Probably, this suspect may even be the intended courier or the intended recipient of the contraband. However, unless there is tangible evidence to establish this

position, it will be no more than a mere surmise or suspicion. The failure to inform this Court of any acceptable reason for this delay in these circumstances will render the said delay as being oppressive or excessive which will be a circumstance that is exceptional. As this Court has repeatedly stated on numerous occasions, persons responsible for holding suspects in remand should consciously act with due diligence to conclude the investigations without delay or should provide this Court with the reasons for such delay. In the absence of such reasons, the period of one year and four months in remand may be considered excessive and oppressive in nature. Accordingly, this suspect is entitled to be granted bail. Accordingly, this application is allowed and the suspect is released on 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 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 Maligakanda; 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. the suspect is required to report to the Officer-in-Charge of the Police Narcotics Bureau on every first and third Sunday of each month before 12 noon.
5. 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 Maligakanda.

JUDGE OF THE COURT OF APPEAL

P. Kumararatnam, J

I agree.

JUDGE OF THE COURT OF APPEAL