

**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.

**Court of Appeal Case No.
CA/BAL/0365/2024**

Mira Mohideen Nawazdeen,
42/30, Dollar Rosa Road,
Pallansena South, Kochchikade.

Petitioner

**Magistrate Court of Negombo
Case No. M 72771**

Vs.

1. Officer-in-Charge,
Vice Prevention Unit,
Head Quarters Police Station,
Negombo.

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

Respondent

AND

Nawazdeen Mohomed Zakir.

Suspect-Respondent

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

COUNSEL: Punarji D. Karunasena for the Petitioner.
 Wishwa Wijesuriya, SC for the Respondents.

INQUIRY ON: 27.02.2025

DECIDED ON: 02.04.2025

K.M.G.H. KULATUNGA, J.

ORDER

1. This application for bail is made under Section 83(2) of the Poisons, Opium and Dangerous Drugs Ordinance seeking bail for the suspect, Nawazdeen Mohomed Zakir. It is alleged that the suspect was arrested on 02.08.2023 with 26.04 grammes of Methamphetamine. The exceptional circumstance relied upon is that the exact place in which the narcotics were concealed or found from is not specifically stated in the B Report and also the absence of a summary of the evidence. The petitioner relied on the decision of this court in **Sumathipala V. A.G.** CA/PHC/APN/ 09 of 2010 decided on 19.07.2010. The relevant portion of the said order is as follows;

“In the B report filed by the police, the police have failed to state the particular place (the body of the suspect) where heroin was found although they claimed that heroin was found in the possession of the suspect. We have gone through the B report and according to the B report that the heroin was found in the house of said Deepa Priyangani De Silva. As I pointed out earlier the B report does not indicate the particular place of the body from which the heroin was found (the body of the suspect).”

2. Relying on this decision, time and again petitioners in applications for bail have been taking up the ground that the B Report not specifying or

stating the particular place from which the narcotic was found. The particular place in the context being the exact part of the body of the suspect when the recovery is from the person of the suspect. It is argued that when the narcotic is found in the personal possession the exact location of the body or made of concealment should be narrated and stated in the B Report.

3. To my mind, the said dicta of Justice Sisira De Abrew is more often than not, is taken out of context and quoted in the abstract. This dictum should be considered in the factual context of the said mater which Justice Abrew expounded the aforesaid where the facts are unique. The facts of that case are that the suspect had been in a house of another when the officer in charge of the Angulana Police Station is alleged to have come to a house to introduce heroin to the owner of the house. However, the suspect who happened to be in the house had heated exchange of words with the OIC and had also assaulted the OIC. It is in this back drop that the alleged introduction of heroin is said to have been made to the said suspect.
4. In this scenario, the B Report has stated that heroin was found in the house of the said Priyangani De Silva. However, the said suspect Premalal Dammika who happened to be in the house was also produced before the Magistrate for possession of narcotics. It is in this contest that the failure to mention that particular place of the body from which the heroin was recovered was considered as material.
5. I observe that Justice Abrew does not either directly or otherwise lay down or prescribe a mandatory requirement as of a rule to state in the report the exact place of the body from which the recovery was made. In that case the B Report has stated that the heroin was found in the house of Priyangani De Silva and then also stated that the heroin was found in the possession of the suspect. It is in this context that the failure to state the exact place of recovery had been adverted to.

6. In the present application, the suspect was arrested on 02.08.2023 by a group of officers from the Negombo Police. According to the B Report dated 02.08.2023 (P-1), the suspect had been arrested around 11.25am and Methamphetamine (a packet of ice) is alleged to have been found when he was searched. The gross weight of which is 46.3 grammes.
7. However, according to the petitioner, the suspect was arrested at his house at Dollar Rosa Mawatha, Pallansena. It is alleged that a group of police officers had come into their house and questioned and the suspect who was in the house is said to have got into an altercation with the police and then the police had taken the accused. It is the position of the petitioner that the said narcotics were introduced at the police station after being so taken. According to the B Report, there is a sum of Rs. 26,990.00 entered in P.R. 2720/23. The petitioner claims that suspect had the said money of Rs. 27,000.00 in his wallet. As for the pending cases, it is admitted that the suspect is the 2nd accused in HC/624/19 pending in the High Court of Colombo. It is also admitted that he had been out on bail for the said matter since 12.06.2023.
8. The respondents have not filed objections in this matter. However, the learned State Counsel appearing for the respondents submitted that he is informed that the IBs are in the process of being forwarded to the Attorney General but is yet to be received. The suspect had been in remand for one year and two months. Admittedly, the suspect had been on bail for a similar offence and he has obtained bail on 12.06.2023. Within two months thereof on 02.08.2023, the suspect is once again apprehended for the similar offence. No doubt, the fact that a person on bail committing a similar offence is a relevant matter in considering application for bail. This is relevant as this is clear evidence of reoffending. It is a notorious fact that narcotics offences due to its unique nature is a crime that has the potential of making considerable profit. This factor singularly is an incentive and the reason for persons

to reoffend. In the present application what is significant is that he is alleged to have reoffended within two months of his release on bail.

9. B Report marked P-1 is certainly an extremely concise report. It merely narrates that the police officers were engaged in a raid on information when the suspect was identified and arrested around 11.25am. It is true that the exact place from which the packet of narcotics alleged to have been recovered is not stated. As to the exact environment or place in which the arrest took place is also not stated in detail. In this context it is not possible to ascertain from the B Report as to the location of arrest, ie; if it was in a house or on a road or if the possession referred to is physical and actual possession or otherwise. This becomes relevant specially as the petitioner alleges that the arrest was in the house and that it was an introduction. Apart from this initial B Report, it is also alleged that no further-reports have been submitted to Court. Then to cap it all, the respondents have failed and not filed any written objection in this count either.
10. In the above scenario, this Court is left only with the petition, the petitioner's averments and documents as to the facts. As for the first ground the failure to specify the exact place from which the narcotics was found becomes relevant as there is an allegation of an introduction. In that context when the exact place from which the narcotics were seized is not stated it gives credence to the allegation of introduction. This as I see is nothing but a rule of common sense and logic. In the normal course, the place from which the offending item was recovered is a relevant fact that one would naturally include in the information transmitted to a Magistrate by a B Report. This is somewhat of a basic fact. The failure to mention this basic fact may inferentially amount to the officers not being certain as to where it was recovered from. This is a situation that may arise if an introduction is made as alleged. It is in this context that Justice Abrew had determined as aforesaid. There is no mandatory requirement to so specify the exact place of recovery in

the B report. But the failure may give credence to an allegation of an introduction in the absence of any other material to the contrary. It is this doubt created on the police version that becomes exceptional.

11. As stated above, the suspect had been on bail for a similar offence. However, this becomes relevant as it is an indicator of a reoffending. This aspect would be negated if the subsequent instance appears to be an introduction. Accordingly, the failure to mention the exact physical location of recovery considered along with the failure to institute action for one year and two months, in my view, can cumulatively be considered as exceptional. This is specially so as the respondents have totally failed to explain this delay. In the above circumstances, the suspect is enlarged 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 and one of the sureties should be a close relative of the accused-petitioner;
3. Sureties are required to provide certificates from the Grama Sevaka from the respective residential areas of such sureties;
4. to surrender the Passport or any travel document of the petitioner if he has any, to the Registrar of the Magistrate's Court of Negombo;
5. to report to the Officer-in-Charge of the Vice Prevention Unit of the Headquarters police Negombo on the second and last Sunday of every month before 12 noon;
6. further, a travel ban is imposed 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; and

12. 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 Negombo and the Officer-in-Charge of the Vice Prevention Unit of the Headquarters police Negombo.

JUDGE OF THE COURT OF APPEAL

P. Kumararatnam, J.

I agree.

JUDGE OF THE COURT OF APPEAL