

**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.

Wedarachchi Patabendige Bhathiya
Sanath Kumara,
No.136, Pannawasa Mawatha,
Medaketiya, Tangalle.

Court of Appeal Case No.

CA/BAL/0344/2024

Suspect-Petitioner

Magistrate Court of Colombo

Case No. B 82604/1/22

Vs.

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

Complainant-Respondent

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

Respondent

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

COUNSEL: Pradeep Perera for the Petitioner.
 Tharaka Kodagoda, SC for the Respondents.

INQUIRY ON: 13.02.2025

DECIDED ON: 11.03.2025

K.M.G.H KULATUNGA, J.

ORDER

1. The suspect-petitioner, Wedarachchi Patabendige Bhathiya Sanath Kumara has preferred this application for bail under Section 83(2) of the Poisons, Opium and Dangerous Drugs Ordinance. He had been arrested on 16.12.2022 whilst at his home at Tangalle. According to the learned Counsel of the petitioner, Mr. Pradeep Perera, nothing had been recovered from the possession of this suspect. According to him, on 14.12.2022 a fishing boat named 'Bashi' had been searched whilst at sea and 128.327kg of Methamphetamine along with 106.474kg of Heroine had been seized. Thereafter, this suspect-petitioner had been apprehended apparently due to information received and based on telephone communication between himself and the skipper of the said boat.
2. Further, the learned State Counsel, Ms. Tharaka Kodagoda submitted that there is information that the fishing boat 'Bashi' was owned by this suspect-petitioner and had been sold to the skipper few days before the impugned search and detection. The learned State Counsel also submitted that the investigation is still in progress. The Hon. Attorney General has received the IB Extracts on 20.11.2023 and the matter is now registered under AG's reference CR3/591/2023. The State Counsel submitted that the Attorney General has directed further investigations and one item is to

ascertain the nature, reason and the purpose of the sale of this fishing vessel two days before the apprehension.

3. The learned Counsel for the petitioner relies on two grounds of exceptionality namely, medical reasons and the delay. It was submitted that the suspect-petitioner has now been in remand for over two years and there is no recovery or connection to the narcotics detected and recovered in this investigation.
4. No doubt, by virtue of provisions of Section 83(2) of the Poisons, Opium and Dangerous Drugs Ordinance, the law decrees that the persons accused of being in possession of 10 grammes or more of a dangerous drug will have to suffer incarceration until the conclusion or the determination of the trial. The legislature has thought and intended so however as incarceration is a serious deprivation of the living and liberty of such person and is inconsistent with the presumption of innocence. In those circumstances, persons responsible for the incarceration of suspects of accused are required to diligently and expeditiously take steps to conclude the legal process and trials in such instances. If there be any remissness, negligence or any conduct of a lackadaisical nature, the time elapsed due to such reasons will be considered and become excessive and oppressive in nature which will be an exceptional ground which entitles an accused for bail under Section 83(2).
5. However, it is now settled law and this Court has consistently been of the view that if there be a delay which is not accounted or explained which appears to be due to the remissness, complacency or negligence on the part of the respondents holding of such suspects in remand, such circumstance may be considered as being exceptional for the purposes of granting bail.
6. It has time and again been held by this Court that when the statute mandates the holding of suspects or accused in remand pending trial, there is correspondingly a duty and an obligation upon those who are

responsible in denying the liberty and holding such person in remand or detention to diligently and consciously take steps to expeditiously conclude the investigation and institute criminal action. Preparation of the IB Extracts and forwarding it to the Attorney General entails such an obligation.

7. What is relevant in the present application is that this suspect was not on the fishing vessel at the time of the detection. According to the State Counsel, this suspect happens to be the previous owner who is alleged to have sold this vessel few days before to the skipper who was apprehended along with the narcotics. This is the position of the respondents. The learned State Counsel vehemently objected and submitted that there was great suspicion as to why the vessel was sold a few days before and there were phone communications between the skipper (new owner) and the suspect-petitioner prior to the said sale. Apart from this there is nothing tangible or incriminating, unraveled or found during this investigation. However, according to the petitioner he is the owner and had entered into an agreement with the skipper to engage the vessel in fishing activities. (Vide document marked 'Q').

8. Almost one year after the receipt of the IB Extracts, the Attorney General has advised the police to conduct further investigations to ascertain the real purpose of the purported sale/handing over agreement of the vessel and if it was a sham transaction. What is significant and relevant at this juncture is that it has taken one year to send out the letter of advice directing further investigations by letter dated 14.10.2024. When suspects are languishing in remand, further investigations and necessary actions to institute legal proceedings should be pursued consciously and diligently. What we observe in this instance is that it lacks the diligence so expected. To cap it all, it is further compounded by the total lack of any convincing or tangible evidence to connect this suspect-petitioner to the narcotics detected. There may be serious suspicion or suspicious circumstances which is far from incriminating evidence required to prefer charges. After

two years of the arrest, there is only some blissful hope or expectation of finding something to implicate. This is totally insufficient to justify the continuous incarceration of such person. These circumstances to my mind constitute delay which is oppressive and excessive.

9. Once again with a profound sense of a regret, I observed that the deprivation of the living and liberty of any person seem to be insignificant and of no relevance to those who are entrusted with the task of instituting legal action or determining this matter. We are satisfied that the exceptional circumstances have been made out which entitles the petitioner to obtain bail under Section 83(2). Accordingly, petitioner is granted bail subjected 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 respective residential areas of such sureties;
4. to surrender the Passport or any travel document of the accused-petitioner, if he has any, to the Registrar of the Magistrates' Court of Colombo;
5. to report to the Officer-in-Charge of the Police Station, Tangalle on last Sunday of the 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

10. 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 Magistrates' Court of Colombo.

JUDGE OF THE COURT OF APPEAL

P. Kumararatnam, J.

I agree.

JUDGE OF THE COURT OF APPEAL