

**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/0079/2024**

**Complainant**

**Magistrate Court of Maligakanda Vs.  
Case No. 14644/22**

Mohammed Zanoon Mohammed  
Naslin,  
D/F5/U14,  
Randiya Uyana,  
Colombo 15.  
(Currently held in Remand Custody)

**Suspect**

**AND NOW BETWEEN**

Ummu Yekeena Samsudeen,  
D/F5/U14,  
Randiya Uyana,  
Henamulla,  
Colombo 15.

**Petitioner**

**Vs.**

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

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

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

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

**BEFORE : MENAKA WIJESUNDERA, J**  
**WICKUM A. KALUARACHCHI, J**

**COUNSEL :** Hafeel Fariz with Sanjeewa Kodituwakku, Shenon  
Thillekeratne and Shermina Bangsjayah for the  
Petitioner.  
Lishan Ratnayake, SC for the Respondents

**INQUIRY ON :** 06.08.2024

**DECIDED ON :** 29.08.2024

**WICKUM A. KALUARACHCHI, J.**

This bail application has been filed to obtain bail to the suspect Mohommed Zanoon Mohomed Naslin who had been produced to the Magistrate Court of Maligakanda as a suspect under the provisions of the Poisons, Opium and Dangerous Drugs Ordinance.

He had been arrested on 07.06.2022 for the offences of possessing and trafficking of a gross quantity of 1 kilogram and 192 grams of Diacetylmorphine (Heroin). According to the Government Analyst Report, the net quantity of Heroin is 690.3 grams. The learned Counsel for the respondent informed that on 22.07.2024, the indictment was signed by the Hon. Attorney General and now it has reached the Colombo High Court.

According to Section 83(2) of the Poisons, Opium and Dangerous Drugs Ordinance as amended by the Act No. 41 of 2022, when the pure quantity of Heroin is 10 grams or above the suspect shall not be released on bail except by the Court of Appeal in exceptional circumstances. Section 84 of the amended Act states that no suspect brought under Section 54A and Section 54B shall be detained for more than 12 months in custody. However, the said 12 months period does not apply to the matter in the Court of Appeal according to Section 83(2) of the amended Act. Therefore, the petitioner must satisfy this Court that there are special circumstances to grant bail. Exceptional circumstances differ from case to case. On the facts and circumstances of each case, it has to be considered whether there are special circumstances.

The learned Counsel for the Petitioner pointed out two matters as special circumstances. Firstly, he pointed out that the suspect was in remand for more than two years. Secondly, the learned Counsel contended that the suspect has been illegally detained.

As this suspect was arrested for possessing and trafficking 690.3 grams of heroin, a high quantity of illegal substances is involved in this case. As the suspect is indicted by now, there is no oppressive or excessive delay in this matter. Therefore, the period of remand alone cannot be considered as an exceptional circumstance.

The argument of illegal detention is based on Section 120 of the Code of Criminal Procedure Act. The learned Counsel contended that at the end of every fifteen days, the period of remand has to be extended and, in this case, after the suspect was produced before the Maligakanda Magistrate Court on 21<sup>st</sup> November 2023, the suspect has been remanded until 7<sup>th</sup> October 2024. Submitting judicial authorities, the learned Counsel contended that remanding a person more than fifteen days without extending the remand is illegal and against the procedure established by law. The learned State Counsel contended by drawing the attention to Section 120 and 115 of the Code of Criminal Procedure Act (CCPA) that the extension of remand in fifteen days is required only during the investigation stage.

Section 120(1) of the Code of Criminal Procedure Act reads as follows:

*“Every investigation under this Chapter shall be completed without unnecessary delay. Where such investigation cannot be completed within fifteen days the officer in charge of the police station or the inquirer shall transmit to the Magistrate's Court having jurisdiction in the case, a report of the facts and the progress of the investigation at the end of the fifteen days and thereafter at the end of every period of fifteen days until completion of the investigation.”*

It is clear from the above subsection that remand extension at the end of every fifteen days is required until the investigations are completed. In the matter before us, investigations have been completed and the IB extracts

had been sent to the Hon. Attorney General to indict the suspect. Thereafter, the learned Magistrate has directed to produce the suspect physically on 7<sup>th</sup> October 2024 before the Magistrate Court. It is to be noted that when the matter is referred to the Hon. Attorney General to indict the suspect according to the quantity mentioned in the Government Analyst Report, the Magistrate has no jurisdiction to deal with the suspect.

Section 115(2) reads as follows:

*“The Magistrate before whom a suspect is forwarded under this section, if he is satisfied that it is expedient to detain the suspect in custody pending further investigation, may after recording his reasons, by warrant addressed to the superintendent of any prison authorize the detention of the suspect for a total period of fifteen days and no more. The provisions of section 264 shall apply to every such warrant. If at the end of the said period of fifteen days proceedings are not instituted the Magistrate may subject to subsection (3) either discharge the suspect or require him to execute a bond to appear if and when so required.”*

In the instant matter, the learned Magistrate had no jurisdiction to release the suspect on bail. As this is a case referred to the Attorney General to indict the suspect, it is obvious that the learned Magistrate cannot discharge the suspect. Therefore, the learned Magistrate could not take any step in terms of 115(2) of the Code of Criminal Procedure Act. The law requires to extend the period of remand every fifteen days until the investigations are completed and after completing investigations, no such requirement is specified in the CCPA. Hence, not extending the period of remand in fifteen days after completing the investigations is not an illegal detention. In any case, if there is an issue of illegal detention, the Supreme Court is the appropriate forum to raise it.

In the circumstances, we find no exceptional circumstances to consider bail in this matter. Accordingly, the instant bail application is dismissed.

**JUDGE OF THE COURT OF APPEAL**

Menaka Wijesundera, J

I agree.

**JUDGE OF THE COURT OF APPEAL**