

**IN THE SUPREME COURT OF THE DEMOCRATIC
SOCIALIST REPUBLIC OF SRI LANKA**

In the matter of an application for special leave
to appeal in terms of Article 128 of the
Constitution.

SC / SPL / LA / 244 / 2024

CA / BAL / 79 / 24

Magistrate's Court of

Maligakanda: 14644 / 22

Umma Yekeena Samsudeen,

No.233/29 B,

Madampitiya Road, Colombo 14.

PETITIONER - PETITIONER

-Vs-

1. Officer in Charge,

Police Narcotic Bureau,

Colombo 01.

2. Hon. Attorney General,

Attorney General's Department,

No.159,

Hulsdorp, Colombo 12.

RESPONDENT - RESPONDENTS

Before: A.H.M.D.Nawaz, J

K. Priyantha Fernando, J &

M. Sampath K.B.Wijeratne, J

Counsel: Hafeel Farisz with Shannon Tillekeratne instructed by Shayamali
Athukorala for the Appellant.
Malik Azeez, SC for the Respondent.

Argued and decided on: 08/05/2025

A.H.M.D. Nawaz, J.

We have heard long and extensive submissions which have raised important questions of law and after a careful consideration of the facts and circumstances surrounding the case, this court is not inclined to grant leave. Thus, we refuse leave by a majority decision.

We have taken cognizance of the robust arguments put forward by the counsel for the Petitioner Hafeel Farisz and the arguments advanced before this court by the learned State Counsel Malik Azeez for the Respondent.

It is undeniable that the Petitioner in this case was put on an order of remand, which would appear to contravene section 115(2) of the Code of Criminal Procedure Act, No.15 of 1979 at some stage.

Prima-facie, it would then mean a case of illegal detention.

The learned counsel for the Petitioner argues that such an incarceration without an authorization from court would amount to an exceptional circumstance qualifying the Petitioner to secure bail.

Well founded as the argument is, this court takes note of the fact that there is an indictment that has now been forwarded by the Attorney General against the accused Petitioner. The Petitioner now would have an opportunity to face the trial and vindicate his innocence inasmuch as the prosecution has to prove its case beyond reasonable doubt.

The right of the State in ensuring due process vis-à-vis the accused person has since shifted to the High Court.

We bear in mind that as rightly contended for by the counsel for the Petitioner, any accused or suspect could be deprived of their personal liberty only by a procedure established by law.

We also make the observation that illegal detention, if any, could have been addressed by the invocation of the fundamental rights jurisdiction that this court is vested with in terms of Article 126 of the Constitution.

We have taken all these factors into consideration and observe that Magistrates should bear in mind the provisions of the Code of Criminal Procedure Act, No. 15 of 1979 as amended and all other relevant statutes before making orders that impinge upon rights of parties including those of an accused person.

If orders are made to deprive a person of his liberty such orders have to be sanctioned by law and any infractions of the governing law in regard to incarceration of suspects have to be dealt with in accordance with the law and in the proper forum.

The learned counsel for the Petitioner also made the submission that though section 115(2) of the Code of Criminal Procedure Act No, 15 of 1979 did not authorize the continued detention of the Petitioner, the prosecution cannot take refuge under section 83(2) of the Poisons, Opium and Dangerous Drugs Ordinance as amended by Act No.41 of 2022 in order to continue the detention until the indictment is preferred. In response, the learned State Counsel made the submission that the aforesaid provision namely section 83(2) of the Poisons, Opium and Dangerous Drugs Ordinance as amended by Act No.41 of 2022 impliedly authorized the detention.

We have considered all these arguments and decide that it is too late in the day to assay this argument in an appeal, now that a trial upon an indictment may pave the way for the Accused – Petitioner to secure his freedom.

So, leave is refused but we direct the learned High Court Judge of Colombo to begin the trial in HC 5047/24 against this accused as expeditiously as possible and have a day to day trial so as to ensure that the trial comes to a completion.

We make the above order of expedition having due regard to the submissions placed before this Court by both the learned counsel for the Petitioner as well as the learned State Counsel.

The learned State Counsel undertakes to ensure that this order would be implemented with the active cooperation of the prosecuting State Counsel.

Judge of the Supreme Court

K. Priyantha Fernando, J

I agree

Judge of the Supreme Court

M. Sampath K.B. Wijeratne, J

I agree

Judge of the Supreme Court