

IN THE COURT OF APPEAL OF THE DEMOCRATIC SOCIALIST
REPUBLIC OF SRI LANKA

In the matter of an Application for bail under Section 10(1)(a) of the Assistance to and Protection of Victims of Crime and Witnesses Act No. 4 of 2015 read along with the Bail Act No. 30 of 1997.

Officer in charge
Police Station, Kabithigollawa

Complainant

V.

CA/BA/23/2018

MC: BR/67/18

K.P. Senarathne, Moragoda, Ataweeragollawa

Suspect

AND NOW BETWEEN

K.P. Senarathne, Moragoda,
Ataweeragollawa

Suspect-Petitioner

V.

Officer in charge
Police Station, Kabithigollawa

Complainant-Respondent

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

Respondent

Before A.L. Shiran Gooneratne, J.,
K.Priyantha Fernando, J.,

Counsel Amila Palliyage for the Petitioner.
Nayomi Wickramasekara, SSC for the
Respondent.

Argued on 22.02.2019

Written Submissions

Filed on 05.03.2019 -Petitioner

Order on 12.03.2019

K. PRIYANTHA FERNANDO, J.

1. The suspect Petitioner (Petitioner) had been produced before Kebithigollawa Magistrate's Court on 16th August 2018 by Officer In Charge of the Kebithigollawa Police Station, alleging that he had committed an offence punishable under Section 8(1)a of the Assistance to And Protection of Victims of Crime and Witnesses Act (hereinafter sometimes referred to as the Act). Taking the facts reported by the Police into consideration, learned Magistrate had remanded the Petitioner.

2. In terms of Section 10(1) of the Act, such suspect can be enlarged on bail only by the Court of Appeal under exceptional circumstances. Therefore, the Petitioner has made this application for bail to be considered by this Court.

3. We considered the petition with documents filed, statement of objections filed by the Respondent, submissions made by the counsel for both parties at the inquiry and the written submissions filed.

4. Facts elicited by the report filed in the Magistrate's Court by O.I.C. Kebithigollawa Police in brief are;

Petitioner had come to Complainant Karunaratne's house with one Janith to saw timber. On 09.08.2018, when nobody was at home, Janith had come and sexually assaulted the 10-year-old daughter of Karunaratne. Karunaratne had made a complaint to Police.

On 12.08.2018 at about 12.15 in the night, Petitioner had tapped on the door. When Karunaratne opened the door, Petitioner had threatened him to withdraw the complaint and if not he would kill Karunaratne. Petitioner had further threatened that he would not let Karunaratne's children go on the road. On 13.08.2018 morning around 06.00 Petitioner had come again and threatened Karunaratne saying that if he is remanded, he would not let them live in the village. Karunaratne had made a complaint to that effect to the Police. On that complaint the Petitioner had been produced in the Magistrate's Court as a suspect alleging that he had committed an offence under Section 8(1)a of the Act.

5. Counsel for the Petitioner submitted that on the above facts, Petitioner cannot be treated as 'Any person' mentioned in Section 8 of the Act. Counsel urged the Court to consider that as an exceptional circumstance and to grant bail to the Petitioner.

6. It is the contention of the counsel for the petitioner that 'Any person' referred to in section 8(1) (a) of the Act refers to a person against whom the complaint had been made, as it refers to 'against such person' in the same section. Counsel further submitted that 'such person' refers to a person against whom the victim refrains from lodging a complaint with a law enforcement authority or testifying at any judicial or quasi-judicial proceedings or to compel such victim of crime to withdraw a complaint lodged or legal action instituted.

7. Offences against victims of crime and witnesses in terms of the Act are defined in Part 3 of the Act that starts with Section 8, Section 8(1) a provides;

8. (1) Any person who-

(a) threatens a victim of crime or a witness with injury to his person, reputation or property or to the person or reputation or

property of any other in whom such victim of crime or witness has an interest, with the intention of causing alarm to such victim of crime or witness or to cause such victim of crime or witness to refrain from lodging a complaint against such person with a law enforcement authority or testifying at any judicial or quasi-judicial proceedings or to compel such victim of crime to withdraw a complaint lodged or legal action instituted against such person; or

(b) ...

Commits an offence, and shall on conviction by a High Court, be sentenced to a term of imprisonment not exceeding ten years and to a fine of rupees twenty thousand.

Although we do not see any ambiguity in the English text of section 8 of the Act, for the purpose of clarity I reproduce the Sinhala text of the same.

Sinhala text of section 8(1) of the Act;

8. (1) යම් තැනැත්තකු විසින්-

- (අ) අපරාධයක වින්දිතයකු හෝ සාක්ෂිකරුවකු විසින් තැනිගැන්වීමේ හෝ අපරාධයක වින්දිතයකු හෝ සාක්ෂිකරුවකු විසින් නීතිය බලාත්මක කිරීමේ අධිකාරියක ඒ තැනැත්තාට එරෙහිව පැමිණිල්ලක් ඉදිරිපත් කිරීමෙන් හෝ යම් අධිකරණ හෝ අර්ධ අධිකරණ කටයුත්තක දී සාක්ෂි දීමෙන් වැළැක්වීමේ හෝ ඒ තැනැත්තාට එරෙහිව කරනු ලැබූ පැමිණිල්ලක් හෝ පවරනු ලැබූ නඩු කටයුත්තක් ඉල්ලා අස් කර ගැනීමට බලකිරීමේ අරමුණින්, අපරාධයක වින්දිතයකුගේ හෝ සාක්ෂි කරුවකුගේ ශරීරයට, කීර්ති නාමයට හෝ දේපල වලට නැතහොත් එම වින්දිතයාට හෝ සාක්ෂිකරුට සම්බන්ධයක් ඇති වෙනත් යම් තැනැත්තෙකුගේ ශරීරයට, කීර්තිනාමයට හෝ දේපලවලට හානියක් සිදු කර තර්ජනය කිරීමෙන්; හෝ
- (ආ) ... ඒ තැනැත්තා වරදක් සිදුකරන ලබන අතර, මහාධිකරණය විසින් වරදකරු කරනු ලැබූ විට, අවුරුදු දහයකට නොවැඩි බන්ධනාගාරගත කිරීමේ දඬුවමකට සහ රුපියල් විසිදහසක දඩයකට හෝ ඔහු යටත් විය යුතුය.

8. On the facts placed before the learned Magistrate, it is clear that Karunaratne who is the complainant is a witness to the crime that was alleged to have committed against his daughter who was 10 years old. Petitioner is alleged to have threatened Karunaratne, among other things to withdraw the complaint. It is clear that it was also to cause alarm to him as defined in section

8 (1) a. The plain reading of the Section 8 of the Act shows that the Petitioner falls into the category of 'Any person' defined in the Section. Contention of the Counsel for the Petitioner that he does not fall under the category of 'Any person' mentioned in Section 8 is untenable.

9. Court has to give due consideration to the objects of the Act provided in Section 2 of the Act.

Section 2 provides;

2. The objects of this Act shall be to-

- a) set out, uphold and enforce the rights and entitlements of victims of crime and witnesses and to provide for a mechanism to promote, protect, enforce and exercise such rights and entitlements ;*
- b) provide assistance and protection to victims of crime and witnesses ;*
- c) enable victims of crime to obtain compensation from persons convicted of having committed offences against them ;*
- d) provide for obtaining redress by victims of crime, including restitution, compensation, reparation and rehabilitation of such victims ;*
- e) set out duties and responsibilities of the State, judicial officers and public officers towards the promotion and protection of the rights and entitlements of victims of crime and witnesses ;*
- f) stipulate offences that may be committed against victims of crime and witnesses and the penal sanctions that may be imposed on persons who commit such offences ; and*
- g) provide for the adoption and implementation of best practices relating to the protection of victims of crime and witnesses.*

If the contention of the Counsel for the Petitioner is accepted, any offender could threaten or intimidate victims and witnesses through third parties and get away. Court will not give such a narrow interpretation to the Section that would go against the intention of the legislature.

10. We find that the Petitioner clearly falls within the ambit of 'Any person' mentioned in Section 8 of the Act. As the Petitioner has failed to submit any exceptional circumstances, application for bail is refused.

JUDGE OF THE COURT OF APPEAL

A.L. SHIRAN GOONERATNE, J.

I agree.

JUDGE OF THE COURT OF APPEAL