

IN THE COURT OF APPEAL OF THE DEMOCRATIC SOCIALIST

REPUBLIC OF SRI LANKA

Magistrate's Court of Homagama

Case No: **B 36230/2020**

Court of Appeal

Case No: **CA BAL 36/2020**

In the matter of an application for bail under and in terms of section 10 (1) (a) of the Assistance to and Protection of Victims of Crime and Witnesses Act No. 4 of 2015.

Officer in Charge,

Police Station,

Homagama.

Complainant

Vs.

Pathirage Don Jeewani Krishanthi,

No 4, Brakhmanagama,

Pannipitiya.

(Presently at Welikada Prison)

Suspect

AND NOW BETWEEN

Pathirage Don Jeewani Krishanthi,

No 4, Brakhmanagama,

Pannipitiya.

(Presently at Welikada Prison)

Suspect – Petitioner

Vs.

1. Officer in Charge,
Police Station,
Homagama.

Complainant – Respondent

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

Respondent

Before – Menaka Wijesundera J.

Neil Iddawala J.

Counsel – Tharindu Rukshanfor

the petitioner.

Chathurangi

Mahawaduge SC. For A.G.

Argued On – 08.06.2021

Decided On – 29.06.2021

MENAKA WIJESUNDERA J.

The instant application for bail has been filed by the petitioner under the Assistance to and Protection of Victims of Crime and Witnesses Act no 4 of 2015.

The petitioner was initially arrested for being in possession of heroin on 23.13.19 by the Athurugiriya police. The petitioner was handed over to the remand prison and the allegation of the respondents is that while the petitioner was in custody at the Welikada remand prison that the petitioner threatened the officer who arrested the petitioner over the phone on 3.1.20 and 7.1.20. The said officer had made a complaint to the officer in charge of the station and had commenced investigations and the petitioner had been produced before the Magistrate.

Meanwhile the petitioner had filed an application for bail for the heroin matter and had obtained bail.

According to the submissions of the respondents the tower reports filed in court indicate that from Welikada and Borella calls have gone out to the complainant's phone during the alleged period. The investigations further reveals that although the phone alleged to have been registered under the petitioners mother's name, according to the son of the petitioner, the phone is generally used by the petitioner herself.

Therefore according to the respondent as the petitioner has allegedly has threatened the life of a police officer that it amounts to a very serious type of an offence and furthermore the petitioner has not averred any exceptional circumstances acceptable within the norms of the general principles of law to enlarge petitioner on bail.

The position of the petitioner is that she is the sole breadwinner of the family and that it is a fabricated case to keep the petitioner in remand.

According to the provisions of the act under which the petitioner had been taken in to custody if the petitioner is to be enlarged on bail it is very clear that the petitioner has to substantiate that there are exceptional circumstances which would endanger the life of the petitioner if in remand prison.

But upon considering the submissions of the petitioner the circumstances averred by the petitioner does not appear to be exceptional as described by the cases so far decided and considered under the provisions of this act. Court of Appeal Case no **CA/BAL 38/19 by Priyantha Fernando J.**

Therefore as the submissions of the petitioner does not aver exceptional circumstances the instant application is hereby rejected and stands dismissed.

Judge of the Court of Appeal.

I agree.

Neil Iddawala J.

Judge of the Court of Appeal.