

IN THE COURT OF APPEAL OF THE DEMOCRATIC SOCIALIST

REPUBLIC OF SRI LANKA.

In terms of an application for Bail under S.10 (1) of the Assistance to and Protection of Victims and Witnesses Act no.04 of 2015.

D.T Swarnakanthi

No.44/52

Police Quarters

Kurunagala.

C.A Bail No: **CAL/BAL/03/2021**

M.C Kurunagala Case No: **B3971/20**

Petitioner

Vs.

1.Officer – in –Charge

Computer Crimes Investigation Unit

– Kandy Branch.

Criminal Investigation Department.

2.Hon. Attorney General

Attorney General’s Department

Colombo 12.

Respondents

Before – Menaka Wijesundera J.

Neil Iddawala J.

Counsel – Nalin Disanayaka PC with Vishva Rajapaksha for the petitioner.

Kanishka Rajakaruna SC for the State.

Argued On – 26.10.2021

Decided On – 02.11.2021

MENAKA WIJESUNDERA J.

The instant application for bail has been filed to obtain bail for the suspect in the case nu B397/20 of Kurunegala Magistrates Court under the Assistance to and Protection of Victims and Witnesses Act nu 4 of 2015.

The suspect was initially taken in to custody for allegedly displaying nude pictures of one K. M Serela Sithumini on 2.3.2020 under the B report nu 885/2020 and remanded till he was enlarged on bail on 16.3.2020.

The same K.M.Serela Sithumini makes yet another complaint against the suspect on 28.5.2020 for threatening her to withdraw the above mentioned complaint. The said statement of the complainant reveals at length as to how she was physically harassed to withdraw the complaint.

On the said complaint another report was filed under the above mentioned act and an investigation had commenced and the suspect had been arrested and is in remand ever since according to the petitioner.

According to the submissions of the Counsel for the respondents the telephone details of the suspect substantiate the fact that he had made contact with the complainant during the alleged period of threats mentioned by the complainant.

The position of the learned Counsel for the suspect is that the details submitted by the respondents do not cover the entire period and that according to a social media platform cited by the suspect the complainant has made contact with the suspect right through out.

The learned Counsel appearing for the respondents further submit that the indictment against the suspect has been dispatched to the relevant High Court, and the suspect had taken steps to obtain a new sim card to make the threatening calls to the complainant while his initial sim had been in the custody of the police, which is indicative of the fact that the suspect had clearly meddled with the due process of administration of justice while being on bail.

According to the object of the act under which the suspect had been produced and indicted for, is to

“Set out, uphold and enforce the rights and entitlements of victims of crimes and witnesses and to provide for a mechanism to promote protect enforce and exercise such rights and entitlements”.

Furthermore under the said act a suspect taken in to custody can be enlarged on bail only upon exceptional circumstances while safe guarding the objects of the act. The term exceptional has been widely analyzed in our legal system and lately it had been decided that the exceptionality will vary from case to case, keeping the same in mind this Court observes that the suspect in this matter has meddled with the due administration of justice to an extent that when his initial sim card and the mobile phone was taken into custody he has gone to the extent of

purchasing a new number while being on bail and had threatened the complainant. The extent of the treats is explicitly explained by the statement of the complainant and the suspect has blatantly violated the bail conditions, which shows his scant disregard for the judicial system.

According to the provisions of the act under which the suspect has produced and indicted for, the trials under this act must be speedily concluded and disposed of, and according to the submissions of the Counsel for the respondents the indictment of the suspect is already dispatched to the High Court, which is indicative of the fact that due administration of justice is taking place against the suspect without delay as laid down by the act.

The position taken up by the suspect that the suspect was remanded without an inquiry this Court is unable to agree with, because by that time the telephone details of the suspect were available with the police ,which corroborated the position of the complainant.

The suspect further averred that the complainant was in constant contact with the suspect according to a social media platform but the complainant has not denied the fact that she had an affair with the suspect, and furthermore this Court also observes that there is no proof as to the authenticity of the details submitted with regard to the details of the social media platform submitted by the suspect.

Therefore in view of the submission made by both parties this Court sees no exceptional circumstance to enlarge the suspect on bail.

Hence the instant application for bail is dismissed.

Judge of the Court of Appeal.

I agree.

Neil Iddawala J.

Judge of the Court of Appeal.