

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

*In the matter of an application for bail  
in terms of Section 10 (1)(a) of the  
Assistance to and Protection of Victims  
of Crimes and Witnesses Act, No.4 of  
2015.*

Nishshanka Pedige Chandrika  
Harshani Samaranayake  
No.9, Hurimaluwa, Rambukkana.

Court of Appeal  
Case No: **CA BAL 31/2020**

**Petitioner**

Magistrate's Court of Kegalle  
Case No: **B 6731/PC/19**

On behalf of

Weeraddana Nandana  
Pushpakumara  
No.9, Hurimaluwa, Rambukkana.

(Presently at remand custody)

**Suspect- Petitioner**

**Vs.** 1. Officer-in-charge.  
Police Station, Rambukkana

**Complainant- Respondent**

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

**Respondent**

:

**BEFORE**

Menaka Wijesundera J  
Neil Iddawala J

**COUNSEL**

:

P.D.D. Harshana Ananda  
representing Legal Aid Commission  
for the petitioner.

S.Weerasuriya SC, for the  
respondents.

**Argued on**

:

02.11.2021

**Decided on**

:

16.11.2021

**Iddawala - J**

In the instant matter, the suspect-petitioner is alleged to have committed an offence that comes under the purview of Sec 8(1) of the Protection of Victims of Crimes and Witness Act, by threatening a witness of a case filed under case no. B 6262/19 at Magistrate Court of Kegalle, which has been instituted against the suspect-petitioner on the count of an assault to a woman with the intention of outraging her modesty under Sec. 345 of the Penal Code.

The suspect-petitioner has been remanded on 24.10.2019 and his bail application has been subsequently rejected by the Learned Magistrate on the same day on the basis that, the Learned Magistrate has no jurisdiction to grant bail in terms of Sec. 10 (1) of the Assistance to and Protection of Victims of Crime and Witnesses Act, No.4 of 2015

Hence, the petitioner has filed this bail application before this Court in terms of section 10(1) (a) of the Assistance to and Protection of Victims of Crime and Witnesses Act, No.4 of 2015 (hereinafter referred to as the Witnesses and Victims Protection Act) requesting bail on behalf of her spouse (hereinafter referred to as the suspect-petitioner) who is presently incarcerated in remand custody at Kegalle prison.

When drawing attention to the relevant legal principles that govern the instant matter, Section 10(1) (a) of the Victims and Witnesses Protection Act has expressly noted that,

*‘If an offence comes under the purview of section 8 or 9, such shall be cognizable and non-bailable and no person suspected, accused or convicted of such offence shall be enlarged on bail, unless under exceptional circumstances by the Court of Appeal.’*

Hence, it is to be noted that the petitioner of this case is required by law to satisfy this court on the existence of exceptional grounds that justify the granting of bail to the suspect-petitioner.

Accordingly, the petitioner in her bail application has relied upon the following grounds as exceptional circumstances to warrant the grant of bail in favor of the suspect petitioner,

1. The suspect has tried to commit suicide in previous instances, but despite of such fact, the learned Magistrate has rejected the request to call for a medical report from the Government Medical Officer on the suspect’s medical condition. Hence, the suspect’s life is in danger.
2. Suspect is the sole breadwinner of the family who supports the petitioner and two minor children.
3. Alleged victim and witnesses have fabricated this false complaint in order to put the suspect into custody.
4. The suspect has been incarcerated for over 10 months for these unfounded allegations and the said allegations are preposterous and unsubstantiated evidence with independent witnesses.
5. The 1st respondent has not made a proper investigation regarding the incident.
6. The suspect has no previous convictions or pending cases of similar nature.

It is to be noted that the court has to be cautious when dealing with bail applications under this particular law as it is necessary to strike a balance, as far as that can be done, between protecting the rights of the victims, witnesses, safeguarding the proper administration of justice and ensuring the liberty of the individuals as guaranteed under Article 13(4) of the Constitution.

As observed above, section 10 (1) (a) of the Witnesses and Victims Protection Act stipulates that an accused person who is charged with an offence referred in section 8 shall be incarcerated unless he (or she) satisfies this court that exceptional circumstances exist which in the interests of justice, permits his or her release.

Hence, it is important to note that the word “*satisfies*” implies that the onus is vested upon the petitioner to prove as to the existence of exceptional grounds warranting the granting of bail to the suspect-petitioner.

Our Courts have refrained from attempting to formulate a comprehensive definition of what constitutes “*exceptional circumstances*” as that would be attempting to define the indefinable. A considerable degree of opportunity is given to an applicant of bail to establish exceptional circumstances which may relate to the nature of the offence, the personal circumstances of the applicant, or any other unusual or different circumstances that may warrant the grant of bail in favor of the suspect petitioner.

Hence, it is to be emphasised that the exceptional grounds submitted by the petitioner must be analysed on a subjective, case-by-case manner, so as to ascertain whether such grounds would warrant the grant of bail to the suspect-petitioner.

Firstly, the petitioner alleges that the suspect-petitioner is subjected to severe mental stress and has tried to commit suicide in several instances. Furthermore, that the suspect-petitioner’s life is in danger and the Learned Magistrate’s decision to refrain from calling for a medical report from the Government Medical Officer creates an exceptional ground for the petitioner to seek the enlargement of bail of the suspect-petitioner.

However, it has come to the notice of this court that according to the document marked as P3, although the counsel appearing for the petitioner had made an application seeking the permission of the Learned Magistrate to call for a medical report from the government medical officer on the suspect-petitioner’s medical condition, such party has failed to provide sufficient reasons and evidence in support of such request before the Learned Magistrate. Hence, it is the view of this court that the Learned Magistrate’s decision to refrain from calling for a medical report is justifiable and does not amount to an exceptional circumstance in the instant matter.

Secondly, the petitioner has submitted the fact that the suspect-petitioner being the sole breadwinner of the family constitutes an exceptional ground to warrant the enlargement of bail of the suspect-petitioner. At the outset it is to be noted that such a ground fails to constitute an exceptional circumstance. As held in Attorney General v Ediriweera (SC) 2006 BLR 12, “*It is trite law that family circumstances are not considered to be exceptional but circumstances which are general and operative in almost all the*

*cases. The facts and circumstances of the case must take it out of the ordinary, creating circumstances that are sufficiently exceptional to merit the grant of bail ...".*

*This Court held in CA No. BAL 39/20 CA minutes dated 29.06 2021, "In most of the bail applications, the petitioners list the situation of their families as constituting to be an exceptional circumstance. However, a person getting married and having children or being a sole bread winner, in other words, leading a family life, are a part of a normal life style of a normal person which is banal in nature and not uncommon to be considered as exceptional. The hardships that imprisonment might impose on a suspect's family is not an exceptional circumstance by itself."*

*Furthermore, in the Judgment of The Queen v Camelis Silva 74 NLR 113, it was stated that "the grounds that are common to many accused persons will not qualified to be considered as exceptional". Similarly, in CA. No. BAL 34/2019 CA minutes dated 29.05.2020, it was held that: ".....personal circumstances as urged by the Petitioner, though entitled to sympathy of this Court, fail to satisfy the requirement as imposed on him by Section 10(1)(a) of Assistance to and Protection of Victims of Crime and Witnesses Act No.4 of 2015, making him entitle to be enlarged on Bail".*

Based on the above examination of judicial precedent, this Court holds the submission that the suspect-petitioner is the sole breadwinner of the family as not amounting to an exceptional circumstance warranting the grant of bail.

The third, fourth and fifth grounds averred in the petition can be analysed together. The petition argues that the complainant has fabricated a false complaint against the accused petitioner and that the 1<sup>st</sup> respondent has failed to carry out a proper investigation which amounts to exceptional circumstances. Additionally, the petition avers that the incarceration period of 10 months amounts to an exceptional circumstance. In response, it was submitted on behalf of the respondent that the Attorney General has carefully considered the evidence of the investigation and has forwarded an indictment against the suspect-petitioner and as such, the case will be called on 20.01.2022. Upon consideration of the evidence presented before this Court, and the fact that an indictment has already been forwarded, this Court holds that a sufficient *prima facie* case has been established against the suspect-petitioner and that there is no inordinate procedural delay that amounts to the oppression of the rights of

the suspect-petitioner to constitute an exceptional ground to warrant the grant of bail in the instant matter.

As such, it is this court's considered view that the third, fourth and fifth grounds averred by the petitioner fail to constitute an exceptional circumstance within the meaning of Section 10(1) (a) of the Victims and Witnesses Protection Act.

The final ground alleged in the petition is that the suspect-petitioner has no previous convictions or pending cases of similar nature. However, as noted under preliminary objections filed by the respondent, this Court observes that the suspect-petitioner holds a series of convictions as well as other pending cases that portrays the suspect-petitioner as a habitual offender. As such, the final ground will not be regarded as an exceptional ground warranting the grant of bail. In fact,, this Court is required to consider the real likelihood of the suspect-petitioner absconding court proceedings if granted bail in the instant matter.

Hence, after careful consideration of all factors put forward by the petitioner in seeking the grant of bail on behalf of the suspect-petitioner, this court holds that the petitioner has failed to satisfy the court as to the existence of exceptional circumstances that warrant the grant of bail in favor of the suspect-petitioner. Therefore, the bail application made by the petitioner is hereby dismissed.

Judge of the Court of Appeal

**Menaka Wijesundera-J**

I agree.

Judge of the Court of Appeal