

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 ACT No. 4 of 2015, Assistance to and Protection of Victims of Crime and Witnesses.

The Officer – in – Charge,

Police Station

Meegoda.

Complainant

C.A Bail Application No: **BAL/ 0021/ 20**

Magistrates' Court Case No:

29389/2019(Homagama)

Vs.

1.Aththanayake Mudiyansege Wiraj Chamara.

2.Aththanayaka Mudiyansege Indika Sanjeewa.

3.Kottawa Gamage Udaya Sarath Kumara.

Suspect

AND NOW BETWEEN

Aththanayaka Mudiyansege Champa Manimekala Kumari.

No. 457, Dadimuththuwa,

Dadigamuwa.

Petitioner

Vs.

1. The Officer – in – Charge.
Police Station,
Meegoda.
2. The Hon. Attorney General,
Attorney General’s Department,
Colombo 12.

Respondents

And

Aththanayaka Mudiyanseelage Indika
Sanjeewa

No 47/2 Sumanasekearapura

Welipillawa,

Dadigamuwa

(Presently at Welikada Prisons)

Second Suspect

Before – Menaka Wijesundera J.

Neil Iddawala J.

Counsel – Gayan Perera for the

Petitioner.

S. Weerasuriya, SC for the

State.

Argued On – 30.11.2021

Decided On – 14.12.2021

MENAKA WIJESUNDERA J.

The instant application for bail has been filed under the Assistance to and Protection of Victims of Crime and Witnesses Act no 4 Of 2015 to obtain bail for the suspect petitioner namely Atthanayake Mudiyansele Indika Sanjeewa (hereinafter referred to as the suspect).

The allegation against the suspect had been for kidnapping and raping a girl of 15 years namely Dilumllesha Abeweera.

The mother of the victim had made a complaint on 28.6.2019 against the suspect stating that her victim daughter had eloped with the suspect. According to the mother of the victim the suspect has had a three wheeler and he had been engaged to transport the victim from school. But the mother had realized that there was a very unusual friendship between the two.

Anyhow after the above mentioned complaint the police had commenced investigations and on the 20th of November the victim had returned home and had been admitted to hospital. The mother of the victim on the 21st of November 2019 makes another complaint against the suspect stating that the suspect had threatened her. Thereafter the suspect had been arrested on the 17th of January 2020 and had been in remand up to date.

The police had recorded statements from the relatives of the mother of the victim but the respondents are not relying on those.

The position of the suspect is that the material against him is all fabricated.

The police had recorded a statement from the victim and according to which the suspect had eloped with her at first but subsequently has had sexual inter course with

her on multiple occasions and thereafter he had got her to put in writing that she eloped with him on consent after threatening her.

The purpose of the Act under which the suspect has been produced is to **“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”**.

But the counsel for the suspect states that according to **section 10(2)** of the above mentioned act trial under this act should be given priority as against others and it should be heard on day to day basis, as such he states that the suspect in the instant case has been arrested in 2020 but yet in remand up to date without any progress.

But the counsel for the respondents state that the indictment against the suspect had been dispatched to the relevant High Court in October, therefore it is only to be served and the trial to commence.

According to the provisions of this act a suspect indicted or produced under this act can be enlarged on bail only on grounds of exceptional circumstances by the Court of Appeal. The exceptionality urged by the counsel for the suspect is the delay in instituting action against the suspect.

The term exceptional has been gone in to very lengthily by our legal fraternity and it has been finally decided that exceptionality varies from case to case, and the general conditions of any person’s life as being married and having children are not exceptional.

Therefore as the indictment against the suspect has already been dispatched this Court sees no unusual delay in the administration of justice and in terms of the Act the suspect can urge the High Court to give priority to this case.

Furthermore this Court has to observe the vulnerable age of the victim in comparison to the advanced age of the suspect which only makes the possibility of the suspect interfering with the victim in giving evidence at the trial being very high, which would be a clear violation of the objectives of this act stipulated in section 2 of this act.

Therefore in view of the above mentioned material this Court is compelled to refuse the instant application for bail.

Hence the instant application for bail is hereby dismissed.

Judge of the Court of Appeal.

I agree.

Judge of the Court of Appeal.