

**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. 04 of 2015 read along with Bail Act No. 30 of 1997.

CA (Bail) Application No.

CA - BAL-0009-21

Wickkrama Arrachchige Nisal

Jayasanka,

(Presently detained at the Kegalle
Prison)

Petitioner

High Court of Kurunegala

Case No.HC 156/2019

Vs.

1. Officer – In – Charge,
Police Station,
Wariyapola.

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

Respondents

**Before : Hon. Justice Menaka Wijesundera
Hon. Justice Neil Iddawala**

Counsel : Wasantha Navarathna Bandara, PC with Ashan Navarathna Bandara instructed by Prince Perera for the Petitioner.
Chathurangi Mahawaduge, SC for the State.

Argued on : 01/12/2021

Decided on : 14/12/2021

Hon. Justice Menaka Wijesundera

The instant application has been filed to obtain bail for the suspect, Wickrama Arrachchige Nisal Jayasanka (hearing after referred to as the Petitioner) under the Provisions of the **Assistance to and Protection of Victims of Crime and Witnesses Act, No. 04 of 2015** read along with Bail Act No. 30 of 1997.

In the instant case, the Counsel for the Petitioner submits that his client has been falsely implicated by the victim namely Kananke Pathiranalage Imesha Erandi.

In the substantive matter according to the material in the brief the Petitioner and the victim had been having a very intimate relationship. According to the statement made by the victim in the substantive matter, the Petitioner is supposed to have taken photographs and videoed certain sexual activities of both of them. Thereafter, the victim had got married to his friend. Thereafter, the Petitioner had released the said pictures and video tapes to the Facebook platform of the victim and himself. The victim has lodged a complaint in the

substantive matter. As such the substantive matter has been investigated and the Petitioner had been indicted in the High Court under **Section 354 and 364** of the penal code. The indictment has been served on the Petitioner on 24/06/2020 and he had been enlarged on bail.

The matter had been called in the High Court on 21/09/2020 and the Counsel appearing for the victim had informed Court that the Petitioner was threatening her to settle the matter if not he would be releasing the photographs and the video tapes mentioned above to websites and relevant parties.

The learned High Court Judge had remanded the Petitioner and had ordered investigations. **Thereafter on 21/09/2020 the mother of the victim had made a statement corroborating the victim regarding the threat informed to Court by the victim. The victim has made a statement regarding the threat on 24/09/2020 corroborated by her husband but the learned High Court Judge was not informed of the progress of this investigation therefore on 15/10/2020 the Petitioner was enlarged on bail.**

But on 26/10/2020 the Police submitted a report to learned High Court Judge. Upon considering the report and the submissions of the Petitioner, the victim, the prosecution, the learned High Court Judge had remanded the Petitioner on 17/12/2020. A subsequent bail application had been made to the learned High Court Judge on 07/01/2021 but it had been refused.

According to the Counsel appearing for the Petitioner, the learned High Court Judge by remanding the suspect on 21/09/2020 for threatening the victim has violated the Provisions of **the Assistance to and Protection of Victims of Crime and Witnesses Act, No. 04 of 2015** read along with **Bail Act No. 30 of 1997**, and he cites Section 10(3) of the Act which says that if a bail condition of a suspect is to be reversed, there should be an inquiry.

The State Counsel appearing for the Respondents stated that by this time, the learned High Court Judge had before him the indictment filed against the Petitioner which carried all the material relevant to the substantive matter and in the substantive matter the victim has described the conduct of the Petitioner during her relationship with him. Therefore, the learned State Counsel contended that the learned High Court Judge had enough material on paper and in the oral submissions which amounted to an inquiry. Furthermore, the learned High Court Judge has ordered further investigations and, when the further investigations got delayed he had enlarged the Petitioner on bail. But when the relevant report came he had considered the material in the report and had remanded the Petitioner.

Therefore, this Court is unable to agree with the contention of the learned President's Counsel that the learned High Court Judge remanded the Petitioner without a proper investigation in to the material.

The learned President's Counsel has urged further that the material before the learned High Court Judge is fabricated but this Court is of the view that it is a matter to be considered at trial stage.

Nevertheless, upon considering the submissions of all parties this Court takes into consideration the objects of the act stipulated in **Section 2(a)** which reads as follows:

“..Uphold and enforce the rights and entitlement of victims of crime, of witnesses and to provide for a mechanism to promote, protect, enforce and exercise the said rights and entitlements.”

Therefore, when considering this matter this Court has to be very mindful to ensure the rights and the entitlements of the victim but in the instant matter it is very obvious that the Petitioner has violated the same on many times.

Nevertheless, under the above mentioned Act if a person is accused of an offence punishable under Section 08 and 09 of this Act which is threatening a witness or voluntarily causing hurt to a witness, the said accused commits an offence which is bailable only by the Court of Appeal under exceptional circumstances.

The term exceptional circumstances have been defined in many cases in our legal history, and it had been finally settled down to be that the term exceptional circumstances means something which varies from case to case according to the facts of the case. But it certainly does not mean that a person being married or having children is considered to be an exceptional.

The exceptionality urged by the learned President's Counsel is that the complaint against the Petitioner is fabricated and that the learned High Court Judge had violated the provisions of the above mentioned Act in remanding the accused. Both these factors have been gone into by this Court as mentioned above, but this Court is of the view that we are unable to agree with the contentions of the learned President's Counsel for the reasons stated above.

The learned President's Counsel also has urged that the victim has suffered an attack of Covid – 19 virus and he has been in remand for nearly one year. This Court has to note that the Covid – 19 virus is plaguing the whole world and it appears to be that for the past nearly two years no person had been safe from the said virus. Therefore, a person whether inside the Prison or outside could be infected by the virus at any point of time. Therefore, as there is ample medical assistance available inside the remand Prison we are unable to consider this ground as an exceptional ground.

The last ground urged by the learned President's Counsel is the fact that the Petitioner had been in remand for nearly one year and that he should be enlarged on bail because the Police have not yet completed the investigations pertaining to the instant matter.

Although it has been provided in the bail **Act No. 30 of 1997 under Section 17** which reads as

“No person shall be detained in custody for a period exceeding twelve months from the date of his arrest”,

The instant Act has specified that if a person suspected or accused of an offence under Section 08 or 09 can be enlarged on bail only **on exceptional circumstances** by the Court of Appeal. Therefore, the question arises whether the **Bail Act No. 30 of 1997** supersedes the instant act when considering bail once twelve months have lapsed since the arrest of a person.

According to Section 3(1) of the Bail Act, “nothing in this act shall apply to any person accused or suspected of offence committed, or convicted of, a Prevention of Terrorism (Temporary Provision) Act No. 48 of 1979, Regulations made under the Public Security Ordinance or in any other written law which makes express provisions in respect of the release on bail by persons accused or suspected of having committed, or convicted to offences under such other written law”.

Therefore, although the learned President’s Counsel cited the Bail Act as stated in Section 3(1) of said Act as there is express provision provided for bail in the instant Act under which the Petitioner had been produced and remanded, the provisions of Section 16 of the Bail Act does not apply in the instant case. But this Court very seriously note that the suspect had been remanded nearly for one year but considering the material available and the conduct of the Petitioner, we are unable to consider the period in remand of the suspect as being exceptional to enlarge the suspect on bail.

Therefore, as stated above we see no exceptional ground in the instant matter as exceptional to enlarge the suspect on bail, as such the instant application for Bail is dismissed.

Judge of the Court of Appeal

Hon. Justice Neil Iddawala

I agree.

Judge of the Court of Appeal