

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

*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,
Criminal Investigation Unit,
Police Station,
Kalutara South.

Complainant

Vs.

Court of Appeal Application No:
CA/BAL/20/21

1. Janguge Chaminda Silva

Magistrate's Court of
KalutharaNo :
BR/109/2021

2. Karavita Vidanalage Charitha Kumara

Suspects

And now between

Welivitiyage Asoka
No. 165/3, Pragathi Mawatha,
Kalutara South.

Petitioner

Vs.

1. Head Quarters Inspector,
Police Station,
Kalutara South.

2. Officer in Charge,
Criminal Branch,
Police Station,
Kalutara South

Complainant-Respondent

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

Respondent

Karavita Vidanalage Charitha Kumara
No. 165/3, Pragathi Mawatha,
Kalutara South.

(Presently in remand prison of Kaluthara)

2nd Suspect-Respondent

BEFORE : Menaka Wijesundera J
Neil Iddawala J

COUNSEL : Rohana Deshapriya with Chanakya
Liyanage for the Petitioner
P. Abeygunawardena SC for the
Respondents.

Argued on : 23.11.2021

Decided on : 14.12.2021

Iddawala – J

At the inquiry stage, CA Application No. BAL 19/21 and BAL 20/21 were taken up together as they were connected matters and, the counsel for the petitioners agreed to abide by the same order.

The petitioner of CA BAL 19/2021 is the mother of the 1st suspect (Janguge Chaminda Silva), and the petitioner of CA BAL 20/2021 is the mother of the 2nd suspect (Karavita Vidanalage Charitha Kumara), who were both arrested on 27.01.2021 under case No. 109/2021 and produced before the Magistrate Court of Kalutara. Both were arrested on suspicion that they had committed offences under section 8(1) of the Assistance to and Protection of Victims of Crime and Witnesses Act No. 4 of 2015. While the substantive

case has already been completed and the victim fully compensated, the petitioners have been incarcerated for ten months under the Protection of Victims of Crime and Witnesses Act at the time the petitions were filed, invoking this Court's jurisdiction to release the petitioners on bail.

The facts of the case are as follows. Both the 1st suspect and 2nd suspect were arrested pursuant to a complaint by the victim of case HC 725/2019 (substantive case) in which the 1st suspect was the accused of attempted murder. The 2nd suspect was not a party to the substantive case.

The facts of the substantive case were such that, in the course of a personal dispute, 1st suspect had slashed the hand of the victim, causing grievous injuries to the latter. In the said substantive case, the 1st suspect pleaded guilty, and the Learned High Court Judge imposed a suspended sentence and ordered the 1st suspect to pay a sum of Rupees 250,000.00 as compensation to the victim. Hence, the 1st suspect was directed to make the payment on 26.01.2021.

On 26.01.2021, the case was called, and upon submission by the counsel that the petitioner was unable to furnish the full amount of compensation, the matter was scheduled to be taken up a few hours later. Around 3.00 pm, the case was called again, and the 1st suspect agreed to pay Rupees 100,000.00 for the time being and the rest to be paid on another day. This arrangement was accepted by the Learned High Court Judge, and the victim was compensated with Rupees 100,000.00.

However, it transpired before this Court that the 2nd suspect accosted the victim within the Court premises shortly after handing over the said compensation, threatening the same to be returned immediately. The victim has complied with the demand and has returned Rupees 75,000.00 out of the Rupees 100,000.00 given to him before Court, as he feared for his life. Given the history the victim shared with the 1st suspect where the latter attempted to murder the former, the victim has complied with the demand. According to the victim, the 2nd suspect had threatened him on previous occasions that the compensation given should be returned once the Court proceedings closed for the day.

The victim has informed the officials of the Court House regarding the said threat but has refused to escalate the same to the presiding Judge fearing that it would cause unnecessary troubles to the victim. After handing over the money, the victim has lodged a complaint with the Police on the following day (27.01.2021) against the 1st and 2nd suspects for threatening him and forcefully taking back part of the compensation given to the victim.

Accordingly, on the same day of such complaint (27.01.2021) the 1st and 2nd suspects were arrested in the residence of a third party. The said third party has given a statement to the effect that the 1st suspect borrowed Rupees 50,000.00 from him in the morning of 26.01.2021 and promised the same would be returned on the same day. As per the promise, the money was returned on the evening of 26.01.2021. The said money was recovered from the residence of the 3rd party and the same has been produced as productions.

The counsel for the petitioners admitted that the petitioner took Rupees 75,000.00 out of the compensation amounting to Rupees 100,000.00 back from the victim but characterized such taking as being 'voluntary' on the part of the victim. As such, the exceptional circumstances presented before this Court is as follows:

1. The period of incarceration of the suspects of 10 months in light of the sentence that may be imposed if they are convicted.
2. The doubt as to the authenticity of the complaint lodged by the victim given the purported voluntariness and failure to identify 2nd suspect.
3. The conclusion of the substantive case with the victim being fully compensated and the completion of the investigations of the present case without any further progress since March of 2021.
4. The suspects surrendered to the police and cooperated fully with the investigation, and they have no previous convictions or pending cases.

Any suspect who is charged under the Victims and Witnesses Protection Act shall be enlarged on bail only under exceptional circumstances by this Court. Section 10(1) (a) of the Act states that:

“An offence under section 8 or 9 shall be cognizable and non-bailable and no person suspected, accused or convicted of such an offence shall be enlarged on bail, unless under exceptional circumstances by the Court of Appeal.”

The counsel for the petitioners referred to Mala Damayathi v OIC Wellawaya Police Station CA (PHC) APN 17/2014 CA Minute dated 02.07.2014. This case concerned the granting of bail in an offence, (where accused was charged for unlawful possession of cannabis), if convicted, would impose a minimum sentence of two years. Further, the Penal section concerned empowered the Court to impose on the suspect, if found guilty only a fine without imposing a custodial term. The facts were such that the petitioner was in remand custody for 11 months, and the Court found the fact amounting to an exceptional circumstance given the minimum mandatory sentence of the offence. As such, when viewed within the matrix of facts peculiar to that case, the Court accepted the period of incarceration as amounting to an exceptional circumstance warranting the grant of bail. In the present case, section 8(1) of the Act applies, which imposes a sentence to a term of imprisonment not exceeding ten years and to a fine of rupees twenty thousand upon conviction by a High Court. It is pertinent to note that unlike in the Mala Damayanthi Case (Supra), the present case does not involve a minimum mandatory sentence. As such, the cases can be distinguished from each other.

A similar reference was made to Kudanuge Darshana Upul Kumarasiri alias Pathum v OIC Police Station Matale BAL 35/20 CA Minute dated 11.05.2021 by the counsel for the petitioner. In that case, the petitioner was arrested after 7 months since the complaint, whereas in the present case, no such delay is recorded. The victim has promptly lodged a complaint with the Police station on the following day of the incident (27.01.2021). Furthermore, in Kudanuge case (supra), there were clear distinctions and differences in the description of the incident as explained by the complainant in two recorded statements, thus casting a doubt as to whether a *prima facie* case has been established against the accused. The present application lacks such discrepancies. Therefore, the facts of Kudanuge case (Supra) cannot be regarded as relevant to the present application. Hence, the cases referred to by the counsel for the petitioners can be distinguished from the present case on their facts.

The main contention put forward by the counsel for the petitioners was that the victim voluntarily returned the amount of compensation previously handed over to him. This contention fails to hold ground when viewed within the fact that there was premeditation involved in borrowing the said amount from a 3rd party prior to the Court proceeding and promising to return such borrowed money on the same day, which in fact did take place. If there indeed existed an agreement between the suspects and the victim to return the amount of compensation, the victim would not have complained to the officials of the Court House and then to the Police Station afterwards. Therefore, this Court cannot accept the submission that the return of the amount of compensation was voluntary. In any event, the actions of the suspects are evidence of an attempt to mislead the Court by pretending to compensate the victim before the Court and necessarily vitiating the very act outside the Court itself. This is a travesty of the justice system and cannot be condoned under any circumstance. In fact, it would amount to the interference of Court proceedings that would even attract contempt of Court proceedings. As such, there is no exceptionality warranting the grant of bail with regard to the submissions made on this point; in fact, it points to quite the contrary.

With regard to the submissions on lack of progress in the investigation and the absence of an indictment or charge sheet against the suspects, it is this Court's considered view that the argument cannot be viewed in isolation. The circumstance of this case is such that the petitioner is involved in a serious intervention with the course of administration of justice which seems to fall within the ambit of the offences envisioned by the Assistance to and Protection of Victims of Crime and Witnesses Act No. 4 of 2015. The alleged conduct of 1st and 2nd suspects, as discussed earlier, is abhorrent, not only in relation to the alleged act of intimidation where the victim was forced to handover the payment of compensation that he was legally entitled back to the suspect due to fear and the risk of life endangerment but also with regard to the disrespect demonstrated towards the sanctity of the judicial processes by the suspects in the instant matter. While the 2nd suspect lacks a previous record of convictions or pending cases, the 1st suspect has two previous convictions for housebreaking and theft committed on 25.08.2001 and causing grievous hurt, for which he was sentenced on 12.07.2012.

Hence, after careful consideration of all factors put forward by the petitioners in seeking the grant of bail on their behalf, this Court holds that the petitioners have failed to satisfy the Court as to the existence of exceptional circumstances that warrant the grant of bail in favour of them.

Therefore, the bail applications made by the petitioners are hereby dismissed by this Court.

JUDGE OF THE COURT OF APPEAL

Menaka Wijesundera J.

I agree.

JUDGE OF THE COURT OF APPEAL