

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 Crimes
and Witnesses Act No 4 of 2015.

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

Court of Appeal Case No:
CA BAIL 70 / 2021

High Court of Colombo Case No:
HC 98/2019

Complainant

Vs.

Nishantha Priyalal De Alwis
No 4/1, 1st Lane
Aruppola
Kandy.

Accused

AND NOW BETWEEN

Nishantha Priyalal De Alwis
No 4/1, 1st Lane
Aruppola
Kandy.

**(Presently Remand Prison –
Pallekele Kandy)**

Accused – Petitioner

Vs.

1. The Hon. Attorney General
Attorney General's Department
Colombo 12.

Complainant – Respondent

2. The Officer in Charge

Assistance to and Protection of
Victims and Witnesses Unit.

No 9, Mihindu Mawatha

Colombo 12.

Respondents

Before: Menaka Wijesundera J.

Neil Iddawala J.

Counsel: Shanaka Ranasinghe, PC with Tharakee Manchanayake for the

Petitioner.

DSG Riyaz Bary for the State.

Argued on: 03.11.2022

Decided on: 01.12.2022

MENAKA WIJESUNDERA J.

The instant matter has been filed under the of the **Provisions of Assistance to and Protection of Victims of Crimes and Witnesses Act No. 4 of 2015.**

Counsel for the Accused stated that although indictment has been filed in the substantive matter the Accused has been in remand since his date of arrest without the trial being taken up, and in addition to that the Accused is suffering from a heart condition in which it has been brought to the notice of Court that his left coronary artery is 95% blocked. This submission is substantiated by medical report submitted under the hand of consultant cardiologist from the National Hospital of Kandy.

The DSG appearing in this matter objected to this application on the basis that the Accused initially had been absconding from High Court and thereafter trial had been fixed to be taken in his absence, upon the warrant being issued the Accused had been taken into custody and produced before the High Court and he had been remanded. Therefore, the DSG urged that he had been remanded in order to make sure that he appears to face the trial, but if he is enlarged on bail he might abscond as per his previous conduct. Therefore, the learned DSG differentiated facts of this case from other cases because of the warrant issued against the Accused and invited Court to consider this matter accordingly.

As per the law pertaining to the above mentioned Act when an Accused is arrested and charged under the instant Act they can be enlarged on bail only upon exceptional circumstances by the Court of Appeal. The term exceptional has not been defined in the statute but in the cases so

far decided it had been decided that the term exceptional differs from case to case.

In the instant matter the Accused has been absconding from Court and the learned High Court Judge has issued a warrant against him and the police had arrested him and produced before Court. But the learned High Court Judge has used his discretion and has remanded the accused in all likelihood to ensure the presence of the accused during the trial.

But at present the Counsel for the accused has placed before Court the health condition of the accused which had been substantiated by medical reports.

In reply to this medical condition the learned Counsel for the respondents stated that the High Court has directed the prison authorities to facilitate the accused to obtain the necessary treatment.

But upon consideration of the medical reports submitted it appears that the accused needs specialized treatment which we consider is a circumstance which can be considered as exceptional.

Hence this Court is of the view that it is only but fair to enlarge the accused on bail and we direct the learned High Court Judge to enlarge the accused on suitable conditions of bail.

As such the instant application for bail is allowed.

Judge of the Court of Appeal.

I agree.

Neil Iddawala J.

Judge of the Court of Appeal.