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

Officer in Charge,
Police Station,
Pannala.

Complainant

Vs.

Court of Appeal Application No: **CA/ BAL/10/21**

Magistrate's Court of Kuliyapitiya
No**: BR/59571/2019**

1. Marasinghe Mudiyanselage Pradeep Suranga A*lias* Banda
   Suduabe Janapadaya, Nalawalana
   Gonawila

2. Kariyapperuma Athukoralage Suranga Sanjeewa *Alias* Ranga
   85/12, Sudu Abe Janapadaya
   Nalawalana
   Gonawila

Suspects

And now between

Marasinghe Mudiyanselage Pradeep Suranga *Alias* Banda
Suduabe Janapadaya, Nalawalana
Gonawila
(Presently at Wariyapola prison)

1st Suspect-Petitioner

Vs.

Officer in Charge,
Police Station,
Pannala.

Complainant-Respondent

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

Respondent

BEFORE	:	Menaka Wijesundera J Neil Iddawala J
COUNSEL	:	Duminda De Alwis with Charuni De Alwis for the Petitioner Priyani Abeygunawardena SC and K. Rajakaruna SC for the Respondents.
Argued on	:	28.03.2022
Decided on	:	17.05.2022

Iddawala – J

The petitioner had been produced before the Magistrate's Court of Kuliyapitiya by the Officer in Charge of the Pannala Police Station (hereinafter complainant *respondent*) on 07.03.2019 as the 1st accused in Case No B/59571/2019. The petitioner has been arrested for allegedly threatening a witness in High Court of Kuliyapitiya Case No bearing HC/26/2016 (substantive case) on 01.03.2019, to abstain from giving

evidence and thereby committing an offence in terms of Section 8(1) of the Assistance to And Protection of Victims and Witnesses Acy No. 04 of 2015 (hereinafter referred to as the *Act*) and was remanded.

In terms of Section 10(1) of the Act, the petitioner has preferred the instant application seeking bail from the Court of Appeal. Hence, the Court of Appeal will only release the petitioner from custody pending trial if exceptional circumstances have been submitted to its satisfaction.

The substantive case deals with the offence of murder, and the virtual complainant of the instant application was the prosecution witness no 03 of such case, who was the sole eyewitness to the murder. The petitioner is the accused of said substantive case. Prior to the events which unfolded on 01.03.2019 pertinent to the instant application, the witness has already testified and concluded his evidence in the substantive matter.

The background facts pertinent to the instant matter is as follows. A complaint was lodged with the respondent by the aforementioned witness stating that on 01.03.2019, while he was buying goods from a boutique, the petitioner and another uttered "අපේ නඩුවට සාක්ෂි දෙන්න හිතන්න එපා තෝව නඩුව ඉවර වෙන්න කලින් මරනවා". During oral submissions it was further revealed that an altercation ensued during which the witness was hospitalized due to an assault with an iron rod. The statement of the witness was recorded by the police at the hospital which initiated the instant case. A statement by a bystander has been recorded who witnessed the said assault as well as a medico legal report of the injuries sustained due to the assault.

During oral submissions, the counsel for the petitioner stated that the petitioner has been incarcerated for more than three years and that an indictment is yet to be served. He referred to Section 8 of the Act to highlight that in the event the petitioner is convicted, the maximum term of imprisonment that can be imposed would be ten years and that in view of the same, a three-year incarceration with no foreseeable indictment is a

grave miscarriage of justice. He further submitted that the complaint by the witness is concocted as such witness has already testified in the substantive case nine months before the alleged threatening. The counsel for the petitioner referred to Section 8(1)(b) of the Act stating that the instant matter would not fall within the ambit of the same, as there is no evidence to the effect that the alleged incident took place out of retaliation for testifying in the substantive case. It was urged that no facts on the point of retaliation have been submitted by the respondent to the Magistrate.

The counsel for the respondent made submissions on the delay in serving an indictment on the petitioner stating that it was occasioned by a delay in concluding investigations as the 2nd suspect of the substantive matter has been absconding. (It transpired that the investigations are yet to be concluded even to date). The counsel further submitted that the petitioner being a layman, would have expected the continued involvement of the witness in the substantive matter and that fact would be a reason enough to threaten the witness against further involvement.

It is settled law that in order to grant bail under the Act, an applicant must prove exceptional circumstances. Based on the oral and written submissions, the petitioner in the instant application submits that the period of incarceration spanning over three years without being served an indictment and the absence of any facts to infer that the alleged threat was a retaliation to the witness giving evidence nine months prior to the incident ought to be considered as exceptional circumstances warranting the grant of bail to the petitioner. As held before by this bench, period of incarceration alone would not amount to exceptional circumstances under the Act. However, this Court note that the investigations are yet to be concluded and the state counsel appearing on behalf of the respondent was unable to give any notion of when such conclusion could be expected.

Furthermore, while there seems to be *prima facie* evidence of an assault, a perusal of the B reports conveys those facts have not been reported to

the effect that the assault was a retaliation to evidence the witness gave nine months prior. Even the independent witness gave a statement regarding the assault, yet nothing is revealed as to its connection to the substantive matter. While the counsel for the respondent contended that the delay in the investigation was due to the 2nd accused absconding, this should not be taken as a reason for the continued incarceration of the petitioner, who has been languishing in prison for three years since his arrest. When viewed within the matrix of these specific circumstances of the instant case, it is the considered view of this Court that the petitioner has satisfied the Court as to the existence of exceptional circumstances.

Hence, the application is allowed.

Bail granted to the petitioner subject to the following conditions:

1. Cash bail of Rs.15,000/=
2. Two Sureties acceptable to the learned Magistrate to the value of Rs.50,000/= each.
3. Petitioner to report to the Pannala Police Station on every 3rd Sunday of each month between 9.00 a.m.-1.00 p.m.
4. The petitioner is severely warned not to interfere with the witnesses under any circumstance, if it is reported the instant bail order will be cancelled.

Registrar of this Court is directed to dispatch a copy of this order to the Magistrate Court of Kuliyapitiya.

JUDGE OF THE COURT OF APPEAL

Menaka Wijesundera J.

I agree.

JUDGE OF THE COURT OF APPEAL