

**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 No 4 of 2015*

Officer in Charge,
Police Station,
Pannala.

Complainant

Vs.

Court of Appeal Application
No: CA/ BAL/11/21

Magistrate's Court of
Kuliyapitiya
No: B/59571/2019

1. Marasinghe Mudiyanseelage Pradeep
Suranga *Alias* Banda
Suduabe Janapadaya, Nalawalana
Gonawila
2. Kariyapperuma Athukoralage
Suranga Sanjeewa *Alias* Ranga
85/12, Sudu Abe Janapadaya
Nalawalana
Gonawila

Suspects

And now between

Kariyapperuma Athukoralage Suranga
Sanjeewa *Alias* Ranga
85/12, Sudu Abe Janapadaya
Nalawalana
Gonawila
(Presently at Wariyapola prison)

2nd 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 Kuliypitiya by the Officer in Charge of the Pannala Police Station (hereinafter *complainant-respondent*) on 26.06.2020 as the 2nd suspect in Case No B/59571/2019. The petitioner has been arrested for allegedly threatening a witness in High Court of Kuliypitiya 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 Act 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 not an 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 ඕනන්න 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 1 year and 9 months 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, an incarceration of 1 year and 9 months 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 petitioner 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. Hence, the counsel for the respondent submitted that the fact that the virtual complainant has already testified should not be considered as an exceptional circumstance.

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 1 year and 9 months 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 in several cases, 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 petitioner's absconding, this should not be taken as a sole reason for the continued incarceration of the petitioner, who

has been languishing in prison for 1 year and 9 months 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. A 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 Kuliyaipitiya.

JUDGE OF THE COURT OF APPEAL

Menaka Wijesundera J.

I agree.

JUDGE OF THE COURT OF APPEAL