

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

In the matter of an application for bail under section 404 of the Code of Criminal Procedure Act No. 15 of 1979 and Section 10 (1) of The Assistance To and Protection of Victims of Crime and Witnesses Act No. 04 of 2015.

Court of Appeal No:

CA/BAL/0079/22

The Officer in Charge,

Police Station,

Wattegama.

COMPLAINANT

Magistrate Court Theldeniya

Case No: B/1560/21

Vs.

1. Kobilla Pathane Gedara Chamoda

Prasanga Upatissa

2. Thuwan Nihar Thuwan Nisar

SUSPECTS

AND NOW BETWEEN

Pahala Yaman Gedara Chandrawathi

No. 33/01, Kobilapathana, Watapana

PETITIONER

Vs.

1. The Officer in Charge,
Police Station,
Wattegama.

COMPLAINANT-RESPONDENT

2. The Attorney General
Attorney General's Department
Colombo 12

RESPONDENT

Kobilla Pathane Gedara Chamoda
Prasanga Upatissa

SUSPECT-RESPONDENT

Before : Sampath B. Abayakoon, J.
: P. Kumararatnam, J.
Counsel : I. B. Sachithra Harshana for the petitioner
: Kanishka Rajakaruna, SC for the State
Supported on : 20-02-2023
Order on : 28-02-2023

Sampath B Abayakoon, J.

This is an application for bail under Section 404 of the Code of Criminal Procedure Act No. 15 of 1979 read with Section 10 (1) of The Assistance to and Protection of Victims of Crime and Witnesses Act No. 04 of 2015.

The petitioner has filed this application seeking bail as the mother of Kobilla Pathane Gedara Chamoda Prasanga Upatissa, who is the 1st suspect in Theldeniya Magistrate Court Case No. B/1560/21.

He has been arrested and produced along with the 2nd suspect who is the father of the underage victim girl mentioned in the B-report. The suspect has been earlier arrested for having raped the underage minor and he had been indicted before the High Court of Kandy. The suspect has pleaded guilty to the charge against him and on the basis that there was a long-standing love affair between the suspect and victim, and the alleged incident of rape was a matter that happened as a result with consent, he has been given a suspended sentence.

It has been alleged that while he was on bail for the offence of rape, he along with the 2nd suspect, namely the father of the victim, has attempted to visit the victim at the children's home where she had been under care. However, the authorities of the children's home have not allowed them to visit the victim child. Subsequent to a complaint made by a boutique owner near the children's home that the two suspects in the case left a parcel in his boutique and when inspected, a snake was found in a bottle inside the parcel, both of them have been arrested under The Assistance to and Protection of Victims of Crime and Witnesses Act No. 04 of 2015 (The Act). They have been arrested and produced before the Magistrate on 31st October 2021 and have been in remand custody since then. It appears that the prosecution has failed to initiate charges against them as yet.

According to the report tendered by the university of Peradeniya as to the identity of the snake, it has been reported that the specimen cannot be identified due to improper storage and that the animal was dead and unrecognizable by the time it reached the University.

Under the circumstance, there is a doubt whether a charge can be maintained against the suspects in the action in view of the fact that there had been no direct contact between the victim and the suspects.

I find it interesting to note that when filing the information to the Magistrate Court, the Officer-in-Charge of the Wategama police has reported that the alleged acts may be subjected to charges against the suspects in terms of section 282, 486, 490 and section 2(1) of Prevention of Cruelty to Animals Act No 13 of 1907.

He has not reported the facts in terms of the Assistance to and Protection of Victims of Crime and Witness Protection Act, which has taken away the jurisdiction of a Magistrate to grant bail for a suspect produced before him under the relevant provisions of the Act. I find that it was the learned Magistrate who has decided to remand the suspect on the basis that the facts reveal matters come under the Act.

It is the view of this Court that since the main case where the suspect had been indicted has now come to a conclusion, keeping the suspect in remand indefinitely is not warranted. It needs to be noted that when the suspect was ordered to pay compensation in a sum of rupees 200000/- to the victim she has stated to the High Court that she does not want compensation.

Taking into above factors into consideration, this court is of the view that this is a fit case to determine that the petitioner has established sufficient exceptional circumstances before this Court, for the suspect to be allowed bail.

Therefore, it is ordered that the learned Magistrate of Theldeniya shall release the first suspect namely, earlier mentioned Prasanga Upatissa on Rs. 20000/- cash bail. In addition, the petitioner is required to stand surety for him for a value of Rs. 100000/-.

The Registrar of the Court is directed to communicate this order to the Magistrate Court of Theldeniya for necessary implementation.

Judge of the Court of Appeal

P. Kumararatnam, J.

I agree.

Judge of the Court of Appeal