

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

In the matter of an Application for bail in terms of Section 10 of Assistance to and Protection of Victims of Crime and Witnesses Act No 04 of 2015.

Sayakkarage Manoda Kumuduni.

PETITIONER

CA Application No: **CA/ BAL/ 15/2020**

Magistrate's Court of Walasmulla

MC Case No: **BR 840/19**

Vs.

1. Officer in Charge.

Police Station, Katuwana.

2. Hon Attorney General

Attorney General's Department,

Colombo 12.

RESPONDENTS

1. Kattadige Gihan Sudaraka.

2. Kattadige Dinesh Madhurangas.

3. Kattadige Karunadasa.

(Presently at Remand Custody)

SUSPECT – RESPONDENTS

Before: Menaka Wijesundera J.

Neil Iddawala J.

Counsel: Shabdika Wellappili for the Petitioner.

Panchali Witharana SC for the AG.

Argued On: 18/ 03/ 2021

Decided On: 31/03/2021

MENAKAWIJESUNDERA J.

The suspect respondents (herein after referred to as respondents) have been produced under the Assistance to and Protection of Victims of Crime and Witnesses Act nu 04 of 2015 under BR840 for threatening Karawilakande Karunawathi and her husband and causing hurt to them in order to force them to withdraw their daughters complaint that she was sexually assaulted and kidnapped by the first respondent under BR 39605, and the complaint had been lodged on 5.12.19 whereas the alleged threat had taken place on 7.11.2019.

Therefore the position of the respondents is that the complaint instrumental for the instant application has been lodged one month later and therefore it is belated which is not explained by the complainant.

Under the provisions of the above mentioned act the objective of the said act is to enforce the rights of the witnesses and victims and to protect them. Any suspect produced under this act can be remanded only upon considering

whether there is prima facie material against him or her as per section 10 (3) of the said act, and section 10(3) reads as follows,

“If after inquiry by a court, it is found that there is prima facie material that a person who was at relevant point of time who was on bailhas committed an offence under section 8 or section 9shall be placed in remand....”

The said act under section 10 (2) provides that whatever trial that is being held under this act needs to be taken up on a day to day basis and it should not be postponed unless due to unavoidable circumstances. The said section reads as *“a trial against a personunder section 8 or 9 shall be taken up before any other business.....and shall be held on day to day basis and not be postponed.....except due to unavoidable circumstances....”*. But at the same time under section 10(1) (a) of the act a suspect can be enlarged on bail only upon exceptional circumstances.

The counsel appearing for the Attorney General did not aver as to how long it would take to file indictment but according to the respondents they have been on remand for nearly 18 months which the state counsel does not deny. Hence there appears to be an ambiguity as to the finality of these proceedings against the respondents which this court thinks is fit enough to consider bail for the respondents because the act envisages a situation where according to sections 10(2) and 10 (3) the rights of the suspects charged under this act is also looked after and there should not be an undue delay on concluding the proceedings.

Therefore the suspects in **CA BA 0015-20** and suspects in **CA BA 0016-20** are hereby enlarged on bail on following conditions,

- 1) Rs 50000/ cash bail each,

- 2) Two surety bail to the value of Rs 100000/ each,
- 3) The suspects to report to the relevant police station on every Sunday of the month,

Suspects not to interfere with the complainant or her family for any reason if they do and reported all bail conditions would be cancelled.

Judge of the Court of Appeal.

I agree.

Neil Iddawala.

Judge of the Court of Appeal.