

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 the Protection of Victims of Crimes and Witnesses Act No. 4 of 2015.

1.The Officer in-charge,

Police Station,

Thalawa.

2.Officer in-Charge,

Police Station,

Eppawala.

Court of Appeal Case Number:

CA/BAL/ 38/2020

Magistrates Court of Thambuttegama

Case Number: **B 1677/2019**

COMPLAINANTS

Vs.

1. L.R. Ajantha Pushpa Kumara.
2. K.B.D. Sandun Madusanka.
3. H.H. Anura Kumara Basnayake.
4. K. Chamara Thusitah Kulasekara.

SUSPECT

AND NOW

L.R. Ajantha Pushpa Kumara

SUSPECT - PETITIONER

Vs.

1.The Officer In-Charge,

Police Station,

Thalawa.

2.Officer in-Charge,

Police Station,

Eppawala.

3.Officer in-Charge

Homicide Unit

Criminal Investigation Department

Colombo 01.

COMPLAINANTS – RESPONDENTS

4.The Hon.Attorney General.

Attorney General's Department,

Colombo 12.

RESPONDENT

Before – Menaka Wijesundera J.

Neil Iddawala J.

Counsel – Nalin Ladduwahetty PC with C. Athukorala and

Vajira Ranasinghe for the Suspect Petitioner.

Maheshika Silva SC for the State.

Argued On: 17 / 03 / 2021

Decided On: 31/ 03 /2021

MENAKA WIJESUNDERA J.

The instant application has been filed under the provisions of the Assistance to the Protection of Victims of Crimes and Witnesses Act no 4 of 2015 to obtain bail for the suspect petitioner.

The petitioner was initially arrested and remanded on 20.1.2019 for being in possession of cannabis by the Eppawala police. While in remand custody he had been produced for a bank robbery by the same police subsequently.

In the meantime H.M.P.Thilakaratne had lodged a complaint on 9.7.19, that the petitioner had threatened him using a mobile phone. The said Thilakaratne is a witness in the bank robbery and he is supposed to have produced a video carrying pictures of the suspect pertaining to the robbery based on that complaint, the Eppawala police had produced the petitioner for the instant case under section 8(1) of the above mentioned act.

The position of the petitioner is that he has been enlarged on bail for the robbery case but is in remand since then for the instant case for nearly 25 months.

According to section 10 (1) (a) of the said act a suspect produced under this act shall be enlarged on bail only on exceptional circumstances by this court. The said section reads as follows,

"...10. (1) (a) An offence under section 8 or 9 be cognizable and non – billable and no person suspected, accused or convicted of such an offence shall be enlarged on bail, unless under exceptional circumstances by the Court of Appeal..."

In the instant application petitioner states that the exceptionality in this case lies on,

- 1) His long period of remand running in to nearly 25 months
- 2) The magistrate remanding the suspect without holding a proper inquiry ,to ascertain whether there is a prima facie material,

The said section reads as follows, [10 (3)]

"..10 (3) if after an inquiry by a Court, it is found that there exists prima –facie material to conclude that a person who at the relevant point of time was on bail in respect of any offence alleged to have been committed by him, has committed an offence under section 8 or section 9, the bail granted to such person by the Court which conducted the inquiry shall be cancelled and such person shall be placed on remand till the end of the trial in respect of the offence which he had been enlarged on bail.."

Upon perusal of the act it is very clearly stated that it has been enacted to protect and uphold the rights of the witnesses but the above section indicates that not only witnesses and victims but also suspects produced under this act must be remanded only upon prima facie material and the section further reads that a trial under this act should not be postponed except in unavoidable circumstances.

But in the instant case the suspect had been in remand for nearly 25 months which the counsel for the Attorney-General concedes and further more filling of indictment is not yet known, which indicates an ambiguity in the finality of the matter. This court is also mindful of the fact that the suspect has been enlarged on bail for the substantive matter although the respondents have drawn the attention of court to the gravity of the said matter. But this court also takes in to consideration **CA (PHC) APN 64/2009** decided on 7.8.2009 which says as follows,

“In any case, if the period of incarceration is out of a provision and depending on the nature of the charges the Court of course can consider on certain circumstances the long period of incarceration as constituting exceptional circumstances.”

Therefore upon consideration of the submissions made it is the considered view of this court that the suspect petitioner should be enlarged on bail on the following grounds,

- 1) on a cash bail of Rs one million
- 2) two sureties to the value of Rs 500000/ each,
- 3) the suspect to report on every Sunday of the month to the relevant police station,
- 4) The suspect if interferes with the witnesses or the complainant and if reported bail would be cancelled.

Judge of the Court of Appeal.

I agree.

Neil Iddawala J.

Judge of the Court of Appeal.