

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 Crime and Witnesses Act, No. 4 of 2015.

Court of Appeal Case No:

CA (BAIL) 27/2020

High Court of Colombo Case No:

HC 98/2019

Hon. Attorney General

Attorney General's Department

Colombo 12.

Complainant

Vs.

Nishantha Priyalal De Alwis

No. 4/1, 1st Lane

Aruppala, Kandy.

Accused

AND NOW BETWEEN

Nishantha Priyalal De Alwis

No. 4/1, 1st Lane

Aruppala, Kandy.

Presently;

Remand Prison, Kandy

Accused – Petitioner

Vs.

1. The Hon. Attorney General
Attorney General's Department
Colombo 12.

Complainant – Respondent

2. The Officer – in – Charge
Assistance to and Protection of
Victims and Witnesses Unit
No.09, Mihindu Mawatha
Colombo 12.

Respondent

Before – Menaka Wijesundera J.

Neil Iddawala J.

Counsel – Saman Galappatthi for
Petitioner.

Ruchindra Fernando, SC
for Respondent.

Argued On – 11.05.2021

Decided On – 02.06.2021

MENAKA WIJESUNDERA J.

The instant application has been filed by the petitioner to obtain bail under section 10(1) a, of the Assistance to and Protection of Victims of Crimes and Witnesses Act nu 4 of 2015.

The petitioner has written to the Unit of the Assistance to and Protection of Victims and witnesses in 2016 stating that he has been threatened and warned by an armed group to withdraw his complaints with regard to the misappropriation of funds at the Trinity College Kandy. The said complaint with regard to his personal security, had been investigated and the investigative officers had found out the complaint to be malicious and false. The Attorney General had been forwarded with the IB extracts and upon perusing the same the petitioner had been indicted under the above mentioned act for falsely providing information to mislead the authorities.

Once the indictment was forwarded to the High Court of Colombo the petitioner had absconded court and trial had been fixed to be taken up in his absence and the petitioner had been warranted. Upon the warrant being issued the police had been able to take the petitioner in to custody and the learned High Court Judge had remanded the petitioner. The trial had been fixed to be taken up in August.

The counsel for the petitioner urged before this court that the petitioner did not falsely mislead the authorities but , the investigative officers have not investigated the matter properly hence the truth had not been revealed, and he urged that the petitioner had been in remand since 2020 to enlarge the petitioner on bail.

The petitioner had filed this application under section 10(1) a of the relevant act and according to which an accused charged under section 8 or 9 of this act can be enlarged on bail only upon exceptional circumstances. The exceptionality, the petitioner has urged in this matter is that the petitioner was the complainant in many sensitive matters therefore he was threatened by unknown parties and when he sought protection under the above mentioned act the police without carrying out the investigations properly the Attorney General had indicted him without proper material.

It is well settled law that the acceptability of the facts in a case cannot be gone in to when considering bail unless there is a very glaring atrocity that has been committed and a person has been falsely implicated.

But in the instant matter the police had fully investigated the matter and the Attorney General had been furnished with the material and thus the petitioner had been indicted but the petitioner had been absconding from the courts and he has been arrested upon being warranted by the relevant High Court. The High Court Judge had used his discretion and has remanded him and has fixed the matter for trial without any delay.

Therefore upon considering the previous conduct of the petitioner the learned High Court Judge remanding the petitioner to ensure that he faces trial is reasonable and justifiable.

Therefore upon considering the submissions of the petitioner and the respondent, it is the considered view of this Court that the grounds urged by the petitioner as exceptional are not exceptional.

Therefore this Court is of the opinion that the petitioner has not supported his application in terms of the provisions of the act under which the petitioner has been indicted. Therefore the instant application is hereby dismissed.

Judge of the Court of Appeal.

I agree.

Neil Iddawala J.

Judge of the Court of Appeal.