

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 (1) of Assistance to and Protection of Victims of Crime and Witnesses Act, No. 04 of 2015.

Officer in Charge.

Victims of Crime and Witnesses Assistance and Protection Division.

No.09, Mihindu Mawatha,

Colombo 12.

CA Application No:

CA Bail 05/2021

M C Batticaloa Case No:

B 947 /19

Complainant

Vs.

1.Nithyanandan Gokulan.

2.Poopalapillai Pirasanthan

Suspect.

AND NOW BETWEEN

Poopalapillai Pirasanthan

No.57, Rajadurai Village,

Aarayampathi.

Presently at the Batticaloa Remand
Prison.

2nd Suspect – Petitioner

Vs.

1. Officer in Charge

Victims of Crime Witnesses
Assistance and Protection Division,

No. 09, Mihindu Mawatha,

Colombo 12.

Complainant – Respondent

2. Hon. Attorney General,

Attorney General's Department,

Colombo 12.

Respondents

Before – Menaka Wijesundera J.

Neil Iddawala J.

Counsel – Ranil Samarasooriya with

Shifan Maharooof and

Rajinda Kandegedara for

2nd Suspect – Petitioner.

Kavishka Rajakaruna, SC

For the Respondents.

Argued On – 15.06.21

Decided On – 06.07.2021

MANAKA WIJESUNDERA J.

The instant application for bail has been filed under the Assistance to and Protection of Victims of Crime and Witnesses Act no 4 of 2015.

A person by the name of S. Sivapakyam had complained against the petitioner on 23.09.19 that she had been threatened by the petitioner and a person by the name of Kalidasa to the effect that not to give evidence in a case pending before the magistrates court, somewhere in March 2019.

Thereafter investigations have commenced and facts have been reported to the magistrate on 1.10.19 and a further report also had been filed pertaining to the 1st suspect and on obtaining advice regarding the 1st suspect the Hon Attorney General had advised the petitioner to be produced under the above mentioned act and it had been done so on 12.11.20, and the petitioner had been in remand since then.

The position of the petitioner is that the instant investigation is based on a belated complaint and the statements recorded during the investigations are contradictory to each other.

Under the provisions of the act under which the petitioner had been produced in court, if the petitioner is to be released on bail the petitioner has to establish exceptional conditions. It is so enumerated under section 10 (1) (a) of the said act and the term exceptional has been defined in many a decided orders of this court. In the instant case the initial complaint had been lodged in 2019 September for an incident which is supposed to have taken place in 2019 March,

and furthermore the counsel appearing before this court did not enlighten this court as to whether indictment is being considered for the instant matter.

The objective of this act is set in section 2 and it envisages a situation where it is to ensure the rights of the victims and witnesses but at the same time section 10(2) of the act has given thought to the rights of the accused as well because it is said to conclude the trials without delay and with special priority. Hence in the instant case the complaint is belated and the date of filling indictment against the petitioner is also not very clear hence this court is of the opinion that it is only fair and prudent to enlarge the petitioner on bail.

Hence the petitioner is enlarged on following conditions of bail,

- 1) A cash bail of Rs. 25000/,
- 2) Two sureties to the value of Rs. 100000/ each
- 3) The petitioner to report on every Sunday of the month to the relevant police station
- 4) The petitioner is severely warned not to interfere with the complainant or her family members if so the instant order for bail stand cancelled.

The registrar of this court is hereby directed to convey the instant order to the relevant Magistrates Court.

Judge of the Court Of Appeal.

I agree.

Neil Iddawala J.

Judge of the Court of Appeal.