

IN THE COURT OF APPEAL OF THE DEMOCRATIC SOCIALIST

REPUBLIC OF SRI LANKA.

In the matter of an application for Bail under and in terms of Section 10 (1) of the Act No. 04 of 2015, the Act for Assistance to and Protection of Victims of Crime and Witnesses.

The Head Quarters Inspector,

The Police Station,

Dummalasuriya.

The Application for Bail No:

CA/BAL/04/2021

Complainant

The Magistrate's Court Of

Vs.

Kuliyapitiya Case No:

Randeniya Arachchige Achira Nimesh
Randeniya,

70289/2019

Marakkalamulla,

Dummalasuriya.

Suspect

And Now Between

Randeniya Arachchige Achira Nimesh
Randeniya,

Marakkalamulla,

Dummalasuriya.

Suspect – Petitioner

Vs.

1. The Head Quarters Inspector,
The Police Station,
Dummalasuriya.

Complainant – Respondent

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

Respondent

Randeniya Arachchige Achira Nimesh
Randeniya.

Marakkalamulla,

Dummalasuriya.

Presently in the Remand Prison
Wariyapola.

Before – Menaka Wijesundera J.

Neil Iddawala J.

Suspect

Counsel – Rohana Deshapriya

With Chanakya

Liyanage for the

Petitioner.

Chathuranga Bandara

SC for the State.

Argued On – 13.07.2021

Decided On – 27.07.2021

MENAKA WIJESUNDERA J.

The instant application has been filed under the Assistance to and Protection of Victims of Crime and Witnesses Act nu 4 of 2015.

The suspect petitioner (hereinafter referred to as the petitioner) has been produced before the Magistrates' Court on 19.12.2019 under the above mentioned Act for supposedly threatening a witness in a case of assault where the petitioner is a suspect.

The above investigation has commenced upon a complaint by one H.T Dilum Tharanga who had made a statement to the police that on 7.12.2019 that he was threatened by the petitioner to withdraw his statement against him as with regard to an assault matter. The said complainant is supposed to have witnessed the petitioner assaulting a person by the name of Lakmal.

The position of the petitioner is that there was a monetary transaction between Lakmal the complainant and the petitioner and when the petitioner went to ask for the money, there was an exchange of words and when he did so over the phone also, the complainant had lodged a false complaint against him.

According to section 10 (1) (a) of the Act under which the petitioner has been produced had stated very clearly that a suspect or an accused produced under this Act can be entered in to bail only on exceptional grounds.

The exceptional grounds urged by the petitioner are that,

- 1) His period in remand,

- 2) Cited several decided cases where it has been stated that if the suspect had been in remand for a period longer than the minimum sentence for the offence he has been taken into custody, it can be considered as exceptional.

In the instant case the petitioner had been produced under section 8(1) and 8(2) of the above Act and according to which there is no minimum sentence but the maximum sentence is 10 years of imprisonment and the petitioner had been in remand since 2019 December up to date, for a period of one year and six months.

The position of the respondents are that indictment is to be filed in the instant case against the petitioner in a day or two and that the petitioner has threatened a witness who has made a statement in a police station in an ongoing investigation, hence he has committed a serious crime by interfering in the due administration of justice.

Upon considering the submissions of both sides this Court note that the petitioner had been in remand for over a period of one year and six months and according to the cases cited by the petitioner ,

- 1) **CA (PHC) APN 124/13** decided on 03.06.2014,
- 2) **CA (PHC) APN73/2012**, the period of remand in comparison to the section under which he has been produced and the legal sentence for the same, makes it an exceptional ground to be considered for the petitioner to be enlarged on bail.

Hence this Court grants bail to the petitioner on the following conditions,

- 1) A cash bail of Rs 25000/,
- 2) Two sureties to the value of Rs 50000/each,

3) The petitioner to report to the relevant police station on every last Sunday of the month before 2.00 p.m.

4) The petitioner is severely warned not to interfere with the witnesses of the instant case, and if he does the instant bail order stands dissolved.

The registrar of this Court is 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.