

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 Crimes and Witnesses Act No. 4 of 2015.

The Officer in Charge,

Crimes Division

Western Province, South District,

Pagoda Road, Nugegoda.

Court of Appeal Case No:

CA / BAL / 31 / 2021

Complainant

Magistrate Court Panadura Case No:

74624

Vs.

Mohammed Raasik Mohammed Naazik

No.408, Marawa, Athulugama,

Bandaragama.

(Presently at Matara Remand Prison)

Suspect

AND NOW

Vellathambi Nabila

No. 408, Marawa,

Athulugama, Bandaragama.

Presently at

No. 84, New Housing Scheme,
Rahulapura,
Madiwela,
Kotte.

Petitioner

Vs.

1. The officer in Charge,
Crime Division,
Western Province, South District,
Pagoda Road,
Nugegoda.

Complainants –Respondent

2. Hon. attorney general,
Attorney General’s Department,
Colombo 12.

Respondent

Mohammed Raasik Mohammed
Naasik

No.408, Marawa

Athulgama,

Bandaragama.

(Presently at Matara Remand Prison)

Suspect – Respondent

Before: Menaka Wijesundera J.

Neil Iddawala J.

Counsel: Hafeel Fariz for Appellant instructed by Srilal Dandeniya.

Priyani Abeygunawardena SC for State.

Argued On: 26.01.2022

Decided On: 07.03.2022

MENAKA WIJESUNDERA J.

The instant matter has been filed to obtain bail to the suspect namely **Mohamed Raasik MohamedNazeek (hereinafter referred to as the suspect)**.

On 12th of June 2019 a person by the name of Abdul HasenFathima Haifa lodged a complaint in the police that she was sexually harassed and assaulted by the suspect and some others. As such suspect was charged in the Magistrates Court.

In the Magistrates Court when the suspect was being produced for the above mentioned matter, the complainant has lodged a further complaint to state that the instant suspect had threatened her mother who is a witness in the assault case with gestures while being taken to the Court cell. As such the suspect was produced under the provisions of the instant act for which bail can be considered by the Court of Appeal only on exceptional grounds.

The term exceptional has not been defined in the act but it had been defined in many of our decided cases in which it has been held that exceptionality vary from case to case.

The exceptionality urged by the Counsel for the suspect in the instant matter, is that the suspect has been in remand ever since and if the suspect has threatened the

mother of the victim as alleged then at least the prison officers should have seen, but prison officers statements have been recorded and they have denied of seeing any.

The Counsel for the respondents vehemently objected to the application and averred that the prison officers seeing the incident was very remote.

But the respondents are unable to say when the indictment against the suspect would be forwarded, but says that it is under consideration. Hence it appears to be very ambiguous as to when the indictment would be forwarded.

As such although the main objective of the act is to safeguard the rights of the victims of crime and the witnesses the act also state that the cases filed under this act should be given priority and be taken up on a day to day basis, which shows that the act also has considered that speedy justice is also very important to the accused person as well.

Hence as the suspect has been in remand since 2019 and as the senior state counsel is unable to say when the indictment would be forwarded it is the considered opinion of this Court that it is only fair to enlarge the instant suspect on bail as the alleged incident is also not corroborated by independent witnesses.

Hence the instant application for bail is allowed and the instant suspect is enlarged on the following grounds of bail,

- 1) A cash bail of Rs 50000/
- 2) Two sureties to the value of 100000/ each,
- 3) The suspect to report to the relevant police station on every last Sunday of the month,
- 4) The suspect is severely warned not to interfere with the complainant, and if reported the instant bail order would be cancelled.

The registrar of this Court is hereby directed to convey this order to the relevant Magistrate Court.

Judge of the Court of Appeal

I agree

Neil Iddawala J.

Judge of the Court of Appeal.