

IN THE COURT OF APPEAL OF THE DEMOCRATIC SOCIALIST

REPUBLIC OF SRI LANKA.

In the matter of an application for bail under section 404 of the code of Criminal Procedure Act No. 15 of 1979 and Section 10 (1) of the Assotance to and protection of Victims of Crime and Witnesses Act No. 04 of 2015.

The Officer in – Charge

Police Station

Rajanganaya

Court of Appeal Case No:

CA (Bail) 18 / 2021

Complainant

Vs.

Magistrate's Court of Thambuttegama

Case No: **B2329 /2020**

1. Mahipala Appuhamilage Krishan Sanjeewan, Yaya 08, Angamuwa, Rajanganaya.

2. Bulathgama arachchilage Isanka Dhananjaya, Yaya 08, Angamuwa, Rajanganaya.

Suspect

AND NOW BETWEEN

Wijayalath Pendige Nilmini, No.07, Yaya 08, Angamuwa, Rajanganaya.

Petitioner

Ranasinghe Arachchige Ranasinghe
Rajapaksha

Substituted – Petitioner

Vs.

2. The Officer in – Charge

Police Station

Rajanganaya

Complainant – Respondent

2. Hon. Attorney General

Attorney General's Department

Colombo 12.

Respondent

1. Mahipala Appuhamilage Krishan
Sanjeewan, Yaya 08, Angamuwa,
Rajanganaya.

2. Bulathgama arachchilage Isanka
Dhananjaya, Yaya 08, Angamuwa,
Rajanganaya.

Suspect – Respondent

Before: Menaka Wijesundera J.

Neil Iddawala J.

Counsel: H. Madukanda for the Petitioner.

Kanishka Rajakaruna SC or respondent.

Argued on: 27.07.2022

Decided on: 30.08.2022

MENAKA WIJESUNDERA J.

The instant matter has been filed to obtain bail for suspect respondents under the provisions of the Assistance to and protection of Victims of Crime and Witnesses Act No.4 of 2015.

When this matter was taken up for inquiry, a Counsel appeared for the petitioner and made an application for the inquiry to be refixed. But, this Court did not grant the application on the basis that the instant date was obtained in the presence of a Counsel for the petitioner who had appeared from the beginning and as such Court ordered both parties to file written submissions on 10.08.2022 and fixed the matter for judgment.

The complainant pertaining to this matter namely, P.C. 61310 Indika Ruwan Bandara of Rajangana police Station had lodged a complaint against the suspect respondents in the instant matter for assault on 03.11.2020. Prior to this incident, the Rajangana Police had arrested a lorry driver who happens to be a family member of the two suspects in the instant matter. The said lorry driver had been transporting sand without a valid permit. The assault on the complaint in the instant matter has been witnessed by two persons.

According to the petition of the two suspect respondents, the period in remand which is one year and four months and the Diabetic condition of the mother of the first suspect respondent had been stated as being conditions suitable to consider bail for the two suspect respondents.

According to the provisions of the instant Act, bail can be considered only upon exceptional circumstances by the Court of Appeal. But, the term exceptional has not been defined in the Act. But, in many of our decided cases, the term exceptional has been defined to be as being varying from case to case according to the facts of the case. A demarcation of the boundaries of the exceptional circumstances is purely a subjective exercise and as such it cannot be given a rigid interpretation. What is recognized as exceptional circumstances in one case may not be so in another. As such, the facts of each case have to be considered and examined very carefully to see whether there is any exceptional situation demanding the granting of bail.

In the instant matter, the petitioner in fact has not stated any circumstances as being exceptional. But has narrated the period of remand and the ill health of the mother of the first suspect as conditions to be considered for bail. But these two ^{we} ~~do~~ fail to see as being exceptional.

But, we observe that the two suspect respondents have assaulted a Police Officer on duty which this Court considers with seriousness. As such, considering the gravity of the incident, this Court is unable to consider bail for the two suspect respondents. But we direct the Attorney General to expedite legal action against the two suspect respondents if any.

As such the instant application for bail is refused.

I agree.

Neil Iddawala J.

Judge of the Court of Appeal.

Judge of the Court of Appeal.