

**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 Bail Act read along with section 10 of the Assistance to and Protection of Victims of Crime and Witnesses Act no. 4 of 2015.

**CA Case No:**  
**CA/BAL/07/2020**

**Magistrate's Court of**  
**Kuliyapitiya Case No:**  
**B 64455/2019**

Head Quarters Inspector of Police  
Police Station  
Kuliyapitiya

**Complainant**

**Vs.**

Jayasingha Purage Gunasiri,  
Galpola Janapadaya,  
Ilukhena.  
(Presently at Wariyapola Remand  
Prison)

**Suspect**

**AND NOW BETWEEN**

Jayasingha Purage Gunasiri,  
Galpola Janapadaya,  
Ilukhena.

(Presently at Wariyapola Remand  
Prison)

**Suspect-Petitioner**

**Vs**

1. Head Quarters Inspector,  
Police Station,  
Kuliyapitiya.

**Complainant-Respondent**

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

**Respondent**

**Before** : **K.K.Wickremasinghe, J**  
**Devika Abeyratne,J**

**Counsel** : Pradeep Perera for the Petitioner  
Panchali Vitharane SC for the AG

**Argued On** : 08.09.2020

**Order On** : 05.10.2020

**Devika Abeyratne,J**

The Suspect Petitioner *Jayasingha Purage Gunasiri* has filed this application under section 10 (1) of the Assistance to and Protection of Victims of Crime and Witnesses Act No 4 of 2015.

The facts relevant to this application are as follows;

Case No 62791 is instituted on 3.6.2019 in the Magistrate's Court of *Balapitiya* against *Waranagedara Manoj Sanjeewa* by the Head Quarters Inspector, *Kuliyapuitiya* for the offence of transporting of 7500ml illicit liquor on a motorcycle bearing number NWBCQ-9019 on or about 22.5.2019 in contravention of the provisions of Section 47 of Excise Ordinance as amended and the accused has pleaded guilty , convicted and sentenced on 3/6/2019 and later on 28.10.2019 the said motorcycle was confiscated.

*Hettiarachchilage Edward Priyantha Perera* of *Galpola Janapadaya, Illukhena* is the 3<sup>rd</sup> witness in the list of witnesses set out in the aforesaid case bearing number 62719. He has complained against the Petitioner Suspect stating that he, his wife and children were threatened with a sword, demanding to pay the fine and the lease installments for the motor cycle involved in case no 62719.

Petitioner denying the allegation against him, has stated that he has been in remand for more than four months and that he is the sole breadwinner and provider for his 4 daughters and there is no flight risk and to grant bail under section 10(1) of the Assistance to and Protection of Victims of Crime and Witnesses Act No 4 of 2015 . These are the exceptional grounds he has submitted.

The learned state counsel has vehemently objected to bail setting up a preliminary objection that exceptional circumstances are not pleaded as required under section 10 (1) (a) of the said Act which reads as follows;

*'An offence under section 8 or 9 shall be cognizable and non-bailable and no person suspected, accused or convicted of such an offence shall be enlarged on bail. Unless under exceptional circumstances by the Court of Appeal.'*

The basis for the alleged threat is that *Edward Priyantha Perera* had tipped off the police about the petitioner's illicit liquor trade where *Manoj Sanjeewa* is an associate and action was instituted against *Manoj Sanjeewa* on that information.

*Edward Priyantha's* complaint over the phone about the threat to him, wife and children is on 29.05.2019 and the B report is dated 12.07.2019 in case No. B 64455/2019 with regard to the alleged complaint.

A further complaint on 18.10.2019 has been made stating that the petitioner's family is repeatedly pressing *Edward Priyantha* to settle the matter.

The petitioner has surrendered through an Attorney at law on 14.10.2019 and remanded by the learned Magistrate.

It is noted that the petitioner has merely stated "there has been serious bias by the police against him", but is silent about his relationship to *Manoj Sanjeewa*. Then the question arises why the petitioner is alleged to have threatened a witness in *Manoj Sanjeewa's* case.

In the objections it is stated that *Manoj Sanjeewa* is an associate of the petitioner's illicit liquor trade, which makes the alleged interference more probable.

It is the position of the learned state counsel that the petitioner surrendered to court through an Attorney-At-Law on 14.10.2019 for the incident alleged to have occurred on 29.05.2019 and that there is a likelihood and a probability of the suspect petitioner absconding and or repeating the offence, and has submitted a list of antecedents and pending cases against the petitioner.

The exceptional grounds the petitioner has submitted are as follows; that he is the sole breadwinner and provider for his children; failure to consider the petitioners version of events and there is no flight risk.

***The Queen v Cornelis Silva 74 NLR 113***, it was stated that the grounds that are “*common to many accused persons*” will not be qualified to be considered as exceptional.

***Attorney General v Ediraweera (2006) BLR 12***, where the Supreme Court has held;

*“Exceptional circumstances only exists, when the facts and circumstances of the case are such that they constrain or impel the Court to the conclusion that justice can only be done by granting bail,..”.*

In the light of the above authorities the above mentioned grounds pleaded by the petitioner cannot be considered as exceptional circumstances.

Section 5(3) of the said Act identifies the entitlements of witnesses. Section 7 imposes a duty on Courts and other related agencies...to recognize, protect and promote” such rights and entitlements afforded to the witnesses.

Section 5 (3) reads thus;

*“A witness shall be entitled to protection against any real or possible harm, threat, intimidation, reprisal or relation resulting from such witness having provided information or lodged a complaint or made a statement to any law enforcement authority or for having provided any testimony in any Court or before a Commission or for instituting legal proceedings, pertaining to the commission of an offence or for the infringement of a fundamental right or for a violation of a human right, by any person.”*

Further, Section 8(1)(b) states that any person;

*“.....Voluntarily causes hurt to a victim of crime or a witness, with the intention of causing such victim of crime or witness to refrain from lodging a complaint against such person with a law enforcement authority, or testifying at any judicial or quasi-judicial proceedings or to compel such victim of crime to withdraw a complaint lodged or legal action instituted against such person, or in relation for a statement made or testimony provided by such victim of crime or witness in any court of law or before a Commission, against such person. .... Commits an offence....”*

It is admitted that case Number 62719, where *Edward Priyantha* is named as a witness has been concluded on *Manoj Sanjeewa* pleading guilty to the charge unconditionally. However, the alleged intimidation to a witness in a judicial proceeding is yet to be inquired in to.

There is no intimation of an indictment been served on the suspect and no time frame has been indicated when such indictment would be served. Thus, it is unlikely this matter will be taken up in the near future. It is noted that the petitioner is in remand for over 11 months.

In the above circumstances, it is my considered opinion that ends of justice will be met by granting bail to the petitioner.

However, having noted his conduct and the antecedents this court is of the view that he should be enlarged on the following conditions.

1. Cash bail of Rs.35000/-
2. Surety Bail to the value of Rs 500,000/- each with two sureties acceptable to the learned Magistrate.
3. The suspect petitioner to report to the Head Quarters Inspector of *Kuliyapitiya* Police Station between 09.00 am and 01.00.Pm on the last Sunday of each month.



4. The suspect petitioner is ordered not to interfere or threaten witnesses in this case and to be present on all court days.
5. Violation of any of the above bail condition will result in the cancellation of bail.

The registrar is directed to convey this order to the Magistrate's Court of *Kuliyapitiya*, the prison authorities and the relevant Police station.

**JUDGE OF THE COURT OF APPEAL**

**K.K.Wickremasinghe,J**

I Agree

**JUDGE OF THE COURT OF APPEAL**