

IN THE COURT OF APPEAL OF THE DEMOCRATIC SOCIALIST
REPUBLIC OF SRI LANKA.

An Application for bail under
Section 10 of the Assistance to and
Protection of Victims of Crime and
Witnesses Act No.4 of 2015.

C.A.(Bail)Application No. 20/2019
M.C. Attanagalla Case No B 696/2019

Yakwalage Sunethra Kumari of
No.350/2, Konwatta, Polgahawela,
Petitioner

Vs.

01. The Hon. Attorney General,
Attorney General's Department,
Colombo 12.
02. Officer-in-Charge,
Police Station, Weyangoda.

Respondents

Wedage Janaka de Silva
Suspect
(Presently at Rmand Prison of Mahara)

BEFORE : HON. JUSTICE ACHALA WENGAPPULI
HON. JUSTICE DEVIKA ABEYRATNE,

COUNSEL : Kamal Suneth Perera for the Petitioner.
Panchali Witharana S.C. for the 1st &
and 2nd Respondents

ARGUED ON : 07th, February, 2020

ORDER ON : 11th February, 2020

HON. JUSTICE ACHALA WENGAPPULI,

The Petitioner seeks an order from this Court, enlarging the suspect *Wedage Janaka de Silva* on bail under Section 10 of the Assistance to and Protection of Victims of Crime and Witnesses Act, No. 4 of 2015. The said suspect was arrested and produced before the Magistrate's Court of *Attanagalla* under case No. B 455/19 on 06.03.2019, soon after an allegation was made by *Ratnayaka Mudiyanseelage Damayanthi* that he had threatened *Wedage Chandana Priyankara*, a nine-year-old witness to death, when the witness was seated inside the Court house after giving evidence in the inquest of the said case.

Case No. B 455/19 was instituted by the Officer-in-Charge of *Veyangoda* Police in respect of a death of one *Kurupettalage Wasantha Kumara*. The suspect's father *Wijemunige Wilson* had been arrested in connection with this incident and on 06.03.2019, the Court had conducted the inquest proceedings. On 18.03.2019, the suspect was produced before the Magistrate's Court of *Attanagalla*, in case No. B 696/19, with a report

accusing him of committing an offence under the Assistance to and Protection of Victims of Crime and Witnesses Act, No. 4 of 2015, since he was produced to Court in case No. B455/19 initially.

The suspect *Wedage Janaka de Silva*, is a son of *Wijemunige Wilson*, from his previous marriage. Said *Wijemunige Wilson* was married to one *Ratnayaka Mudiyansele Damayanthi*, who is the mother of the child witness, at the time of the death of the deceased. The deceased had sustained injuries, whilst in the house of said *Damayanthi* and the young witness had claimed to have seen the attack on the deceased and heard an utterance made by the deceased that it was his father *Wijemunige Wilson* who attacked him that evening. It is alleged that the witness's mother has had a relationship with the deceased at that time.

Since the death of the deceased, *Damayanthi* had shifted her residence to another house with the witness. On 27.02.2019, it is alleged that *Damayanthi* was threatened by the suspect *Janaka* that if her son ever gave evidence against his father, the witness would be sliced to death as if a fish. She had made a complaint to *Veyangoda* Police over this incident on 28.02.2019. The witness was present in Court on 06.03.2019 and the inquest proceedings were concluded. The suspect had allegedly threatened the child witness for giving evidence against their father whilst seated in the Court house. The suspect was arrested and produced before Court immediately by the Police.

In support of the application for bail, learned Counsel for the Petitioner submitted the following as exceptional grounds upon which he could be enlarged on bail;

- a. the allegation of threatening witnesses is easily made,
- b. the Police did not record statements of any other person who supported or corroborated *Damayanthi's* claim,
- c. the relevant non summery proceedings are concluded,
- d. the suspect was incarcerated for almost a year,
- e. the suspect is the sole breadwinner of his family,
- f. the suspect's detention had adversely affected education of his three young children,
- g. the suspect had no previous criminal record,
- h. the daughter of the deceased, in her affidavit said that the suspect was with her that day and there was no such incident of threatening as alleged.
- i. there is no mandatory minimum sentence prescribed to the offence said to have been committed by the suspect.

Learned State Counsel for the Respondent strongly resisted the application of the Petitioner and submitted that the suspect had repeatedly issued death threats on the child witness and his mother and had repeated his offensive conduct within a Court premises where the protection to the witnesses should be considered as high priority.

Section 10 of the Assistance to and Protection of Victims of Crime and Witnesses Act, No. 4 of 2015 states that the offences that are set out in Sections 8 or 9 are non bailable offences and no suspect, accused or convicted shall be enlarged on bail "unless under exceptional circumstances by the Court of Appeal." Therefore, it is incumbent on the

Petitioner to satisfy this Court of the existences of any exceptional circumstance, if the suspect is to be enlarged on bail.

The grounds urged by the learned Counsel for the Petitioner concerns the credibility of the witnesses and personal circumstances of the suspect which are common to all persons who are placed under similar circumstances. Credibility of the witnesses and their claim of death threats will have to be determined by the trial Court at the appropriate stage. Other circumstances urged by the Petitioner cannot be considered as exceptional.

Section 5(3) of the said Act identifies the entitlements of witnesses. Section 7 had imposed 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 retaliation 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."

It is alleged that the witness was threatened with death for the second time soon after he concluded his testimony before the inquirer into sudden deaths, and while seated inside the Court house. learned State Counsel was justified in making submissions that the suspect had the audacity to issue death threat to a witness who was seated in the Court house.

Having considered the circumstances as urged by the Petitioner, this Court finds that she had failed to establish any exceptional circumstance compelling this Court to enlarge the suspect on bail pending his trial.

Accordingly the Application for Bail is refused.

The petition is dismissed without costs.

JUDGE OF THE COURT OF APPEAL

HON. JUSTICE DEVIKA ABEYRATNE

I agree.

JUDGE OF THE COURT OF APPEAL