

IN THE COURT OF APPEAL OF THE DEMOCRATIC SOCIALIST

REPUBLIC OF SRI LANKA

In the matter of an Application for bail in terms of Section 10 of Assistance to and Protection of Victims of Crime and Witnesses Act No 04 of 2015.

Mohomad Hassen Mohomad Paizer,

Holinbon Colony,

Welipanna.

(Presently at Kalutara Prison)

CA Application No: **CA / BAL / 22 / 2019**

Magistrate's Court of Mathugama MC
Case No: **B40885 /17**

Petitioner.

Vs.

1. Officer in Charge,
Police Station,
Mathugama.
2. Hon. Attorney General,
Attorney General's Department,
Colombo 12.

Respondents.

Before – Menaka Wijesundera J.

Neil Iddawala J.

Counsel – Chathura Amarathunga for the Suspect - Petitioner.

Kanishka Rajakaruna, SC for Respondents.

Argued On - 05.08.2021

Decided On – 21.09.2021

MENAKA WIJESUNDERA J.

The instant application for bail has been filed to obtain bail for the accused petitioner (hereinafter referred to as the petitioner) under the provisions of the Assistance to and Protection of Victims of Crime and Witnesses Act no 04 of 2015.

On 22.7.2017 the complainant by the name of Mohamed Fathima Aisha has lodged a complaint in the Welipenna police station for allegedly threatening her with death by the petitioner in the compound of the Court premises at Magistrates Court of Mathugama.

According to the Victim and her Uncle the petitioner was originally produced before the Magistrates Court of Mathugama for allegedly kidnapping the Victim with others, and while the petitioner was coming out of the Court premises the petitioner on seeing the Victim had threatened the Victim in the presence of her uncle.

The learned Magistrate upon being informed of the incident had directed the Police to investigate and once the petitioner was arrested and produced the Magistrate had remanded the petitioner.

Therefore the contention of the petitioner is that he has been in remand since 2017 up to date, is sufficiently exceptional to enlarge him on bail.

The purpose of the Act under which the petitioner has been produced is described as follows

..”an act to provide for the setting out of rights and entitlements of victims of crime and witnesses and the protection and promotion of such rights and entitlements...”. Therefore it is very clear for what purpose the above mentioned Act has been brought in to force.

In the instant application the petitioner has threatened the Victim inside the Court premises without any fear of being detected which is a clear display of his or her scant disregard for the judicial system, and if that is so it is very clear as to the verbosity and the seriousness of his threat to the Victim.

The position of the respondents is that the instant offence which is alleged to have been committed by the petitioner is of serious nature because it has been committed inside the Court premises of Mathugama while the Court was in session and the matter has been brought to the notice of the investigative officers by the Magistrate himself. Hence the State Counsel appearing for the Attorney General further submitted that although they do concede that the petitioner has been in remand since 2017 the indictment has been dispatched to the relevant High Court and in case the petitioner is enlarged on bail at the trial stage there is a very serious likelihood that the petitioner might prevent the Victim from giving evidence.

Hence upon considering the submissions of both Counsel this Court is of the view that in considering the purpose of the Act under which the Victim has been produced it is only fair and just that the Victim should have a conducive environment to give evidence at the trial stage in the instant case, hence this Court decides to reject the instant application for bail, in view of the seriousness and in the way the offence has been committed by the petitioner.

Hence the instant application for bail is hereby dismissed.

Judge of the Court of Appeal.

I agree.

Neil Iddawala J.

Judge of the Court of Appeal.