

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 Section 10(1) of the
Assistance to and Protection of Victims and
Witnesses Act No. 04 of 2015.

Officer in Charge,
Police Station,
Padukka.

Complainant

Court of Appeal Application
Number: CA/Bail/25/2018
HC Avissawella
Case No: HC 47/2015

Vs.

Devatha Pedige Udula
No. 176 C, Gammadda,
Thunaana, Hanwella

Suspect

And Now Between

Devatha Pedige Udula
No. 176 C, Gammadda,
Thunaana, Hanwella

Suspect - Petitioner

(Presently in remand custody in Kuruwita)

Vs.

1. Officer in Charge,
Police Station,
Padukka.

2. The Hon. Attorney – General
Attorney – General Department,
Colombo 12.

Respondents

BEFORE : K. K. Wickremasinghe, J.
Devika Abeyratne J

COUNSEL : AAL Yajish Thennakoon with AAL Prabath S.
Amarasinghe for the Petitioner
Ms. C.J. Mahawaduge SC for the Respondent

ARGUED ON : 02.07.2020

DECIDED : 29.07.2020

K.K.Wickremasinghe J.

This is a matter of an Application for Bail under section 10 (1) (a) of the Assistance to and Protection of Victims of Crime and Witnesses Act No.4 of 2015 where the jurisdiction lies in this court to hear such cases directly.

The Suspect Petitioner in this case is Devatha Pedige Udula who is presently in the Remand Prison at Kuruwita. The Suspect Petitioner is said to have been taken into custody for committing an alleged offence punishable under section 8 (1) (a) of the Assistance to and Protection of Victims of Crime and Witnesses Act No.4 of 2015.

The Suspect Petitioner has been taken into custody by the 1st Respondent for committing the alleged offence for having inflicted death threats on Sirisoma Galappaththi who was a witness in the High Court of Awissawella in case No. HC/47/2015, which is an offence punishable under

section 8(1) (a) of the Assistance to and Protection of Victims of Crime and Witnesses Act No.4 of 2015.

The victim in this case is the Prosecution witness No.2 in Case No. HC 47/2015 Gamini Sisirasoma Galappathti has made a complaint to the police and accordingly, the 1st Respondent has thereafter reported facts to the Learned Magistrate under a B report.

The Suspect Petitioner who is charged under this act shall be enlarged on bail only under exceptional circumstances. This Court considers Bail, only with regard to the alleged commission of the offence punishable under section 8 (1) (a) of the above mentioned Act and not the Substantive matter.

It has been brought to the notice of this Court that the Suspect Petitioner has been in remand for two years and not yet charged to the alleged offence before a Court of Law.

In the case of **CA (PHC) APN 64/2009 (decided on 07.08.2009)** W.L.R. Silva, J held that,

*“...If an accused cannot assign exceptional circumstances he will have to be kept on remand and when an accused had been on remand for 03 years because he had no exceptional circumstances will that by itself constitute exceptional circumstances. If that is treated as an exceptional circumstance, in my view it would be an anomaly because the facts that there aren't any exceptional circumstances finally mature into exceptional circumstances. The fact that he had no exceptional circumstances becomes a qualification after 03 years. If that was the intention of the legislature, the section itself would have stated the exceptional circumstances should not be insisted after 03 years and there is no such qualification, no such jurisdiction found in the particular provision dealing with bail. **In any case, if the period of incarceration is out of a provision and depending on the nature of the charges the Court of course can consider on certain circumstances the long period of incarceration as constituting an exceptional circumstances...**”*

In the above mentioned case the accused was charged for possession of more than 2 grams of heroin. Therefore the charge of the above mentioned case is severe in nature where the accused after conviction would have been sentenced to a sentence of life or death. It is being decided that other than the period in remand, the nature of the charge should also be considered. The charge of the instant case is different to above. Therefore, in view of the above finding and facts, this

Court considers two years of remand period as an exceptional circumstance in the instant case. Therefore, this court is of the view that the ends of justice will be met by enlarging the suspect on bail under stringent conditions.

This court directs the Learned Magistrate to enlarge the Suspect Petitioner on bail under following conditions:-

- (a) Cash bail of Rs.50,000
- (b) Surety Bail of Rs. 1,000,000 each with two sureties acceptable to the Learned Magistrate.
- (c) The suspect is directed to report to the Officer in Charge of the Police Station, Awissawella on every last Sunday of every month between 8.30 am to 12.30 pm until the case is concluded.
- (d) Not to threaten or influence witnesses of the instant case or substantive case.
- (e) Prohibit communication or coming into close proximity of the victim.
- (f) Not to be involved in any other criminal offence.

In case, if the suspect violates any of the bail conditions mentioned above, he will be remanded until final determination of the case.

Registrar is directed to send a copy of the bail order to the Learned Magistrate's Court of Awissawella, Officer In charge, Police Station, Awissawella and the relevant Prison Authorities.

Judge of the Court of Appeal

Devika Abeyratne J.

I agree

Judge of the Court of Appeal