

**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(1)(a) of
the Assistance to and Protection of
Victims of Crime and Witness Act
No.4 of 2015

C.A. No. BAL 40/2019

PHC Ratnapura No. HCR 233/19

M.C. Balangoda No.B 59471

Patikiri Koralalage Chamila
Sajeewani

Petitioner

Vs.

01. The Hon. Attorney General
Attorney General's Department
Colombo 12.

Respondent

And
Payagala Gamaralalage Ajith
Priyankara Samaratunga
(Presently in Remand Prison-
Kuruwita)

Accused

BEFORE : **ACHALA WENGAPPULI, J.**
K. PRIYANTHA FERNANDO, J.

COUNSEL : Shabdika Wellappili for the Petitioner.
Chathurangani Mahawaduge S.C. for the
Respondent

ARGUED ON : 21st July 2020

ORDER ON : 04th August, 2020

ACHALA WENGAPPULI, J.

The Petitioner has made an application to this Court, under Section 10(1)(a) of the Assistance to and Protection of Victims of Crime and Witnesses Act No. 4 of 2015, seeking an order enlarging the Accused-Respondent (hereinafter referred to as the "Accused"), namely *Payagala Gamaralalage Ajith Priyankara Smarathunga*, on bail.

The accused was employed as an Area Manager of the *Sabaragamuwa* Province, by *Rakna Arakshaka Lanka Ltd.*, a Company fully owned by the Government, which provided security services. The accused before his employment at the said Company has served in Sri Lanka Army as a Captain and had retired from active service upon medical grounds, in July 2006.

He is the accused in the Magistrate's Court of *Balangoda* case No. 59471, where he was charged under Section 345 of the Penal Code as amended, upon an allegation of committing sexual harassment on one *Rukmal Devika Amarasena*, who had served under the accused as a junior security officer without being attached to the security division stationed at the *Sabaragamuwa* University.

The trial against the accused in case No. 59471 commenced on 10.11.2016 and evidence of the virtual complainant was recorded by Court on 18.05.2017.

He has another case pending in the same Magistrate's Court under case No. 59472.

On 29.05.2017, a Letter of Demand was sent to the said virtual complainant by an Attorney-at-law, who acted on instructions of the accused, demanding Rs. 10 Million from her, for causing damage to the accused's good reputation by making a false complaint against him.

A similar Letter of Demand was sent to one *Osmond Yahampath*, a witness for the prosecution, in the said case No. 59471, pending before the Magistrate's Court.

This development was reported to the Magistrate's Court and the learned Magistrate had directed the Police to conduct investigations on this complaint. Statements from the accused, his Attorneys who appeared

for him in the Magistrate's Court as well as who sent the Letters of Demand, the virtual complainant and the witness were recorded.

Having considered the available material, the accused was indicted by the Hon. Attorney General, before the High Court of *Ratnapura* for committing offences under Section 8(1)(a) of the Assistance to and Protection of Victims of Crime and Witnesses Act No. 4 of 2015. The indictment was served on the accused in case No. HCR 233/2019 by the High Court of *Ratnapura* on 14.11.2019.

The facts were reported to the Magistrate's Court of *Balangoda* in relation to the allegation of sexual assault on 08.10.2015. The accused sought anticipatory bail from the said Court on 04.01.2016 and it was refused on 12.01.2016, after an inquiry. On 26.05.2016 the accused was enlarged on bail by the Magistrate's Court and was thereafter remanded by the High Court, upon service of indictment by the High Court, on 14.11.2019.

With her instant application to this Court, the petitioner seeks that her husband be enlarged on bail.

The petitioner's bail application was resisted by the Hon. Attorney General on the basis that there were no exceptional circumstances warranting the accused to be enlarged on bail.

At the inquiry of the petitioner's application, learned Counsel for the petitioner contended that the allegation under Section 8(1)(a) of the

Assistance to and Protection of Victims of Crime and Witnesses Act No. 4 of 2015, could not be maintained since the accused had merely sought the advice of an Attorney-at-Law, who, having decided the appropriate legal remedy available to the accused had on his own sent out the Letters of Demand, in view of the two year prescriptive period in relation to the perceived cause of action of the accused.

Having emphasised that there was no physical or verbal threat of violence that had originated from the accused in relation to the two witnesses, learned Counsel contended that mere sending of Letters of Demand, and thereby exercising his right to pursue a civil remedy in relation to the allegation of sexual harassment, does not amount to a "threat" as envisaged in the wording to the Section 8(1)(a) of the Assistance to and Protection of Victims of Crime and Witnesses Act No. 4 of 2015. Learned Counsel therefore moved this Court to consider that legal position as an exceptional ground, in conjunction with the factual position that there was no direct threat was made on any of the witnesses, either verbally or physically, in favour of the accused.

Indeed, the position advanced by the learned Counsel for the accused, is undoubtedly a unique and presents an interesting legal point to be determined by a Court. However, it must also be noted that this appears to be the accused's defence that he may advance to negate imputation of criminal liability in the pending trial before the High Court. If this Court were to indicate its mind, on the said question of law at this stage that would have a significant effect on either the prosecution case,

which is yet to commence before the High Court or on the defence case, if the trial Court rules that the accused had a case to answer. In the circumstances, this Court is of the view that consideration of the said contention is best left to the High Court, if advanced by the accused at the appropriate stage.

But that does not dilute the unique factual and legal situation that arose for consideration upon this submission. On one hand the prosecution claims that the “threatening” its witness with Letters of Demand were sufficient to impute criminal liability while on the other hand, the accused maintains that he was merely exercising his entitlement to seek relief against a false allegation that had been foisted on him. This Court also notes that the accused was on bail, until the service of indictment by the High Court. During this period, he was on bail, he did not make any attempt to establish contact to any of the witnesses, either directly or indirectly.

Given the unique nature of the circumstances, as revealed by the petition of the accused as well as the objections filed by the Respondents, and considered in its totality, this Court rules that the petitioner has satisfied it of existence of exceptional circumstances, as per the statutory requirement of Section 10 (1)(a) of the Assistance to and Protection of Victims of Crime and Witnesses Act No. 4 of 2015, to enlarge the accused on bail.

Accordingly, this Court enlarges the accused on bail upon following conditions;

- a. the accused must furnish cash bail in a sum of Rs. 100,000.00,
- b. the accused must present two sureties, who are acceptable to the High Court and pledge Rs. One Million on surety bonds. They must also be permanent residents of jurisdiction of the High Court,
- c. the accused must report to Officer-in-Charge of Women and Child Abuse Prevention Bureau every last Sunday of each month,
- d. the accused must present himself before the High Court during the pendency of his trial,
- e. the accused should not change his residential address without informing the High Court,
- f. the accused should not in any way interfere with the ongoing prosecutions or of the witnesses.

JUDGE OF THE COURT OF APPEAL

PRIYANTHA FERNANDO, J.

I agree.

JUDGE OF THE COURT OF APPEAL