

N 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)(a) of the Assistance to and Protection of Victims of Crime and Witnesses Act No. 4/2015 read with the Bail Act.

C.A. No. BAL 18/2020

M.C. Colombo No.B 15353/02/2019

Hewa Aluth Sahal Arachchige Ajith
Prasanna
No.87/D, de Saram Place,
Parakrama Road,
Thalahena.
(Presently at Welikada Remand Prisons
Colombo 08)

3rd Suspect-Petitioner

Vs.

1. The Officer-in-Charge
Gang Robbery Unit,
Criminal Investigation Department,
Colombo 01.

Complainant-Respondent

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

Respondent

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

COUNSEL : Anil Silva P.C. with Nandana Perera for the 3rd
Suspect- Petitioner.
Janaka Bandara S.S.C. with Chathurangani
Mahawaduge S.C. for the Respondents.

ARGUED ON : 04th September, 2020

ORDER ON : 14th September 2020

ACHALA WENGAPPULI, J.

In this application, the 3rd Suspect-Petitioner (hereinafter referred to as the Petitioner) prays from this Court that he be enlarged on bail under Section 10(1)(a) of Assistance to and Protection of Victims of Crimes Act No. 04 of 2015.

It is stated by the Petitioner that he had organised two media conferences in December 2019 *“to educate the public about the harassment faced by individuals and their families attached to various intelligence branches of the armed forces due to subjective, arbitrary and unjustifiable arrests of the security personnel by certain individuals of the Police who are no longer in service ...”*.

Subsequent to these two media conferences, the Petitioner was directed to make a statement to Criminal Investigations Department after it had commenced investigations into a complaint by the Registrar of the Magistrate’s Court of Fort. The Petitioner subsequently became aware that in relation to case No. B 732/09

pending before the said Court, an Attorney-at-Law who appeared for the aggrieved party in the said matter had brought to the notice of Court that the Petitioner had intimidated witnesses during the said media conferences.

Upon the complaint by the Registrar, the CID reported facts to the same Court stating that the Petitioner has committed offences under Section 8 of the Assistance to and Protection of Victims of Crimes Act No. 04 of 2015. He was remanded on 31.01.2020, pending investigations.

It is the position of the Petitioner that the available material does not justify the Petitioner being named as a suspect in the said case and asserts that *"... in the circumstances of this case and especially in the absence any material pertaining to threatening of witnesses it is contrary to law and illegal to invoke the provisions of the Assistance to and Protection of Victims of Crimes Act No. 04 of 2015 and claims that there exists exceptional circumstances"* warranting him to be released on bail.

The Petitioner, in his attempt to satisfy this Court of the existence of exceptional circumstances stated in his petition that his 17-year-old daughter had to undergo emotional stress and social embarrassment due to the incarceration of the Petitioner which received wide publicity. It is also stated that his daughter was diagnosed by a Consultant Psychiatrist as suffering from a psychological disorder. It is the opinion of the said Psychiatrist that *"... the return of the Petitioner to his house would facilitate the recovery of the child"* and if her condition is worsened due to continued incarceration of the Petitioner, it would have an irreparable effect on her life and therefore these circumstances should be considered by this Court as exceptional. The Petitioner has annexed a report issued by the Consultant Psychiatrist marked X15 to his petition.

The Respondents resisted the Petitioner's application and in their objections it is stated that the 1st and 2nd suspects in case No. B732/09 were indicted along with several others by the 2nd Respondent in case No. HC/TAB/1448/2020 before a Trial at Bar. The said matter is pending before the Trial at Bar, and one Lieutenant Commander *Welagedara*, is named as a witness for the prosecution. During the media conferences, it is claimed by the Respondents that the Petitioner had made " ...*several allegations and/or threatening remarks against the witnesses*".

Learned President's Counsel submitted that the emotional and social impact on the daughter of the Petitioner due to the continued incarceration of her father had resulted in a psychologically termed illness of "Adjustment Disorder". Learned President's Counsel had particularly invited the attention of Court to the fact that she entertains suicidal thoughts. In the circumstances, he contended that her illness is qualified to be accepted as an exceptional, a factor in favour of the Petitioner, in the consideration of bail.

Learned Senior State Counsel for the Respondent submitted that although he was sympathetic towards the young girl's psychologically traumatic experience, he is unable to concede to the position that such circumstances are exceptional in nature, since an arrest and detention of a family member will undoubtedly results in varying degrees of adverse impact, both psychological and financial, on his immediate family, and therefore the daughter of the Petitioner too is not placed in a situation that is different to the one faced by a daughter of any another detainee.

Referring to the medical report X 15, learned Senior State Counsel submitted the fact that the young girl is entertaining suicidal thoughts is only

mentioned in the clinical history where the Consultant Psychiatrist interviewed both her and her mother on that aspect. The medical expert did not confirm of any tendency of harming herself as a result of "Adjustment Disorder".

In the backdrop these submissions made by Counsel on the factual and legal aspects, this Court now proceeds to consider the application of the Petitioner.

The allegation against the Petitioner is that he is concerned with an offence under Section 8 of Assistance to and Protection of Victims of Crimes Act No. 04 of 2015.

Both the Petitioner and Respondents have tendered the electronic version of the media conferences the Petitioner had conducted annexed to their respective pleadings. The question whether the Petitioner has committed an offence under the said section of the Assistance to and Protection of Victims of Crimes Act No. 04 of 2015 is best left to the High Court since the learned Senior State Counsel indicated that the 2nd Respondent has contemplated forwarding an indictment once the investigative phase, in relation to the allegation of the commission of an offence, has reached its conclusion. This Court therefore deliberately refrains itself from making any observations upon the Petitioner's conduct during the two media conferences as the issue before this Court is whether to enlarge the Petitioner on bail or not.

Section 10(1)(a) of the said Act states that "*... no person suspected, accused or convicted of such an offence shall be enlarged on bail, unless under exceptional circumstances by the Court of Appeal.*"

In order to satisfy this Court that the mental health of the Petitioner's daughter, fulfils the said criterion on which the Legislature had provided for in

enlarging the persons who are concerned with offences under Assistance to and Protection of Victims of Crimes Act No. 04 of 2015, learned President's Counsel, laid emphasis on the probability of a suicide as a direct result of the said mental condition.

The report (marked as X15), issued by the Consultant Psychiatrist, is dated 28.04.2020. It is in relation to the clinical history obtained from the patient and her mother the reference to suicide is made. It is stated therein the patient presented the Consultant with a history of " ... *feeling sad with crying episodes, feeling anxious and inner restlessness, avoidance of friends and relatives due to social embarrassment, thoughts of ending her life, outbursts of anger and irritability mainly directed at her family members and disturbed health.*"

The Consultant Psychiatrist states the clinical features indicate his patient has an "Adjustment Disorder". The impact of the said illness is stated as " ... *her education getting disrupted, as she could not concentrate on her academic work and avoided attending academic classes due to social embarrassment*". She was treated using Psychological Therapy in the form of Supportive Therapy and was requested to attend outpatient clinic for continuation of medical care. In view of the above, learned Consultant is of the view that her " ... *recovery will be facilitated with the return of her father to her home.*"

This Court understands with empathy of the anxiety created in the young mind of a girl of 17 years, confronted with an unpleasant situation to which she had not contributed at all to but was forced to be in. In general terms, the clinical history as recorded by the Consultant indicate the way any average person would feel when a family member being incarcerated for some time. The adverse impact of the particular mental disorder that had been diagnosed with the young

girl apparently is confined to her studies. She is fortunate to be placed under the care of a qualified and experienced Psychiatrist with the onset of her illness.

As the learned Senior State Counsel submitted, this is an unfortunate but an inevitable result, each time when a Court orders remanding a person in judicial custody. Being deprived of personal liberty no doubt creates an adverse psychological impact on such person as well as his dependents. Often the Courts are expected to make a ruling on the interests of the suspect conflicting with the interests of the society at large, represented by the State, by striking a balance between the two.

In view of these considerations, the all-important question this Court must decide is whether the psychological impact on the daughter of the Petitioner due to his continued incarceration could be considered as an exceptional when compared to the psychological impact suffered by any other girl who is placed under similar circumstances ?

The Respondents, in their objections referred to a quotation from the judgment of the Supreme Court in *Attorney General v Ediriweera* 2006 BLR 12, where it is stated that;

"It is trite law that family circumstances are not considered to be exceptional but circumstances which are general and operative in almost all the cases. The facts and circumstances of the case must take it out of the ordinary, creating circumstances that are sufficiently exceptional to merit the grant of bail ...".

This Court, having considered the circumstances urged by the learned President's Counsel, is of the view that they fail to qualify themselves from the

circumstances that are of a "general" in nature to circumstances that are "out of ordinary", so that they could be taken as "exceptional" .

Therefore, the Petitioner's application to enlarge himself on bail is refused.

His Petition is accordingly dismissed with no costs.

JUDGE OF THE COURT OF APPEAL

K. PRIYANTHA FERNANDO, J.

I agree.

JUDGE OF THE COURT OF APPEAL