

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

In the matter of an application  
for bail under and in terms of  
Bail Act read along with section  
10 (1) (a) of the Assistance to  
and Protection of Victims of  
Crime and Witnesses Act No.4 of  
2015.

**CA Bail Application**  
**Case No:CA BAL 39/2019**

**Magistrate's Court of**  
**Mullaitivu**  
**Case No: B/1269/2018**

Officer-In-Charge,  
Police Station,  
Mullaitivu

**Complainant**

**\_Vs\_**

Abdul Cader Misriya,  
Wannakulam,  
Mullaitivu.

**Suspect-Petitioner**

**AND NOW BETWEEN**

Abdul Cader Misriya,  
Wannakulam,  
Mullaitivu.

**Suspect-Petitioner**  
**(Currently detained in Vavuniya Prison)**

**\_VS\_**

1.Head Quarters Inspector,  
Police Station,  
Mullaitiwu.

**Complainant-Respondent**

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

**Respondent**

<b>Before</b>	<b>: K.K.Wickremasinghe,J Devika Abeyratne,J</b>
<b>Counsel</b>	<b>: Faris Saly With Melani Perera for the Suspect-Petitioner C.Mahawaduge SC for the Respondent</b>
<b>Written Submissions On</b>	<b>: 07.07.2020(by the Suspect-Petitioner) 09.07.2020(by the Respondent)</b>
<b>Decided On</b>	<b>: 07.08.2020</b>

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**Devika Abeyratne,J**

The instant order concerns an application made by the suspect Petitioner in terms of Section 10 (1) (a) of the Assistance to and Protection of Victims of Crime and Witnesses Act No. 4 of 2015.

The Petitioner has been arrested and produced before the Magistrate's Court of *Mullaitivu* under case No. B/1269/2018 on 11.11.2018 on an allegation made by *Sivagnanavel Janani*, that the Petitioner together with her daughter *Fathima Mapasha* on 15.09.2018 verbally threatened by saying;

**"... why you caused the arrest of my Imran, do you know who we are? We are Muslim. Do you know what we will do you for this?"**

Case No. B 1022/2018 was instituted in respect of a house robbery and theft of jewellery and causing hurt, identifying a suspect named *Imrankhan* who is the Son-in-law of the Petitioner, who was arrested on 15.09.2018 for the substantive matter.

The Petitioner together with her daughter are alleged to have threatened the complainant and causing intimidation regarding the Magistrate's Court Case B 1022/2018 which is an offence under Section 8 (1) (a) of the Assistance to and Protection of Victims of Crime and Witnesses Act.

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

- a. The statements of the complainant, the circumstances and the evidence referred to in the "B" report are not sufficient to maintain a case under the Assistance to and Protection of Victims of Crime and Witnesses Act No 4 of 2015.

- b. The alleged incident is said to have been committed on 15.09.2018 but reported to Court on 11.11.2018 and this unreasonable delay itself creates a reasonable doubt on the incident.
- c. As the threat is a verbal threat, ingredients to frame charges under Section 8 (1) of Assistance to and Protection of Victims of Crime and Witnesses Act No 4 of 2015 and Section 434 and 483 read with Section 32 of the Penal code is unlikely.
- d. The B Report is malicious and fabricated on a false complaint.
- e. The Petitioner is often falling sick and suffering from the long period of incarceration at the Prison.

It is further submitted that; the Petitioner is 60 years old who has resettled with the husband in *Mullaitivu* from *Puttalam* after 20 years in refugee camps since the forceful eviction from her home town by the LTTE in 1990; that she has been in remand for the last one year; that the son- in-law *Imrankhan* and another suspect *M.Ibrahim* have been granted bail in the substantive matter; that she was arrested on 11<sup>th</sup> of November 2018, for the alleged offence committed on 15<sup>th</sup> of September 2018, which is two months later, however there is not any reference of threatening or intimidation by the **petitioner** in the first complaint of the virtual complainant according to the B report or subsequent further report ( emphasis added),there is no reference whatsoever could be found to the effect of threatening of witnesses as alleged until 22<sup>nd</sup> of September 2018 in the said case B/1022/ Magistrate's Court of

*Mullaitivu*; the Police made a reference of threatening the witness by an oral submission only on 22<sup>nd</sup> of September 2018 in order to object for bail after the Counsel made the application for bail and brought it to the notice of the court; the alleged incident of threatening the witnesses reported by Police to the Magistrate is based on false allegation and is a fabricated story; the said allegations of threatening the said witness was filed against her only to keep the Suspect in remand for a longer period of time; her incarceration has caused severe pain of mind, hardship to the petitioner and her family.

The State Counsel has vehemently objected to bail at the inquiry, mainly based on the Petitioner's daughter evading arrest and the fact that she cannot be found by the Police. In the objections it is stated that the petitioner together with her daughter *Fathima Mapasha* have threatened and intimidated the complainant and in the investigation in to the complaint of *Sivagnanavel Janani* on the statement of her sister *Siva Abhirami* the identity of the Petitioner was revealed which has been corroborated by the statement of *P.Thawamani*.

The contention of the Petitioner is that the daughter is living with the suspect *Imrankhan* who is her husband in *Thalaimannar* and that the petitioner has no contact with the daughter and do not know of her whereabouts. Further, as the petitioner is in remand since 11.11.2018 she has no way of contacting *Fathima Mapasha* her daughter.

According to the respondent although several police messages have been sent to the *Thalaimannar* Police, *Fathima Mapasha* has not been arrested. This fact is borne out by several B reports in case No. B

1269/18 reporting that the main suspect has to be taken in to custody. It is the duty of the Police to take appropriate steps to take *Fathima Mapasha* into custody which they have failed to do for over two years. There is not sufficient material before Court to establish that the Police have taken adequate measures to apprehend the main suspect *Fathima Mapasha*. In the circumstances, it is difficult to comprehend the position of the Attorney General's Department objecting to bail on the basis that the main suspect *Fathima Mapasha* is not apprehended.

On a perusal of the complaint of *Sivagnanavel Janani* and the statements of the two other Witnesses which precipitated the 'B' report that paved way to remand the Petitioner, it is clearly seen that none of the witnesses have stated that the Petitioner personally threatened the alleged Victim *Sivagnanavel Janani*.

It is yet to be proved in Court that the Petitioner was in the company of the daughter *Fathima Mapasha* who is alleged to have verbally threatened *Sivagnanavel Janani* the complainant.

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*

*relation 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.”*

Further, Section 8(1)(b) states that any person;

*“.....Voluntarily causes hurt to a victim of crime or a witness, with the intention of causing such victim of crime or witness to refrain from lodging a complaint against such person with a law enforcement authority, or testifying at any judicial or quasi-judicial proceedings or to compel such victim of crime to withdraw a complaint lodged or legal action instituted against such person, or in relation for a statement made or testimony provided by such victim of crime or witness in any court of law or before a Commission, against such person. .... Commits an offence....”*

When considering the spirit of the legislature it is obvious that this law was enacted for the benefit of the Victims of Crime and Witnesses.



But there have been instances, where there are questions whether the law enforcement officers are following and adopting best practices relating to the protection of victims, or whether the Act is abused by their negligence or incompetence.

In the instant matter, there is only the B reports informing courts that they have yet to take *Fathima Mapasha* in to custody. This has gone on for over one and a half years and during that period the Petitioner, mother of *Fathima Mapasha* is languishing in remand custody. There is no mention whatsoever of the Petitioner threatening the victim, the only reference is a witness identifying her as one of the women who were looking for *Sivagnanavel Janani's* house, and *Sivagnanavel Janani's* sister's statement that she knew them when they were in *Karachchikudiiruppu*. But here also it is not clear whether *Abhirani* identified the Petitioner correctly and sufficiently.

Be that as it may, from the available material no direct involvement has been established so far of the Petitioner threatening the alleged victim. The lethargic attitude of the police is seen by their own conduct where they have been unable to take *Fathima Mapasha* in to custody who is said to be the main suspect, for over one and a half years.

In the circumstances it is my considered opinion that ends of justice will be met by granting bail to the petitioner on the following conditions.



- 1.Surety bail to the value of Rs. 500,000/= each with two sureties acceptable to the learned Magistrate.
- 2.The suspect advised not to interfere with witnesses in the substantive case as well as this case.
- 3 The suspect.to be present in Courts on all court days.
4. The suspect to report to the O.I.C Mullaitivu between 9 am and 1 pm on the last Sunday of each month.
- 5.Violation of any of the bail conditions will result in the cancellation of bail.

Registrar is directed to send copies of the order to the Magistrate's Court of *Mullaitivu* and OIC *Mullaithivu* Police Station.

**JUDGE OF THE COURT OF APPEAL**

**K.K.Wickremasinghe,J**

**I Agree,**

**JUDGE OF THE COURT OF APPEAL**