

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

In the 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. 04 of 2015

Kamburawala Kankanamlage Dhammika
Sudarshanie,
No. 179/15, Galwalamulla,
Watareka, Padukka.
(Presently at Remand Prison Welikada)

Petitioner

Court of Appeal Bail Application
No. CA/BAL/20/2020

V.

1. Officer in Charge,
Police Station,
Meegoda.

2. Inspector Lalith,
Sectional Head,
Criminal Branch,
Police Station,
Meegoda.

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

Respondents

BEFORE

:ACHALA WENGAPPULI, J

K. PRIYANTHA FERNANDO, J

COUNSEL

: P. Kenneth E Perera for the Petitioner.

Chathurangi Mahawaduge SC for the Respondents.

ARGUED ON

: 15.10.2020

OBJECTIONS

FILED ON

: 23.09.2020 by the Respondents.

COUNTER OBJECTIONS

FILED ON

: 05.10.2020 by the Petitioner

ORDER ON

: 16.11.2020

K. PRIYANTHA FERNANDO, J.

01. The petitioner had been produced before the Magistrate's Court of *Homagama* by the Officer in Charge of the *Meegoda* Police Station (1st Respondent) on 25.01.2020, for allegedly threatening a complainant to withdraw a complaint made against her son and thereby committing an offence in terms of section 8(1) of the Assistance to And Protection of Victims and Witnesses Act No. 04 of 2015 (hereinafter referred to as the Act), and was remanded.
02. In terms of section 10(1) of the Act, such suspect can be enlarged on bail only by the Court of Appeal under exceptional circumstances. The instant application is made in terms of the above provision by the petitioner seeking bail.

Facts in Brief

03. The facts as reported to the Magistrate's Court by the 1st respondent, are that one *Thalappulilage Nishanthi* (complainant) had made a complaint of theft of her water pump on 31.12.2019. She had suspected the petitioner's son as the thief. Whilst the matter was being investigated by the police, on 24.01.2020, the petitioner had come in a three-wheeler and asked her to go to the police station. When she refused to go as the police never informed her to come, the petitioner had threatened her in filth to withdraw the complaint made by her to the police.
04. As submitted by the petitioner in her affidavit filed with the petition in this Court, she had gone to the police station on 23.01.2020 in the afternoon to inquire into a complaint made against her son. Thereafter, she had gone to the police station again on 24.01.2020 to meet the 2nd respondent to get the son who was under arrest released. The 2nd respondent then put her into a room and had assaulted her in the presence of her son. It is submitted that she never threatened the complainant to withdraw the complaint, but wanted to settle the matter.
05. In the affidavit filed by the petitioner on 02.10.2020 with her counter objections, she stated that her son returned the water pump to the complainant, but the 2nd respondent wanted to continue with the complaint and took the water pump as a production.
06. While denying the allegation, it is the contention of the learned counsel for the petitioner that the police fabricated the complaint, as the 2nd respondent assaulted her in front of her son. The petitioner states that the police fabricated the case as the 2nd respondent assaulted her on 24.01.2020. The son of the petitioner, *Pallegamaralage Pasindu Ramesh Kulathunga*, who is the eye witness, in his affidavit filed of record as 'P4' states that he witnessed the 2nd respondent assaulting his mother on or about 21.01.2020. The petitioner has submitted that although the complainant was willing to settle the case of theft of the water pump with the petitioner, the 2nd respondent proceeded to file action in Court. It is to be noted that an offence of theft is not a compoundable offence as per the Code of Criminal Procedure Act. However, it is not for this Court at this stage, but for the Magistrate's Court, to decide whether the complaint made in terms of the Act is true or fabricated.

07. What this Court has to consider at this stage is whether the petitioner has submitted exceptional circumstances to grant bail. The petitioner has submitted two grounds to be considered as exceptional circumstances to grant bail. They are;
- i. That the petitioner is still taking treatment for a head injury that occurred on 02.07.2018.
 - ii. Her husband Ranjith Kulathunga is a heart patient.
08. It is the submission of the learned counsel for the respondent that the above grounds cannot be considered as exceptional circumstances.
09. The petitioner has submitted her clinic record book maintained by the Colombo National Hospital for her ailment in the ear as P2. She had been regularly attended the E.N.T. clinic at the General Hospital. There is no medical report filed of record about her present condition, and also whether she cannot be treated further at the General Hospital. According to the clinic attendance card attached to P2, the petitioner has last attended the clinic on 30.08.2018 and the next date given by the doctor is 25.03.2019. There is no record whether the petitioner attended the clinic on the given date 25.03.2019 although she was not in remand as she was remanded for this case only on 25.01.2020. Hence, the petitioner has failed to submit that she had any ailment as at the date of this application, nor that the ailment, if she had any, could not be treated in the National Hospital or prison hospital.
10. The petitioner further submitted that her husband Ranjith Kulathunga is a heart patient and that doctors have advised him not to get emotional in any matter. Although the petitioner has submitted a clinic record book of her husband as P3, she has failed to submit any medical report to substantiate her clam. P3 also refers to treatment given during the period between 22.02.2016 and 26.02.2016 where he had been admitted in the hospital. He had been treated as an indoor patient from 06.06.2016 to 09.06.2016, but that was 4 years ago. There is no medical report to substantiate that he has any serious ailment that could not be treated in the absence of the petitioner or that the presence of the petitioner would be necessary for any treatment.

11. In the case of *Attorney General V. Ediriweera* 2006 BLR 12 it was held 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 fact and circumstances of the case must take in out of the ordinary, creating circumstances that are sufficiently exceptional to merit the grant of bail...'

12. The above circumstances urged by the petitioner are general in nature and cannot be considered as exceptional. The petitioner has therefore, failed to submit exceptional circumstances making her entitled to bail.

Hence, application for bail is refused.

JUDGE OF THE COURT OF APPEAL

ACHALA WENGAPPULI, J

I agree.

JUDGE OF THE COURT OF APPEAL