

IN THE COURT OF APPEAL OF THE DEMOCRATIC SOCIALIST REPUBLIC OF

SRI LANKA

Head Quarters Inspector,  
Police Station,  
Walasmulla.

Complainant

V.

Court of Appeal Case No.  
CA BAL 30/2019  
CA BAL 31/2019  
CA BAL 32/2019

1. Chaminda Egodage
2. Kattadige Amila Gayan
3. Kattadige Janaka Pushpakumara

Suspects

Magistrate Court of  
Walasmulla Case No. BR  
256/2019

AND NOW BETWEEN

1. Chaminda Egodage (CA BAL 30/19)
2. Kattadige Amila Gayan (CA BAL 31/19)
3. Kattadige Janaka Pushpakumara (CA BAL 32/19)

Suspect Petitioners

V.

1. Head Quarters Inspector,  
Police Station,  
Walasmulla.

Complainant Respondent

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

Respondent

BEFORE : ACHALA WENGAPPULI, J.  
K. PRIYANTHA FERNANDO J.  
COUNSEL : Himali Kularathna for the Suspect Petitioners.  
C. J. Mahawaduge SC for the Respondent.  
ARGUED ON : 11.03.2020  
ORDER ON : 26.05.2020

**K. PRIYANTHA FERNANDO J.**

01. Petitioners *Chaminda Egodage, K. Amila Gayan, and K. Janaka Pushpakumara* have made separate applications for bail, by their applications No. BAL 30/19, BAL 31/19 and BAL 32/19 respectively. As they all are remanded in the same case in Magistrate's Court, Walasmulla (Case No. BR 256/19), all three applications were taken up for inquiry on the same day. Same facts with regard to the alleged incident referred to in case No. BR 256/19 would apply to all three applications. Therefore, this order is made on all three applications, however, the exceptional circumstances urged by each Petitioner will be considered separately when bail is considered on each Petitioner.

**Facts in brief**

02. As facts reported before the Magistrate's Court, Walasmulla, the Petitioner in the instant application No. BAL 32/2019 *Janaka Pusupakumara*, has allegedly kidnapped and raped the victim child named *Madushani Kaushalya*. The complaint had been made on 06.01.2019. Police had been looking for the suspect *Janaka* who had been evading arrest. In the meantime, *Janaka's* brother by the name of *Amila Gayan* (Petitioner in BR 31/2019) and his friend *Chamila Godage* (Petitioner in BR 30/2019) with others had gone to the *Madushani Kaushalya's* house in the night on 13.04.2019 and had assaulted her father.

caused mischief to the household items and had threatened to withdraw the complaint of rape and kidnapping. Matter had been reported to the police the same day and a mobile phone and a helmet left at the scene by the suspects had been handed over to the police. Police also had recovered a piece of cloth soaked with blood and a pole from the crime scene.

03. This incident had been reported to the Magistrate's Court with reference that the suspects had committed an offence punishable in terms of the Assistance to and Protection of Victims of Crime and Witnesses Act No. 4 of 2015 (the Act).
04. Suspect *Amila Gayan* had been produced before the learned Magistrate on 18.04.2019 and *Chaminda Egodage* on 04.07.2019 and were remanded. *Janaka Pushpakumara* had been produced before the learned Magistrate on 03.05.2019 and was remanded.
05. In terms of section 10(1) of the Act, no suspect of such offence shall be enlarged on bail, unless under exceptional circumstances by the Court of Appeal. Therefore, the Petitioners have invoked the jurisdiction of this Court for consideration of granting bail.
06. Exceptional circumstances may vary from case to case. Our superior Courts have discussed exceptional circumstances to grant bail, extensively in bail pending appeal applications. Long period of incarceration and ill health have been considered as exceptional in some cases.
07. In the case of *The Queen V. Cornelis Silva 74 N.L.R. 113*, it was held that grounds which would be common to very many Accused persons would not be considered exceptional. Court said;

*"... I do not think the circumstances urged are sufficient to make the petitioner's case an exceptional one. ... The first of these reasons bears examination while the difficulty envisaged in the second ground is by no means extraordinary as it is one which would be common to very many accused persons."*

08. Hence, circumstances common to all or very many Accused persons including their personal issues that may be common to many will not be considered extraordinary.
09. When considering whether the grounds urged are exceptional, it is incumbent upon the Court to take the objectives of the Act also into consideration. Main objective among others of the Act is to provide for a mechanism to promote, protect, enforce and exercise the rights of victims. Also, to provide assistance and protection to victims of crime and witnesses. An environment has to establish for the victim and the witnesses to come and testify in Court without any fear.
10. With having the above-mentioned judicial precedents and principles in mind, I will now consider whether the grounds urged by the respective Petitioners are exceptional.
11. Petitioner *Chumina Egodage* in application No. BAl. 30/2019, preferred the following grounds as exceptional to grant bail.
- a) The Petitioner categorically denies that he has committed an offence punishable under the Assistance to and Protection of Victims of Crime and Witness Act No. 04 of 2015.
  - b) The learned Magistrate has failed to specify a legal basis on which the Petitioner was remanded and continuously incarcerated.
  - c) The learned Magistrate has failed to consider the submissions made by the counsel of the Petitioner concerning the issue of bail.
  - d) The investigation into this alleged offence had long been concluded and the Petitioner has been in remand concerning this case for about 06 months. The matter is to be referred for advice to the Honourable Attorney General.
  - e) The Petitioner is the sole breadwinner of the family with three children aged 16 years, 8 years and 5 years and was working at a garage who lived in poverty at the time of his arrest. The family of the Petitioner is undergoing severe hardship due to his continuous incarceration.

- f) The Petitioner is receiving medical treatment while in remand.
- g) There are no previous convictions or pending cases against the Petitioner.
12. None of those grounds urged are exceptional to grant bail for the following reasons. Learned counsel for the Appellant submitted that the Petitioner denies the allegation. Further, counsel submitted that although the Petitioner attended a party in front of the complainant's house across the road that was held in an abandoned house, no such incident took place as complained.
13. However, the police have reported to the Magistrate's Court that they received a helmet and a mobile phone left by the suspects at the crime scene. Further, police have recovered a pole and a blood-stained piece of cloth at the scene. Hence, it is a matter for the Trial Court to decide whether there is sufficient evidence against the suspects.
14. It is also urged that the learned Magistrate has failed to specify the legal basis on which the Petitioner was remanded. As I mentioned before in paragraph 05, in terms of section 10 of the Act, jurisdiction to grant bail to a person suspected of an offence under the sections 8 or 9 of the Act is vested only with the Court of Appeal in exceptional circumstances.
15. Although, it is urged that the suspect is receiving medical treatment at the remand prison, there is no medical report submitted about his sickness. There is no evidence to conclude that the sickness, if any, cannot be treated at the prison hospital or any other government hospital, and that the sickness can be aggravated if the suspect continues to be incarcerated.
16. The suspect being the sole bread winner of the family and the fact that he is married with three children are not exceptional to grant bail. Those factors are common to very many suspects who are in remand and no means are extra ordinary, and therefore not exceptional to grant bail. Submission of the learned counsel that the suspect has no previous convictions and pending cases and the period in remand cannot be taken into account as exceptional circumstances. As the suspect has failed to adduce exceptional circumstances, which would be the only basis to warrant the granting of bail, application for bail is refused.
17. Petitioner *K. Amila Gayan* in application No. BAL 31/2019, preferred the following grounds as exceptional to grant bail.

- a) The Petitioner categorically denies that he has committed an offence punishable under the Assistance to and Protection of Victims of Crime and Witness Act No. 04 of 2015.
  - b) The learned Magistrate has failed to specify a legal basis on which the Petitioner was remanded and continuously incarcerated.
  - c) The learned Magistrate has failed to consider the submissions made by the counsel of the Petitioner concerning the issue of bail.
  - d) The investigation into this alleged offence had long been concluded and the Petitioner has been in remand concerning this case for about 06 months. The matter is to be referred for advice to the Honourable Attorney General.
  - e) The Petitioner is the sole breadwinner of the family with one child aged 4 years and was a three-wheeler driver who lived in poverty at the time of his arrest. The family of the Petitioner is undergoing severe hardship due to his continuous incarceration.
  - f) The Petitioner is receiving medical treatment while in remand.
  - g) There are no previous convictions against the Petitioner.
18. This Petitioner *Amila Gayan* has submitted the same grounds as the Petitioner *Chaminda Egodage* in application No. BAL 30/2019. The only difference is that he is the father of one child.
19. Although, it is submitted on behalf of the Petitioner, that he has no previous convictions or pending cases, it was submitted by the Respondent that the Petitioner had a similar case against him in the Walasmulla Magistrate's Court in Case No. 37505, where he is charged for committing offences punishable under sections 403, 486, 343 and 410 of the Penal Code. It is also submitted in the affidavit filed by Sub Inspector *G.P. Gunasena* for the Respondent, that this case had been compounded with the consent of the parties. However, the fact that the suspect has no previous convictions, alone, cannot be taken as an

exceptional circumstance to grant bail. Hence, for the same reasons mentioned by me in paragraphs 12 to 16, application for bail of the Petitioner is refused.

20. The Suspect- Petitioner *Kattadige Janaka Pushpakumara* (CA BAL 32/2019), in his Petition has urged the following as exceptional circumstances to be considered in granting bail.

- a) The Petitioner categorically denies that he has committed an offence punishable under the Assistance to and Protection of Victims of Crime and Witness Act No. 04 of 2015.
- b) The learned Magistrate has failed to specify a legal basis on which the Petitioner was remanded and continuously incarcerated.
- c) The learned Magistrate has failed to consider the submissions made by the counsel of the Petitioner concerning the issue of bail.
- d) The investigation into this alleged offence had long been concluded and the Petitioner has been in remand concerning this case for about 06 months. The matter is to be referred for advice to the Honourable Attorney General.
- e) The Petitioner is the sole breadwinner of the family with one child aged 8 years and was a mason who lived in poverty at the time of his arrest. The family of the Petitioner is undergoing severe hardship due to his continuous incarceration.
- f) The Petitioner is receiving medical treatment while in remand.
- g) There are no previous convictions against the Petitioner.

21. Petitioner *Janaka Pushpakumara* (Petitioner in BAL 32/2019) is the main suspect in the substantive case of kidnapping and rape in case No. BR 10/2019. He denies any involvement in the incident alleged to have occurred on 13.04.2019, where he is suspected of threatening witnesses in case No. 10/2019. Counsel for the Petitioner submitted that the Petitioner did not know about any incident reported in case No. 10/2019. However, Police have reported that the Petitioner had been evading arrest and that the alleged incident in case No. BR 256/19 had taken place whilst the Petitioner was evading arrest in the substantive case. On

the evidence placed before him, it is for the learned Trial Judge to decide whether there is evidence against the Petitioner to find him guilty.

22. Counsel for the Petitioner submitted that the Petitioner has no previous convictions or pending cases. However, it is submitted in his affidavit by Sub Inspector *G.P. Abeywikrama* that the Petitioner whilst evading arrest in the substantive matter has allegedly attempted to kidnap the victim child again and that there is a separate case pending against the Petitioner in case No. BR 292/2019. In his counter objections Petitioner has not denied the above. This would override all other grounds urged by the Petitioner as exceptional circumstances. However, all other grounds which are similar to that were urged by the other Suspect-Petitioners as mentioned before in this order, do not warrant the granting of bail. Hence, as the Petitioner has failed to adduce exceptional circumstances to warrant the granting of bail, bail is refused.

Therefore, the applications for bail for the Petitioners in all three applications (BAL 30/2019, BAL 31/2019, BAL 32/2019) are refused.

**JUDGE OF THE COURT OF APPEAL**

**ACHALA WENGAPPULI, J**

I agree.

**JUDGE OF THE COURT OF APPEAL**