

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

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. 04 of 2015 read with
Article 138(2) of the Constitution of the
Democratic Socialist Republic of Sri Lanka.

Officer – in – Charge,
Police Station,
Kaluthara North.

Complainant

**Court of Appeal Application
Number: CA/Bail/03/2020**

Vs.

Hengodage Sanjeewa
Premakumara Silva
Jambugahawatta, Delduwa.

2nd Suspect

**MC Kaluthara
Case No: 03173/19**

AND BETWEEN

Hengodage Sanjeewa
Premakumara Silva
Jambugahawatta, Delduwa.

**2nd Suspect Petitioner (presently
incarcerated at the Kaluthara Prison)**

Vs.

1. Officer- in - Charge
Police station
Kaluthara North

Complainant – 1st Respondent

2. The Hon. Attorney – General
Attorney – General Department,
Colombo 12.

2nd Respondent

BEFORE : Hon. K. K. Wickremasinghe, J.
Hon. Devika Abeyratne, J

COUNSEL : Mr. Jiffry Zainudeen, AAL for the Petitioner
Ms. Panchali Witharana, SC for the 2nd Respondent

ARGUED ON : 06.10.2020

DECIDED ON : 19.11.2020

K.K.WICKREMASINGHE J.

This is a 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, where the jurisdiction lies in this Court to hear such cases directly.

A suspect who is charged under this Act shall be enlarged on bail only under exceptional circumstances. This Court considers bail, only with regard to the alleged commission of the offence punishable under Section 8 (2) of the above mentioned Act and not the Substantive case.

The following virtual complainants namely Yasan Dhananjaya Balapitiya, Sarath Chandrasiri Balapitiya and Wijepurage Deepthi have lodged complaints with regard to the alleged offences of threatening, causing injuries and assault to the complainants and their families who are the

victims of this action by **Hengodage Sanjeewa Premakumara Silva**, the 2nd suspect - petitioner (hereinafter referred to as the "Petitioner"). Therefore, five complaints have been lodged by the victim's family against the Petitioner on different dates. The 1st Respondent in his B Report bearing number MC Kaluthara B 3173/19 has stated that the Petitioner committed the aforesaid offences while he was on bail.

The Petitioner averred the following grounds to be considered by this Court as *exceptional circumstances* in his petition.

- a. The entire procedure adopted is repugnant to the Section 10 of the Assistance to and Protection of Victims of Crime and Witnesses Act No.04 of 2015.
- b. The Learned Magistrate of Kaluthara has erred in Law in remanding the Petitioner considering the provisions of the Assistance to and Protection of Victims of Crime and Witnesses Act No.04 of 2015, on the premise that the said Court has no jurisdiction to enlarge the petitioner on bail.
- c. Remanding the Petitioner for allegedly having committed offences punishable under Section 8(2) of the Assistance to and Protection of Victims of Crime and Witnesses Act No.04 of 2015, in the said circumstances is contrary to law, illegal and unlawful. Thus the same has caused a grave miscarriage of justice.

The Learned State Counsel for the 2nd Respondent, having read the petition of the Petitioner, strongly objected to enlarge the Petitioner on bail. The Learned State Counsel objected on the premise that the instant bail application was made in terms of Section 10 (1) of the Assistance to and Protection of Victims of Crime and Witnesses Act No.04 of 2015 and the Petitioner has

failed to submit any exceptional circumstances which warrant this Court to enlarge the Petitioner on bail and the Petitioner has not come to this Court with clean hands, therefore, the petition should be dismissed *in limine*.

Pending cases against the Petitioner submitted by the Learned State Counsel;

- I. Magistrate's Court of Mahara 1099/07 in respect of an armed robbery of cash and property on 26.01.2007. The case has been laid by on 16.07.2009 since Complainants have not shown an interest in the matter.
- II. Magistrate's Court of Kaluthara B 2360 for possession of 2.100 g of heroin. The case has been postponed to 28.07.2020.
- III. Magistrate's Court of Kaluthara 50092 in respect of robbery and assault on 14.12.2013. The Petitioner had been discharged on 21.02.2020 since the 1st Prosecution Witness had been absent.

It was brought to the notice of this Court that the Petitioner is currently in the custody of the Kaluthara Prison. The Petitioner along with his brother ***Raththaran Hendige Upul Priyadarshana***, is said to have been taken into custody for committing an alleged offence under Section 8 (2) of the above mentioned Act. The B Report has been filed by the Officer in charge of the Kaluthara North Police Station who is the 1st Respondent in the instant case.

Further, it was brought to the notice of this Court that the alleged incident pertaining to the substantive matter has taken place on or about **22.12.2017** and as per the police investigations, charges were filed on **31.05.2018** before the Learned Magistrate of Kaluthara under the case number **81045**. Charges were filed against 6 Accused including the Petitioner for committing

offences under Sections 314, 316, 486, 433, 434 read with section 140 and 146 of the Penal Code.

Section 8 (2) of the Assistance to and Protection of Victims of Crime and Witnesses Act No.04 of 2015 is reproduced as follows;

“Any person who -

(a) Voluntarily causes grievous hurt to a victim of crime or a witness; or

(b) Wrongfully restrains a victim of crime or a witness,

with the intention of preventing such victim of crime or witness from lodging a complaint against such person with a law enforcement authority or from testifying in any judicial or quasi-judicial proceedings against such person, or compelling such victim of crime or witness to withdraw a complaint lodged or a legal action instituted against such person, or in retaliation for a statement made or testimony provided by such victim of crime or witness in a Court of law or before a Commission against such person, commits an offence, and shall on conviction by a High Court be sentenced to a term of imprisonment not exceeding twelve years and to a fine of rupees thirty thousand.”

Further, Section 10 (1) (a) of the said Act reads as follows;

“An offence under section 8 or 9 shall be cognizable and non-bailable and no person suspected, accused or convicted of such an offence shall be enlarged on bail, unless under exceptional circumstances by the Court of Appeal.”

The objective of this Act is to provide a mechanism to promote, protect and enforce the rights of the victims and witnesses to be testified in a Court of Law without any fear or interference.

Therefore, it is trite law that any Petitioner having been charged under the above act will be admitted to bail only on exceptional circumstances. At this juncture, I wish to draw my attention to consider whether there are exceptional circumstances to enlarge the suspect – petitioner on bail.

Upon perusal of the brief, I observe that the indictment is not forwarded with regard to the instant case. The Petitioner was taken into custody on **24.09.2019** and so far no inquiry was held.

In the case of *Attorney General V. Ediriweera* [S.C. Appeal No. 100/2005] (2006 B.L.R. 12), it was held that;

“Exceptional circumstances only exist, when the facts and circumstances of the case are such that they constrain or impel the Court to the conclusion that justice can only be done by granting bail....”

In the case of **CA (PHC) APN 64/2009 (decided on 07.08.2009)** W.L.R. Silva, J held that,

“...If an accused cannot assign exceptional circumstances he will have to be kept on remand and when an accused had been on remand for 03 years because he had no exceptional circumstances will that by itself constitute exceptional circumstances. If that is treated as an exceptional circumstance, in my view it would be an anomaly because the facts that there aren't any exceptional circumstances finally mature into exceptional circumstances. The fact that he had no exceptional circumstances becomes a qualification after 03 years. If that was the intention of the legislature, the section itself would have stated the exceptional circumstances should not be insisted after 03 years and there is no such qualification, no such jurisdiction found in the particular provision dealing with bail. In any case, if the period of incarceration is out of a provision and

depending on the nature of the charges the Court of course can consider on certain circumstances the long period of incarceration as constituting an exceptional circumstances...”

Therefore, my attention is drawn to the fact that, in the instant case the Petitioner is in remand for over 12 months. It is also not clear if and when indictment will be served on the Petitioner. Considering above, in the interest of justice this Court decides to enlarge the Petitioner on bail subject to stringent conditions.

Therefore, this court directs the Learned Magistrate to enlarge the Petitioner, ***Hengodage Sanjeewa Premakumara Silva*** on bail under following conditions:-

- (a) Cash bail of Rs.30,000
- (b) Surety Bail of Rs. 1,000,000 each with two sureties acceptable to the Learned Magistrate.
- (c) The Suspect Petitioner is directed to report to the Officer in charge of the Police Station, Kaluthara North on every last Sunday of every month between 8.30 am to 12.30 pm until the case is concluded.
- (d) Not to threaten or influence witnesses of the instant case or substantive case.
- (e) Prohibit communication or coming into close proximity of the victim or witnesses.
- (f) Not to be involved in any other criminal offence.
- (g) To attend all Court dates.

In case, if the Suspect Petitioner violates any of the bail conditions mentioned above, he will be remanded until final determination of the case.

Registrar is directed to send copies of the bail order to the Learned Magistrate of Kaluthara, Officer in charge, Police Station, Kaluthara North and the relevant Prison Authorities.

Judge of the Court of Appeal

Devika Abeyratne J.

I agree

Judge of the Court of Appeal