

IN 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 34/2019
M.C.Kuliyapitiya No.BR 59571

Marasinghe Mudiyanseelage Pradeep
Suranga alias Banda,
Suduambe Colony,
Halawalana, Gonawila.

Petitioner

Vs.

1. The Officer-in-Charge
Police Station,
Pannala.
2. Hon. Attorney General
Attorney General's Department,
Colombo 12 .

Respondents

BEFORE : ACHALA WENGAPPULI, J.
DEVIKA ABEYRATNE, J.

COUNSEL : Migara Kodithuwakku for the Petitioner.
Maheshika Silva SSC for the Respondents.

ARGUED ON : 10th March, 2020

ORDER ON : 29th May, 2020

ACHALA WENGAPPULI, J.

This is an application by the Petitioner *Marasinghe Mudiyanseelage Pradeep Suranga alias Banda*, seeking an order from this Court enlarging him on bail. He was arrested on 08.03.2019 by *Pannala* Police upon a complaint by one *Rajapaksha Appuhamilage Randika Dimithu Rajapaksha*, that the Petitioner had caused injuries by assaulting him with a spade.

The Petitioner was thereafter produced before the Magistrate's Court of *Kuliyapitiya* under case No. B 59571/19 with the allegation that he had committed an offence under Section 8(1)(b) of the Assistance to and Protection of Victims of Crime and Witnesses Act No. 4 of 2015. The Petitioner was remanded by the Magistrate's Court. Since then the Petitioner is continuing to be in remand to this date and therefore moves this Court to enlarge him on bail under Section 10(1)(a) of the said Act.

At the inquiry of this application, learned Counsel for the Petitioner submitted that the alleged victim had lied in making his complaint when he said that he is yet to give evidence although he had already concluded his evidence. The Petitioner therefore urges that this Court would consider the falsity of the complainant's assertion as an exceptional circumstance in his favour. It is said that the Petitioner is the sole provider for the 11-year-old girl child of his epileptic elder brother, whose wife had deserted him due to that illness. The Petitioner also financially supports his mentally unstable brother as well as his ailing mother.

In view of the contention of the Petitioner that the complainant had lied, it is helpful to make a passing reference to the factual history which led to the lodgement of the complaint against the Petitioner.

The Petitioner is indicted along with two others before the High Court of *Kuliyapitiya* in case No. 26/19 for committing murder. The complainant *Rajapaksha Appuhamilage Randika Dimithu Rajapaksha* is one of the prosecution witness in the said case and had concluded his evidence before the High Court on 06.06.18, about nine months before this incident of assault. The complainant, in his evidence before the High Court had implicated the Petitioner for the murder by repeating the dying declaration of the deceased made to the former when he visited him in the Hospital.

As to the alleged falsity of the allegation, the Petitioner had not annexed the statement made by the complainant *Randika Dimithu Rajapaksha* to Police with his Petition. Only a summary of his statement appears in the further report filed by the Police is available annexed to the Petition. It is clear from that summary, the Petitioner had repeatedly threatened the complainant with the utterance

“අපේ නඩුවට සාක්ෂි දෙන්න හිතන්න එපා. තෝට නඩුව ඉටුර වෙන්න කලින් මරණවා”.

It is upon this particular portion of the statement of the complainant that the Petitioner relies on, in order to substantiate his allegation of deliberate falsity.

On the contrary, the statement summary of the complainant is also indicative of repeated threats of harm issued on him by the Petitioner and to his children. It further indicate that the complainant had already given evidence before Court. The summary of the complainant's statement also reveals that the immediate reason for him to lodge his complaint against the Petitioner. It was stated that due to the recent most assault, his fear of life and of his children was renewed which made him to seek protection of law. Therefore, the difference between the previous threats and the latest incident which led to the complaint could easily be understood.

On previous occasions, there had only been mere verbal threats but the recent incident had transformed those verbal threats to an actual incidence of violence, prompting the complainant to take the threatening utterances of the Petitioner more seriously. Suffice at this stage to conclude that the Petitioner's claim of falsity of complaint is therefore clearly ill-founded. However, it is not for this Court to consider the credibility of the complainant's version of events in these proceedings, which is therefore left to the trial Court to determine.

Section 8(1)(b) of Assistance to and Protection of Victims of Crime and Witnesses Act No. 4 of 2015 states 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 retaliation 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 ..." (emphasis added).

It is clear that the act of causing injuries to the complainant, although occurred after he had given evidence against the Petitioner before the High Court, is criminalised by the Section 8(1)(b) of the Act. When there is an allegation under Section 8 of the said Act, a suspect could only be enlarged on bail under Section 10(1)(a) of the Act and only in exceptional circumstances.

Clearly the alleged falsity of the complainant, could not be considered as an exceptional circumstance since such allegation is clearly based upon the Petitioner adding his own twist to the summary of the complainant's statement. The remaining grounds urged by the Petitioner are of his personal circumstances. In the judgment of *The Queen v Cornelis Silva* 74 NLR 113, it was stated that the grounds that are "common to many accused persons" will not qualified to be considered as exceptional. This restrictive approach, in relation to consider whether a particular set of circumstances are as exceptional, is continued as indicative from the judgment of *Attorney General v Ediriweera* [2006] BLR 12, where the Supreme Court has held;

"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 of bail, ...".

Therefore, these personal circumstances as urged by the Petitioner, though entitled to sympathy of this Court, fail to satisfy the requirement as imposed on him by Section 10(1)(a) of Assistance to and Protection of Victims of Crime and Witnesses Act No. 4 of 2015, making him entitle to be enlarged on bail.

The application of the Petitioner is therefore refused and his Petition is accordingly dismissed.

JUDGE OF THE COURT OF APPEAL

DEVIKA ABEYRATNE, J.

I agree.

JUDGE OF THE COURT OF APPEAL