

**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
Witness Act No. 4 of 2015 Read
along with the Bail Act.*

CA Bail No: 04/2016

M.C. Kalawana: B 102/16

Pitigala Arachchilage Gunasena
Kithul Wathura,

PETITIONER

Vs.

1. Officer in Charge,
Police Station,
Kalawana.

2. The Hon. Attorney General,
The Attorney General's
Department,
Hultsdorph,
Colombo - 12.

RESPONDENTS

Before : P.R. Walgama, J

: K.K. Wickramasinghe, J

Counsel : Reshal Seresinghe for the Petitioner.

: Varunika Hettige SSC for the State.

Argued on : 13.02.2017

Decided on : 05.04.2017

ORDER

P.R. Walgama, J

The instant order concerns an application made by the Petitioner 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 along with the Bail Act.

The petition dated 27th July 2016 the petitioner has stated the following;

That the Respondent instituted action against the Petitioner in the Magistrate Courts of Kalawana for

committing an offence under Sections 315 and 317 of the Penal Code. The Petitioner was produced before the Magistrate Court of Kalawana and was remanded on 14.05.2016.

Further a report has been filed by the Respondent stating that investigations had revealed that the Petitioner had committed an offence under Section 8(2) of the Assistance to and Protection of Victims of Crime and Witnesses Act No. 4 of 2015, as he had caused injury to one Delwala Kukulage Prematilleke by using sharp knife on or about 11.05.2016 who was an eyewitness of the case bearing No. 248 /15 of the Magistrate Court of Kalawana, filed against the Accused – Petitioner and thereby had committed an offence in terms of Section 8 (2) (a) of the said Act No. 4 of 2015.

It is contended by the Petitioner that it was the victim who initiated the scuffle and he was attacked by the victim with a knife, and as such the Petitioner has exercised the right of private defence.

It is alleged by the Petitioner that although initially he was charged under Section 315 and 317 without proper

basis the Respondent had charged him under the above Section 8(2)(a) of the Act No. 4 of 2015. Therefore it is seen that the Petitioner had been languishing in remand since 14.05.2016 up to date.

Besides it is stated by the Petitioner that he is suffering from a heart condition and therefore moves this court to act under Section 10(1) of the Act No. 4 of 2015 and grant him bail.

In making this application for bail in terms of the above section the Petitioner has urged the following exceptional circumstances to be considered in granting bail.

In that it is stated that the Respondent has not considered the fact that the Petitioner too was injured by the said altercation. The Petitioner is of 60 years of age, and is suffering from a heart disease and is under regular medication.

In the above setting it is noted, and the court is inclined to enlarge the Petitioner on bail.

The SSC for the Respondent had no objections for the Petitioner being released on bail on the conditions as stated here under.

The Petitioner shall deposit a sum of Rs. 10,000/- in cash.

Shall enter into a personal bond to the value of Rs. 100,000/- and a certified bond to the value of Rs. 20,000/-.

Shall not interfere with the witnesses in the above case.

Accordingly application for bail is allowed.

JUDGE OF THE COURT OF APPEAL

K.K. Wickramasinghe, J
I agree.

JUDGE OF THE COURT OF APPEAL