

IN THE COURT OF APPEAL OF THE DEMOCRATIC SOCIALIST

REPUBLIC OF SRI LANKA.

In the matter of an application
for Bail under in terms of
section 10 (1) of the Assistance
to and protection of Victims and
Witnesses Act No. 04 of 2015.

Head Quarters Inspector of
Police,

Police Station,

Polonnaruwa.

C.A Application (BAIL) No:

BAL / 42/ 2020

M.C Polonnaruwa No:

B 295 / 20

Complainant

Vs.

Mahathelage Nelka Dananjaya
Peiris,

No. 03.06,

Batahira,

Athumalpitiya,

Polinnaruwa.

Suspect

AND NOW BETWEEN

Mahathelage Nelka Dananjaya
Peiris,

No. 03 / 06,

Batahira,
Athumalpitiya,
Polonnaruwa.

(Presently in remand custody in
Polonnaruwa Prison)

Suspect

Gamage Malani Premalatha,
No. 03/06,
Batahiriya,
Athumalpitiya,
Polonnaruwa.

Petitioner

Vs.

1. Head Quarters Inspector of
Police,
Police Station,
Polonnaruwa.

Complainant – Respondent

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

Respondent

Before – Menaka Wijesundera J.

Neil Iddawala J.

Counsel – K. Sivapatha Sundaram for the petitioner.

Erandi Dissanayake SC for the state.

Argued on – 20.01.2022

Decided on – 15.02.2022

MENAKA WIJESUNDERA J.

The instant matter has been filed to obtain bail for the suspect under the provisions of the Assistance to and Protection of Victims and Witnesses Act no 4 of 2015.

In the instant matter the suspect along with some others had assaulted a person by the name of DabareLiyanageRasikaChandimal and his wife for a garbage issue.

A complaint had been lodged by the victims on 19.1.2020 and the police had arrested the suspect on 12.2.2020.

The suspect also had complained against the above mentioned Dabare couple and facts had been reported to the Magistrate by the police, it is alleged that, when both parties were inside the Court cell when the matters were being mentioned before the Magistrate, the suspect had assaulted the said Dabare inside the Court cell.

Police had recorded statements from other inmates who were inside the same cell at that time to substantiate the position.

Hence the suspect had been in remand ever since and the counsel for the suspect is canvassing bail on the ground of the period in remand as being exceptional.

According to the provisions of the Act under which the suspect been produced, bail can be considered only under section 10 (1) of the said act, on exceptional ground by the Court of Appeal.

The term exceptional has not been defined in the act but it had been considered and had been defined to be that it should be considered according to the facts of each case by our legal luminaries.

In the instant matter what has been urged as exceptional is the period in remand.

But the Counsel appearing for the respondents urged that the nature of the offence and the manner in which it had been committed and the place of incident clearly demonstrate the scant disregard the suspect has had for the judicial system. Therefore the respondents vehemently objected for bail being granted to the suspect.

The objective the Act in the instant matter has been well defined in section 2(a) of the same which reads as,

“Set out to uphold and enforce the rights and entitlements of victims of crime and witnesses and to provide for a mechanism to promote, protect, enforce and exercise, such rights and entitlements...”

Hence in the instant matter it is noted with much regret that the very fundamental objectives of the act had been grossly violated by the suspect which is very clearly displayed by the behavior of the suspect inside the Court room cell.

Therefore we see no justifiable reason to grant bail for suspect in the instant matter.

As such the instant matter is dismissed.

Judge of the Court of Appeal.

I agree.

Neil Iddawala J.

Judge of the Court of Appeal.