

IN THE COURT OF APPEAL OF THE DEMOCRATIC SOCIALIST

REPUBLIC OF SRI LANKA.

In the matter of an application for Bail under Section 10 (1) of the Assistance to and Protection of Victim of Crime and Witnesses Act no. 04 of 2015.

Officer in Charge

Police Station

Kuliyapitiya.

Court of Appeal Case No:

CA BAIL 29/22

Magistrete's Of Kuliyapitiya Case No:

B 89968/21

Complainant

Vs.

R.P. Ashen Charuka

C. Wishmitha Shehan Maduwantha

Suspect

AND NOW BETWEEN

R.P. Chaminda Wickramaearne

411/3, Kamburupola, Moonamaldeniya

Petitioner

On behalf of

R.P. Ashen Charuka.

(Presently Languishing in Remand)

Vs.

1. Officer in Charge

Police Station

Kuliyapitiya.

Complainant – Respondent

2. Hon. Attorney General,

Attorney General's Department

Colombo 12

Respondent

Before: Menaka Wijesundera J.

Neil Iddawala J.

Counsel: Tenny Fernando with Sahan Weerasinghe appears for the petitioner.

Indika Nelumini, SC for the Respondent.

Argued on: 03.10.2022

Decided on: 11.10.2022

MENAKA WIJESUNDERA J.

The instant application has been filed to obtain bail to the 1st suspect in the B report according to the prayer of the petition. The complainant namely Hasitha Prasad Lakmal has lodged a complaint against the 2 suspects named in the caption of the petition on 14/05/2020 for assaulting the victim and his dog with a sword. According to the IB extracts filed by the Petitioner, the police have not been able to arrest the suspects after the initial complaint but on 16-05-2021 the same suspects have come to his residence and had threatened him to withdraw the complaint. Thereafter on 18/05/2021 the police had filed B report against the suspect under the instant act and there after the learned Magistrate had remanded the suspects.

The state Counsel in the instant matter had undertaken to file objections on 05/09/2022 during the course of the day. But when this mater came up for inquiry today which is 03/10/2022 the objections are not in the docket. Therefore, this Court believes that the objections have not been filed by the Respondents. We also observe in the case of **Christopher V. Don. Paul (1990) 2 SRI LR (54(LA) it has been decided that if objections are not filed considering the submissions of the Respondent is the discretion of Court.**

In the instant matter the State Counsel made verbal objections and vehemently objected to the instant application. It is observed by this Court that although the State Counsel has objected to the instant application, the State Counsel had been unable to state as to when charges against the suspects in the instant matter would be filed if any, in Court, furthermore the State Counsel had failed to file objections as per the Supreme Court rules having given an undertaking to Court which we note with disapproval.

The instant act has been enacted to safeguard the rights of victims and witnesses, but it is also stated in the act, that matters pertaining to the instant act should be given

precedence over others but in the instant matter although over 01 year has lapsed, any legal action has not been filed against the suspects. As such bail can be granted under the instant act only upon exceptional circumstances by this Court, the period in remand without due administration of justice, we conclude as being exceptional to consider bail for the 1st suspect in the B report as mentioned in the prayer to the petition on the following conditions.

01. A cash bail of Rs. 200,000/-

02. Two sureties to the value of 500,000 each.

03. The suspect to report to every Sunday of the month to the relevant Police station.

04. The suspect is hereby warned not to interfere with the victims or the family, if it is reported the instant bail order would be cancelled.

As such the instant application for bail is allowed and the Registrar of this Court is hereby directed to inform the relevant Magistrate's Court regarding the instant order.

Judge of the Court of Appeal.

I agree.

Neil Iddawala J.

Judge of the Court of Appeal.