

**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) (c) of the Assistance to and Protection of Victim and Witnesses Act No.4 of 2015.

Headquarters Inspector (HQI)

Police Station,

Kuliyapitiya.

**Complainant**

Court of Appeal Case No:  
**CA Bail 72/ 2021**

Kadupitige Jayantha Lakshman  
Dharmasena,

Magistrate's Court of Kuliyapitiya  
Case No: **B 84861/21**

Currently in remand custody at the  
Wariyapola Prison.

**Suspect**

**AND NOW**

Kadupitige Jayantha Lakshman  
Dharmasena,

Currently in remand custody at the  
Wariyapola Prison.

**Suspect – Petitioner**

Vs.

1. Headquarters Inspector (HQI)

Police Station, Kuliyapitiya.

**Complainant – Respondent**

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

**Respondent**

Before: Menaka Wijesundera J.

Neil Iddawala J.

Counsel: Nalin Ladduwahetti, PC with Hafeel Fariz, Vajira Ranasinghe, I  
Ranasinghe, Eranda Weliange, Shashika Gunawardena, Nihara  
Randeniya, Buddhika Chandrasekara, Kavithri Ubeysekara,  
Yasas Hewapathirana and Rajith Samarasekara from the  
suspect – petitioner. M. Nagaradanam SC for the state.

Argued on: 05.10.2022

Decided on: 12.10.2022

**MENAKA WIJESUNDERA J.**

The instant matter has been filed to obtain bail for the suspect namely **Kadupitige Jayantha Lakshman Dharmasena, under the Provisions of the Assistance to and Protection of victims of Crime and Witnesses Act, No. 04 of 2015.** The suspect in the instant matter had been initially arrested for an offence of sexual harassment of a minor on 03 /07/2020. The suspect had been enlarged on bail for the said offence on 12/08/2020.

But on 11/01/2021 the virtual complainant had made a complaint against the suspect for assaulting and extorting money from him. On 14/01/2021 the bail of the said suspect had been cancelled in terms of Section 14 of the Bail Act and on 15/02/2021 the police had reported facts to the Magistrate under the instant Act. The suspect had been in remand since then.

The main contention of the counsel for the suspect is the period in remand of the suspect without any investigations being concluded nor any judicial proceedings taking place.

The State Counsel appearing for the Respondents vehemently objected to the application stating that the petitioner had not averred any exceptional circumstances.

Having considered the submissions of both parties this Court observes that in the instant matter the suspect had been in remand since 14/01/2021, but the Respondents have failed to conclude investigations

or institute proceedings against the substantive matter and the instant matter, which this Court thinks is in discord with his personal liberty.

The instant Act has been enacted to safeguard the rights of Victims of Witnesses but it also says that matters filed under this Act should be given precedence. But in the instant matter the objectives of the Act had not been achieved and it is exceptional enough to consider bail for the instant suspect.

The term exceptional has not been defined in the Act, but in cases so far decided have concluded that exceptionality defers from case to case. In the instant Act we observe the exceptionality lies in the period in remand of the suspect without investigations and judicial proceedings taking place for the substantive and the instant matter.

As such the instant application for bail is allowed and the suspect namely **Kadupitige Jayantha Lakshman Dharmasena** is enlarged on the following conditions of bail.

01. A cash bail of Rs. 50,000/-
02. Two sureties to the value of 100,000/- each.
03. The suspect to report to the relevant Police Station on every last Sunday of the month.
04. The suspect is hereby severely warned not to interfere with the complainant or the family members. If it is reported the instant bail order would be cancelled.

The Registrar of this Court is directed to convey the instant order to the Registrar of the relevant Magistrate's Court.

**Judge of the Court of Appeal**

**I agree.**

**Neil Iddawala J.**

**Judge of the Court of Appeal.**