

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 No 4 of 2015.

Officer in Charge

Child and Women Bureau,

Court of Appeal Case No:

CA Bail 31 /2022

Police Station

Matara.

Magistrate's Court of Matara Case

No: **BR 3284/2021**

Complainant

Vs.

Disanayake Mudiyanseelage Anurudda
Saman Disanayake.

Suspect

AND NOW BETWEEN

Rani Shanthilatha Senarathne,

Dewala Road,

AdikaramWaththa,

Wewahanduwa,

Matara

Bail Applicant – Petitioner

1. Officer in Charge

Child and Women Bureau,

Matara.

2. Officer in Charge

Police Station

Matara

Complainant – Respondent

3. Hon. Attorney General,

Attorney General's Department,

Colombo 12.

Respondent

Disanayake Mudiyanseelage Anurudda
Saman Disanayake.

Suspect – Respondent

Presently in the Remand Prison.

Before: Menaka Wijesundera J.

Neil Iddawala J.

Counsel: Rohana Deshapriya with Eranga Karanayake for the petitioner.

Nishanth Nagarathnam, SC for the Respondent.

Argued on: 11.10.2022

Decided on: 01.11.2022

MENAKA WIJESUNDERA J.

The instant application has been filed to obtain bail to suspect namely **Dissanayake Mudiyanseelage Anurudda Saman Dissanayake by the Petitioner** under the Provisions of the Assistance to and Protection of Victims of Crime and Witnesses No. 4 of 2015.

The Counsel for the Petitioner submitted that the suspect has been taken into custody initially in 2020 and in 2214 for sexually harassing the Complainant namely **Oshadee Malsha**. The Counsel further submitted that on 25.11.2021 the Complainant namely OshadeeMalsha had lodged the complaint that the suspect verbally threatened her to withdraw the case filed in year 2020. The Counsel further said that he is languishing in remand since 25.11.2021 for the instant matter and cited some personal grounds.

The State Counsel appearing for the Respondent vehemently objected to the application on two grounds,

1. The Petitioner not producing proof that she is the wife of the suspect.
2. Exceptional grounds have no nexus to the Petitioner because her relationship to the suspect is not proved.

Considering the submissions of both parties this Court observes that the suspect above named has been harassing the victim since 2014. Therefore, it appears that the harassment of the victim is a common occurrence. The legal position pertaining to the instant matter is that, a suspect produced under the provisions of the instant act can be enlarged on bail only upon exceptional grounds by the Court of Appeal. The term exceptional is not defined. But, in the cases so far decided it has been concluded that the exceptional circumstances vary from case to case. In the instant matter, the exceptional grounds urged by the Counsel are,

1. The suspect being in remand for nearly 8 months.
2. The suspect being the sole bread winner of the family and that the family is destitute.

The instant act has been enacted to safe guard the rights of the victims and the witnesses. But in the instant case, the victim has been harassed by the suspect since 2014. Therefore, the conduct of the suspect violates the basic purpose of the act. Furthermore, the exceptional circumstances urged by the Counsel for the Petitioner cannot be considered as exceptional in view of the conduct of the suspect.

Therefore, the instant application for bail is refused.

Judge of the Court of Appeal.

I agree.

Neil Iddawala J.

Judge of the Court of Appeal