

**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 Bail Act read along with Section 10 (1) (a) of the Assistance to and Protection of Victims of Crime and Witnesses Act No: 04 of 2015.

Court of Appeal Case No:  
**CA / BAL / 049 / 2022**

MC (Kalawana) Case No:  
**BR 22208**

Doloswala Batahenage

Sunil G Pushpa Kumara

Kadumeeriya

Waddagala.

**Complainant**

Vs.

1. Officer in Charge

Police Station

Kalawana

**1<sup>st</sup> Respondent**

2. The Hon. Attorney General

Attorney General's Department

Colombo 12.

**2<sup>nd</sup> Respondent**

3. Doloswala Batahenage Sunil G  
Pushpa Kumara

Kadumeeriya

Waddagala

**Suspect – 3<sup>rd</sup> Respondent**

(Presently detained at Kuruwita  
Remand)

**Suspect – Petitioner**

Before: Menaka Wijesundera J.

Neil Iddawala J.

Counsel: Udaya Bandara for the Petitioner on the instructions of Sarath

De Silva.

SC Ridma Kuruvita for the State.

Argued on: 01.11.2022

Decided on: 23.11.2022

**MENAKA WIJESUNDERA J.**

The instant application has been filed to obtain bail for the suspect petitioner namely **Doloswala Batahenage Sunil G Pushpa Kumara** 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 has been produced before the Magistrate's Court of Kalawana for a case of abduction attempted murder and causing grievous hurt. On 13.04.2022 the Kalawana Police had received a complaint from **Gayathri Ishara** stating that the suspect entered her house and threatened her with death in order to withdraw the above mentioned case. The inmates of the house had corroborated this incident. The suspect had been produced under the above mentioned Act for the complaint made **by Gayathri Ishara** and he had been remanded by the Magistrate under the provisions of the above mentioned Act.

The Counsel for the Suspect denied this allegation and stated that the document marked as P4 is a medical report of the suspect and that he is undergoing a **depressive disorder with psychotic features, as such he urged Court to consider enlarging the suspect on bail.**

The Counsel appearing for the Attorney General objected to this application.

Having considered the submissions of both parties, the law pertaining to the instant Act is that **once a suspect is produced under this Act bail can be considered only by the Court of Appeal under exceptional Circumstance. The term exceptional has not been defined in the statute, but in the many of our decided cases it has been concluded that exceptionality defers from case to case.** In the instant matter the exceptionality pleaded is the **mental condition of the suspect.** It has been decided in the case of **Ram Thamodaranpille that the "ill health of the accused can be considered only if the incarceration endangers his life", but we also note that in the case of Ramu Thamodarumpillai bail**

is considered after conviction hence the likelihood of the accused absconding is higher than in a case where trial is yet to commence, as in the instant matter. The document marked and produced by the petitioner as P4 says that the suspect suffers from psychotic features.

This Court also observe that although investigations had been concluded (as pleaded by the State Counsel) State Counsel failed to state as to indictment would be filed against the suspect. Hence there is an ambiguity pertaining to his period in remand which we consider is a violation of the objective of this Act. It is very well known that the above mentioned Act has been enacted to safeguard the rights of witnesses and victims. But in the same Act it has been stated that matters pertaining to this Act should be given precedence over others. But in the instant matter we do not see such a situation. As such the instant application for bail is allowed. The Learned Magistrate is directed to enlarge the suspect on suitable conditions of bail on receipt of this order without delay.

**Judge of the Court of Appeal.**

I agree.

**Neil Iddawala J.**

**Judge of the Court of Appeal.**