

IN THE COURT OF APPEAL OF THE DEMOCRATIC SOCIALIST

REPUBLIC OF SRI LANKA.

An application for bail in terms of
Section 10 (1) (a) of the
Assistance to and Protection of
Victims of Crime and Witnesses
Act No. 4 of 2015.

Officer in Charge

Police Station

Court of Appeal Case No:

CA / BAL / 62 / 2021

Matale

Complainant

Magistrate's Court of Matale

Case No: **B 143 / 20**

Vs.

Ihala Kotambe Gedara Kasun
Dhanushka alias Ujith alias Sudu

No 55 C Vihara Road,

Matale

Suspect

AND NOW BETWEEN

Wagale Kumbure Gedara
Wasantha,

No 55 C Vihara Road,

Matale.

Petitioner

Vs.

1. Officer in Charge

Police Station

Matale

Complainant – Respondent

2. Hon. Attorney General,

Attorney General's Department,

Colombo 12.

2nd Respondent

3. Ihala Kotambe Gedara Kasun

Dhanushka alias Ujith alias Sudu

No 55 C Vihara Road,

Matale

Suspect Respondent

Before: Menaka Wjesundera J.

Neil Iddawala J.

Counsel: Mohan Weerakoon PC with N. Alwis and S. Peiris for Suspect –
Respondent.

R. Kuruwita SC with AG.

Argued on: 14.11.2022

Decided on: 29.11.2022

MENAKA WIJESUNDERA J.

The instant application has been filed to obtain bail to the suspect namely **Ihala Kotambe Gedara Kasun Dhanushka alias Sudu under the provisions of the Assistance to and Protection of Victims of Crime and Witnesses Act no 4 of 2015.**

The suspect in the instant matter had been a suspect in a stabbing case over the dispute of the theft of a motor cycle and the complainant has made a statement to police that the suspect had threatened him.

The Counsel for the suspect stated that **the suspect had been in remand for the** instant matter for nearly two years.

The State Counsel appearing for respondents objected to the application on the basis that the suspect had threatened the complainant and that his life is at risk, but failed to state as to when legal action will be considered against the suspect, she in fact **stated that** the police have failed to submit the IB extracts **so far.**

The law pertaining to the instant matter is that **when a suspect is produced under the provisions of the above act bail can be considered**

only upon exceptional circumstances by the Court of Appeal. The term exceptional has not been defined in the statute, but in many of our decided cases it has been held that exceptionality defers from case to case. The exceptionality pleaded by the Counsel in the instant matter is the long period of remand without any action being taken against or for the suspect by the respondents.

It is observed by this Court that the objective of the instant act is to safeguard the rights of the victims and the witnesses but at the same time it has been stated by the act that matters coming under this act must be given precedence over other matters. But in the instant matter we do not see any such thing being considered but instead what we see is that the matter is being dragged on for no good reason.

As such we consider this case to be a fit matter to be considered for the granting of bail.

As such the instant application for bail is allowed and we direct the relevant Magistrate to enlarge the above named suspect on suitable conditions of bail without delay upon the receipt of this order.

We direct the Registrar of this Court to convey the instant order to the relevant Magistrates Court.

Judge of the Court of Appeal.

I agree.

Neil Iddawala J.

Judge of the Court of Appeal.