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. 4 of 2015.

Officer in Charge

Police Station

Habaraduwa.

Court of Appeal Case No:

CA BAL 57 /2022

Magistrate's Court of Galle Case No:

B 1726 /2022

Complainant

<u>Vs.</u>

1.Polhena Jayasinghen Tantirige Sudarshini

2.Gonitha Gedara Ayesha Dilshani

3.Helikada Palliyaguruge Subodhani

4.Kaluthotage Chamika Rangi

5.Chamika Dikini Pranawitharana

 (Currently in Galle Remand Prison)

Suspect

AND NOW BETWEEN

Chandrasiri   Paranawitharana
Baddiwela, Padinnoruwa,

Wanchawala.

<u>Petitioner</u>

<u>Vs.</u>

1. Hon. Attorney General

Attorney General's Department

Colombo 12

2. Officer in Charge

Police Station

Habaraduwa

<u>Respondents</u>

Before: Menaka Wijesundera J.

       Neil Iddawala J.

Counsel: Maithri Gunaratne, P.C with Migara Gunarathna and Rahul Jayathilaka,

       Charitha Gunarathne for the Petitioner.

       Panchali Witharana, SC for Hon. AG.

Argued on: 15.11.2022

Decided on: 29.11.2022

MENAKA WIJESUNDERA J.

The instant application has been filed to obtain bail to the suspect namely Polahena Jayasinghe Tahnthitrige Sudarshini under the provisions of the Assistance to and Protection of Victims of Crime and Witnesses Act.

The Counsel for the suspect stated that the suspect and six others were produced before the Magistrate of Galle for causing mischief and grievous hurt on 30.5.2022 and had been remanded. But on 4.7.2022 the Magistrate had been informed that action would be considered under the provisions of the above mentioned act as such bail had been refused to the instant suspect.

The grievance of the Counsel for the suspect was that the 2nd respondent reported facts under the instant act in order to keep the suspect in remand and he quoted the example of the petitioner to this application who is the husband of the suspect who had been once produced for the same offence and later released for lack of evidence. This Court also observes that on 27.6.2022 the petitioner and the 2nd and the 5th suspects have been granted bail but it had been cancelled once facts had been reported under the instant act. Therefore, the Counsel for the suspect further said that the provisions of the instant act have been used for the purpose of implicating the wrong person in order to overcome personal grievances. Upon perusing of the case record also we observe that the same submission has been made before the Magistrate as well but the Magistrate has cited the law pertaining to the instant matter and had refused bail.

The Counsel for the respondents vehemently objected to the application and said that, the suspects Counsel by asking for bail before investigation are over and if bail is granted it is **draconian and at** the stage of bail facts of the case should not be considered. She further submitted that in the case of Ramu Thamodarum Pillai

even seven years' imprisonment has not been considered to be excessive to consider bail.

Upon considering the submissions of both parties the law pertaining to the instant matter is that if a suspect is produced before the Magistrate under the provisions of the instant act bail is considered only upon exceptional circumstances **by the Court of Appeal.** But the statute has not defined the term exceptional but in many of the case so far decided it has been held that exceptional circumstances depends on the facts of each case.

The Counsel for the respondents cited the case of Ramu Thamodarum Pilaai but we observe that in the case of Ramu Thamodarum Pillai bail has been considered only after conviction and pending the appeal, then what Court has to consider is whether the appellant would evade Court and not face the sentence if it is affirmed and in such a situation the likelihood of him absconding when bail is granted is higher than in a situation where bail is considered pending the investigations and the indictment and in that light only the length of the sentence has been considered by their Lordships in the case of Ramu Thamodarum Pillai.. Therefore, if as the learned State Counsel stated a suspect is to stay in remand for around seven years pending the indictment and the investigations we consider it to be draconian. Therefore, we are in fact surprised that an officer of the State made such submission. If that is so the enshrinement of the fundamental rights of the people in the Constitution will serve no purpose.

The exceptionality urged by the Counsel for the suspect is that she is being implicated falsely and to avenge the grievance of the complainant.

The purpose of the instant act is to safeguard the rights of the victims and witnesses, but if that is so it is the opinion of this Court that the act should not be used for the purpose of avenging the grievances of any party.

But upon considering the submissions of both parties we observe that the instant act had been quoted by the police before the Magistrate at the time when some suspects had been enlarged on bail and thereafter all suspects had been remanded, and further more although the State Counsel misquoted the law pertaining to the case of Ramu Thamodarum Pillai and very vehemently objected to the application failed to inform Court that the instant matter is being given priority and is being investigated in keeping with the objectives of the act . In fact when it has been brought to the notice of the Attorney General that the police have abused the provisions of the instant act it is the duty of the Attorney General to look in to the matter as the chief law officer of the State.

Therefore, for the reasons stated above this Court is of the opinion that the instant application should be allowed and the suspect in the instant matter should be enlarged on bail.

As such we direct the Magistrate to enlarge the above mentioned suspect on suitable conditions of bail upon the receipt of this Order.

Judge of the Court of Appeal

I agree.

Neil Iddawala J

Judge of the Court of Appeal