

**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 Act No: 04 of 2015 read along with Bail Act No 30 of 1997.

The Officer in Charge

Court of Appeal Case No:  
**CA / BAIL / 073 / 2021**

Police Station

Bentota.

Magistrate's Court of Balapitiya Case  
No: **B 40283**

**Complainant**

Vs.

Hettimadda Vithanage Chaminda  
Susantha of Arachchimulla, Bentota.

**(Presently at Galle remand prison)**

**Suspect**

**AND NOW BETWEEN**

Madawala Madduwage Gnanalatha  
of Arachchimulla,

Bentota.

**Petitioner**

2. The officer in Charge

Police Station

Bentota

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

**Respondent**

Before: Menaka Wijesundera J.

Neil Iddawala J.

Counsel: Thanuka Nandasiri with Susil Wanigapura for the Petitioner.

SC Ridma Kuruvita for the State.

Argued on: 03.11.2022

Decided on: 01. 12..2022

**MENAKA WIJESUNDERA J.**

The instant application has been filed to obtain bail to suspect namely **Hettimadda Vithanage Chaminda Susantha** under the Provisions of the **Assistance to and Protection of Victims of Crime and Witnesses Act, N of 2015.**

The suspect was initially produced before the Magistrate for causing grievance hurt on **K.K. Roshani Madapulli** who had complained against him in May 2021. The Magistrate had enlarged him on bail. But on 31.07.2021 she had further complained that the suspect had threatened her to withdraw the substantive matter. The police had reported the fact to the Magistrate under the above mentioned Act and he had been in remand since 31.07.2021.

The Counsel for the suspect said that as the suspect had been in remand since 31.07.2021 without any case being filed against him that grave prejudice had been caused to the suspect.

The State Counsel appearing for the Respondent objected to the application and stated that the suspect had a pending case of triple murder and submitted that investigations are over in the present matter but, forwarding of indictment has not taken place.

The law pertaining to the instant Act is that bail can be considered under the instant Act only **upon exceptional circumstances by the Court of Appeal**. The term exceptional is not defined in the statute. But this Court has to be mindful of the fact that the instant matter is before trial and not after trial. In many of our cases so far decided our Courts have concluded that exceptionality differs from case to case.

In the instant matter the suspect has been in remand since July 2021 without any judicial proceedings taking place and the date of filling of the indictment is not known there this Court considers that it is only but fair to allow the instant application.

**As such the instant application for bail is allowed and the Magistrate is directed to enlarge the suspect on suitable conditions of bail on receipt of this order.**

**Judge of the Court of Appeal.**

**I agree.**

**Neil Iddawala J.**

**Judge of the Court of Appeal.**