

**IN THE COURT OF APPEAL OF THE DEMOCRATIC SOCIALIST**

**REPUBLIC OF SRI LANKA.**

In the matter of an application for bail under section 10 (1) (a) of the Assistance to and Protection of Victims of Crime and Witnesses Act No: 04 of 2015.

1. The Officer in Charge

Police Station

Court of Appeal Case No:

Payagala.

**CA / BAIL/ 017 / 2022**

**Complainant**

Magistrate's Court of Kalutara

Vs.

Case No: **B 985/2021**

Manjula Nishantha

317 Kirihanthuduwa

Pambe

Payagala

**Suspect**

**AND NOW BETWEEN**

Manjula Nishantha

317 Kirihanthuduwa

Pambe

Payagala

**(Presently at Remand Prison)**

**Suspect Petitioner**

Vs.

1. The Officer in Charge

Police Station

Payagala.

2. Hon Attorney General,

Attorney General's Department,

Colombo 12

Before: Menaka Wijesundera J.

Neil Iddawala J.

Counsel: Yalith Wijesundera for the Petitioner.

Ridma Kuruwita SC for the State.

Argued on: 21.11.2022

Decided on: 14.12.2022

**MENAKA WIJESUNDERA J.**

The instant application has been filed to obtain bail to the suspect namely Manjula Nishantha under the provisions of the **Assistance to and Protection of Victims of crime and Witnesses act.**

The facts pertaining to this matter is that facts have been reported to the Magistrate on 4.7.2021 that the suspect above named had cut and injured one Vasantha Kumara.

Subsequently another B report had been filed to the effect on 27. 8.2021 that the above named suspect had threatened the witness pertaining to the stabbing incident and some police officers, under the provisions of the instant act. The magistrate had remanded the suspect.

The main contention of the Counsel for the suspect is that the act of threatening reported in the B report filed in August is a fabrication to keep the suspect in remand.

But the Counsel appearing for the respondents vehemently objected to the application on the basis that the suspect has one pending case and two other previous convictions and the instant substantive matter had been committed during the period of the suspended jail term.

The law pertaining to the instant matter is that a suspect produced under the instant act can be enlarged on bail only upon exceptional conditions and it has been decided in many cases that the term exceptional differs from case to case and in deciding Court has to rely on the cases so far decided as the statute does not define the term exceptional.

In the instant matter the exceptionality urged is the period in remand on a fabricated complaint.

At this point this Court takes in to account the fact that matters under this act should be given priority in order to achieve the objective of the act. The Counsel for the respondents has objected in view of the suspended term the suspect was serving at the time of the commission of the initial act. But this Court observes that suspended terms should be considered at the time of sentencing and not at the time of bail in the same way as urged by the

State on numerous occasions before this Court that facts of a case should not be gone into at the time of considering a bail application.

Hence as the suspect has been in remand for a period of over one year without any administration of justice taking place against or for him we are of the view that **justice can be done only by enlarging the above named suspect on bail.**

**As such we direct the Magistrate to enlarge the above named 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.**