

IN THE COURT OF APPEAL OF THE DEMOCRATIC SOCIALIST

REPUBLIC OF SRI LANKA

In the matter of an application for
bail in terms of section 10 (1) (a)
of the Assistant to and Protection
of Victims of Crimes and Witness
Act no. 4 of 2015.

Abdul Azees Fathima Rinzan,
366, Ejithuma lane,
Marawa, Athulugama,
Banadaragama.

Court of Appeal Case No:

43/2021

M.C Panadura Case No:

82375

Petitioner

Vs

1. The officer in Charge,

Police Station,

Banadaragama.

2. Hon. Attorney General,

Attorney General's Department,

Colombo 12.

3. Mohommed Subair Mohommed
Nazeer

(Suspect in remand custody at
kalutara Prison)

Respondents

Before – Menaka Wijesundera J.

Neil Iddawala J.

Counsel – Jeffry Zeinudeen for the petitioner.

K. Rajakaruna SC for the State.

Argued On – 11.01.2022

Decided On – 18.01.2022

MENAKA WIJESUNDERA J.

The instant application has been filed to obtain bail **for Mohamed Subair Mohamed Nazeer under the Assistance to and Protection of Victims of Crime and Witnesses Act no 4 of 2015.**

A person by the name of **Mohamed Amir Mohamed Amjad** had made a complaint against the suspect for committing the offence of assault and the same person had complained that the suspect threatened him to withdraw his complaint to police.

Thereafter the police had reported facts to the Magistrate on the same B report for both incidents but with the intervention of the Attorney General the suspect had been charged separately.

The main contention of the petitioner is that the suspect was taken into custody for the instant offence when he was not charged for the substantive offence.

He further says that the suspect had been in remand for more than one year.

The contention of the counsel for the respondents is that the indictment is underway and the petitioner had not cited any exceptional circumstances.

This Court notes that the suspect was initially charged under the same B report for both the offences, but nevertheless it was corrected with the intervention of the Attorney General.

The Counsel for the petitioner further says that the suspect was remanded without an inquiry which is a violation of section 10(3) of the same act.

The offences pertaining to the instant act has been defined under sections 8 and 9 of the same.

As such according to the relevant act, *bail has been discussed under section 10(1)(a) of the act which reads as*

“An offence under cognizable and non bailablesection 8 or 9 shall be unless under exceptional circumstances by the Court of Appeal.”

Therefore under the above section a person who has not already been arrested for an offence if an action is done which becomes an offence under section 8 or 9 of the instant act bail can be considered only under the above section and under exceptional circumstances by this Court.

The section cited by the Counsel for the petitioner is relevant only for suspects already arrested and enlarged on bail, therefore this Court is unable to agree with the above contention of the petitioner. In the instant matter the suspect when arrested for the instant matter had not been arrested and produced for the substantive matter.

The Counsel appearing for the respondents has stated that the indictment is being prepared and would be dispatched very soon.

Hence as the Counsel for the petitioner has not cited any exceptional circumstances this Court sees no reason to allow the instant application for bail.

As such the instant application is hereby dismissed.

Judge of the Court of Appeal.

I agree.

Neil Iddawala J.

Judge of the Court of Appeal.