

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

**REPUBLIC OF SRI LANKA.**

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

The officer in Charge,

Computer Crimes Investigation Unit,

Kandy Police Station,

Kandy.

**Complainant**

Court of Appeal Case No:  
**CA (Bail) 53/21**

Magistrate's Court of Kandy Case  
No: **B 60994 / 2021**

Vs.

Udage Kamkanamge Harsha  
Maduranga Udage,

No 162/3,

Uda Peradeniya,

Peradeniya.

**Suspect**

**AND NOW BETWEEN**

Udage Kamkanamge Harsha  
Maduranga Udage,

No 162/3,

Peradeniya

**Petitioner**

Vs.

1. The Officer in Charge,

Computer Crimes Investigation  
Unit,

Kandy Unit.

**Complainant – Respondent**

2. Hon. Attorney General

Attorney General's Department

Colombo 12.

Before – Menaka Wijesundera J.

Neil Iddawala J.

Counsel – Suren D Perera for the petitioner.

Indika Nelummini SC for the state.

Argued on – 21.03.2022

Decided on – 24.05.2022

**MENAKA WIJESUNDERA J.**

The instant matter has been filed to obtain bail for Udage Kankanamge Harsha Maduranga Udage under the provisions of the Assistance of Victims of Crime and Witnesses Act, No.04 of 2015.

The Suspect had been initially arrested for displaying obscene photographs on WhatsApp of Dewatawaththegedara Teruni Danushka Maduwanthi on 27/01/2021. Thereafter the Magistrate had enlarged the suspect on bail. While the suspect being on bail the said Dewatawaththegedara Teruni Danushka Maduwanthi had made another complaint that she had been threatened by the suspect while she was at the driving school at Pilimathalawa to withdraw

the initial complaint. Thereafter, the police had produced him before the Magistrate on 1/09/2021 under the provisions of Assistance of Victims of Crime and Witnesses Act, No.04 of 2015. The Magistrate had remanded him, he had been on remand ever since.

According to the counsel appearing for the respondents the suspect has been a navy officer and he had abused his office by displaying the photographs of his former girlfriend namely Dewatawathgedara Teruni Danushka Maduwanthi and he has thereafter threatened her to withdraw the complaint, which is a clear violation of the instant act. The counsel further stated that the indictment has been filed and the case is to be called on the 23/03/2022 for the service of the indictment. She further submitted that the complainant being a university student had sustained injuries which are substantiated by a medical report. The complainant's father also had lodged a complaint regarding the incident.

**The objective of the instant Act is set out in Section 2 (a) of the act which reads as “set out, uphold and enforce the rights and entitlements of victims of crime and witnesses and to provide for a mechanism to promote, protect, enforce and exercise such rights and entitlements”**

**Taking into consideration the objects of the Act, this Court notes that if a suspect or an accused is produced or indicted under the instant Act, he or she can be enlarged on bail only by the Court of Appeal on exceptional circumstances. The term exceptional has not been defined in the Act, but in the cases so far decided by the superior courts, the term exceptional has been defined to be decided according to the facts of the case. Therefore, in deciding the term exceptional, it has been decided in the legal history of our country that the discretion given by law must be exercised judiciously not arbitrarily or capriciously.**

**In the case of Queen v Liyanage 65 NLR 289 p 291- 293 Sansoni J has stated that “ In considering an application for bail, a court follows well settled principles which have been laid down from time to time, even if our discretion to grant bail is unfettered it must be still be judiciously exercised..... But it is not to be thought that the granting of bail should be the rule and the refusal of bail should be the exception where non bailable offences of this sort are concerned; bail in such cases granted only in rare instant and for strong special reasons, as for instance where the prosecution case is prima facie weak.”**

**In Ramu Thamotheerampillai v Attorney General (2004) 3 SLR 180 p 190 held that: “where a statute vests discretion in a court it is of course unwise to confine its exercise within narrow limits by rigid and inflexible rules from which a court is never at liberty to depart nor indeed there be found any absolutes or formula which could invariably give an answer to different problems which may be posed in different cases on different facts. The decision must in each case depend on its own peculiar facts and circumstances.”**

In the instant matter the counsel appearing for the suspect has not urged any exceptional grounds before this Court. But, this Court notes that the suspect being a navy officer has threatened and caused hurt to the victim threatening her to withdraw her initial complaint which had been made after he is supposed to have displayed her pictures in a compromising posture on social media.

The Attorney general has taken action to indict the suspect; therefore, there is no delay in the administration of justice against the accused. As the actions of the suspect denotes a clear violation of the very primary objective of the Act and as there is no delay in the administration of justice, this Court sees no exceptional ground to enlarge the suspect on bail. As such the instant application for bail is dismissed.

**Judge of the Court of Appeal.**

**I agree.**

**Neil Iddawala J.**

**Judge of the Court of Appeal.**