

IN THE COURT OF APPEAL OF THE DEMOCRATIC SOCIALIST REPUBLIC OF
SRI LANKA

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.

Court of Appeal Application No:-

CA/BAIL/0035/2021

Magistrate's Court of Marawila

Case No:- B 2532/2019

Officer-in-Charge,
Police Station,
Wennappuwa.

COMPLAINANT

Vs.

R.A. Shanuka Madhushan alias
Olumara

SUSPECT

AND BETWEEN

Warnakulasuriya Weerakonda
Arachchilage Sujali Maleesha
Shiranki Fernando,
No. 03/199,
Kirimatiyana Watta,
Lunuwila.

PETITIONER

Vs.

01. Officer-in-Charge,
Police Station,
Wennappuwa.

COMPLAINANT-1st RESPONDENT

02. The Hon. Attorney General,
Attorney General's Department,
Colombo 12.

02nd RESPONDENT

Before : - **Hon. Justice Menaka Wijesundera**
Hon. Justice Neil Iddawala

Counsel : - Waruna Weerasooriya for the Petitioner.
Indika Nelumini, SC for the Respondents.

Decided on : - 31.08.2022

Hon. Justice Menaka Wijesundera

The instant application has been filed to obtain bail to Suspect namely, R.A. Shanuka Madhushan alias Olumara in terms of Assistance to and Protection of Victims of Crime and Witnesses Act No. 04 of 2015. The Counsel appearing for the Suspect alleges that the Suspect for the instant matter had been in remand for two years and nine months and no indictment, neither any possibility of the indictment being filed is known to the Suspect. He further cited B 2531 where another bail application has been filed regarding this particular Suspect and the Hon. Attorney General has not objected.

The learned State Counsel appearing on behalf of the Hon. Attorney General pleaded that B 2531 has no bearing on this case. But nevertheless, she conceded that the Suspect had been in remand for the instant matter for two years and nine months. She further

submitted to Court that the Suspect has many pending cases and the instant delay was mainly due to a confusion, the investigators has caused between the B 2532 and B 2531.

This Court observes that the instant application has been filed under the provisions of Assistance to and Protection of Victims of Crime and Witnesses Act No. 04 of 2015 under which if the Suspect is produced for an offence under that Act, he or she can be enlarged on bail only on exceptional grounds by the Court of Appeal.

The term exceptional has not been defined in the Act but upon perusing of the decided cases so far it has come to be concluded that exceptionality defers from case to case. In the instant matter, the exceptional circumstances urged by the Counsel for the Suspect is the period in remand.

This Court observes that the instant act has been enacted to safeguard the rights of victims and witnesses. But in the same act, it has been stated that matters filed under this act should be given precedence. That is in order to see that speedy justice is meted out to the Suspects and Accused as well. Therefore, in the instant case we find that the Suspect has been in remand for two years and nine months. The learned State Counsel justifies it by saying that this was mainly due to a confusion caused by the investigators. But this Court observes that the Suspect who has been taken into custody on the presumption of innocence until he is proven guilty should not suffer because of a confusion caused by the investigators. Therefore, as provided by the act, we observe that matters filed under this act should be given precedence over others. But in the instant matter, it has not been so.

As such considering the period of remand as being very exceptional without any action being considered or being filed in a Court of Law the instant application for bail is allowed and the Suspect namely, R.A. Shanuka Madhushan alia Olumara is enlarged on bail on the following conditions:-

01. A cash bail of Rs.100,000/-.
02. Two sureties to the value of 200,000 each.

03. The Suspect to report to the relevant Police Station on every Sunday of the month.
04. The Suspect to hand over his Passport if any, to the relevant Magistrate's Court.
05. The Suspect is severely warned not to interfere with any of the witnesses or the investigations in whatever manner. If it is reported, the instant bail Order would be cancelled.

The Registrar of this Court is directed to convey the instant Order to the Registrar of the relevant Magistrate's Court which is Magistrate's Court of Marawila.

As such, the instant application for bail is allowed.

JUDGE OF THE COURT OF APPEAL

Hon. Justice Neil Iddawala.

I agree.

JUDGE OF THE COURT OF APPEAL

SMR/-