

IN THE COURT OF APPEAL OF THE DEMOCRATIC SOCIALIST

REPUBLIC OF SRI LANKA.

In the matter of an application
for bail under Assistance to and
protection of Victims of Crime
and Witnesses act No 04 of
2015.

Court of Appeal Case No:
CA / BAIL / 33 / 2022

Magistrete's Court of Mulathive
Case No: **B / 467/21**

Officer in Charge
Police Station
Mallavi.

Complainant

Vs.

Mahendrarasa Kabilraj alias
Kaviraj Palinagar,
Vavunikulam.

Accused

AND NOW

Thambirasa Mahendrarasa
Palinagar
Vavunikulum.

Petitioner

Vs.

1. Officer in Charge

Police Station

Mallavi.

Complainant – Respondent

2. Hon. Attorney General

Attorney General's Department

Colombo 12.

Respondent

Before: Menaka Wijesundera J.

Neil Iddawala J.

Counsel: Srinath Perera for the Petitioner.

Ridma Kuruwita, SC for the State.

Argued on: 24.01.2023

Decided on: 02.03.2023

MENAKA WIJESUNDERA J.

The instant application has been filed to obtain bail to suspect namely Maehara's Kabiraj alias Kaviraj under the Provisions of the **Assistance to and Protection of Victims of Crime and Witnesses act.**

The suspect had been produced under the instant act for allegedly threatening a witness in the case of B1747-2020 on 26.3.2021 and as the Magistrate has no jurisdiction to enlarge the suspect on bail he had been remanded.

The suspect has no previous convictions but has one pending case.

The investigations are not yet over and the indictment is also not being prepared.

The main contention of the Counsel for the suspect was the delay in any meaningful action being taken against the suspect.

The Counsel for the Respondents raised one concern for the granting of bail the fact that the suspect had been evading arrest in the substantial matter.

The law pertaining to this matter is that a suspect produced and remanded under this act can be granted bail only upon exceptional circumstances by the Court of Appeal, and the term exceptional has not been defined in the act but our legal literature has held that exceptionality has to be determined by the facts of each case.

As such we observe that the suspect had been in remand now for nearly two years without any meaningful action being taken against him.

As such we are of the opinion that it is only but fare to enlarge the above mentions suspect on bail and we direct the learned Magistrate to enlarge the above mentioned suspect on suitable conditions of bail.

As such the instant application for bail is allowed.

Judge of the Court of Appeal.

I agree.

Neil Iddawala J.

Judge of the Court of Appeal.