

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. 4 of 2015
read along with Bail Act No. 30
of 1997.

Court of Appeal Case No:
CA/ BAIL / 53 /2022

Magistrate's Court of
Anuradhapura Case No:

B 2626/2022

Officer in Charge

Child and Women Bureau

Headquarters Police

Anuradhapura.

Complainant

Vs.

Don Sakya Sri Athalage

21/149, A2, Wijaya Mawatha
Isurupura

Anuradhapura.

(And presently being held at
Anuradhapura Prison)

Suspect

AND NOW BETWEEN

Don Sakya Sri Athalage

21/149, A2, Wijaya Mawatha
Isurupura

Anuradhapura

(And presently being held at
Anuradhapura Prison)

Suspect – Petitioner

Vs.

1. Officer in Charge

Child and Women Bureau

Headquarters Police Station

Anuradhapura.

2. Hon. Attorney General

Attorney General's Department

Colombo 12.

Respondents

Before: Menaka Wijesundera J.

Neil Iddawala J.

Counsel: Migara Doss for the

Petitioner.

Ridma Kuruwita, SC for

the Respondents.

Argued on: 30.01.2023

Decided on: 07.03.2023

MENAKA WIJESUNDERA J.

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

The suspect an Ordinary Level student had been having affair with **Tharushi Dulanjali Rajapakse** who alleges that the suspect had sexually abused her on 27.2.2019. He had been produced before the Magistrate on those charges and the Magistrate had called for a probation officers report which had said that the victim and the suspect had been having a romantic relationship, and the Magistrate taking in to consideration the facts in the said report had enlarged the suspect on bail on 16.7.2021.

But on 19.7.2021 the aggrieved party had filed a motion in Court that the suspect had threatened the victim while leaving the Court premises being released on bail.

But consequently the victim had eloped with the suspect and had been living with the suspect and after the victim returned home action had been filed against the petitioner under the instant act on 11.7.2022 and he had been remanded.

The Counsel for the suspect urged this Court to consider the young age of the suspect and the fact that the instant matter is a fabrication of the victims' parents.

The State Counsel appearing for the respondents objected to the application but relevant Ibe's have not been received by the respondents and any meaningful action had not been taken against the suspect.

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.

The Counsel for the suspect further averred to the document marked as P6 in the brief which is undated which is supposed to be written by the victim in which she had elaborated the romantic relationship she had been having with the suspect and the pressure she had undergone from the parents to stop the affair.

Hence having considered the submissions of both parties we are of the opinion that it is only but faire to allow the instant application for bail.

As such the instant application for bail is allowed and we direct the learned Magistrate to enlarge the above named suspect on suitable conditions of bail.

Judge of the Court of Appeal.

I agree.

Neil Iddawala J.

Judge of the Court of Appeal.