

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 and Witnesses Act No. 04 of 2015 (as amended).

Wickrama Kodippili Patabendige Jayaratne,

Gulugahawatte, Nilwella

Dickwella.

Petitioner

Court of Appeal Case No:

CA /BAL/ 63/22

Magistrate Court of Matara Case

No: **BR /2061/22**

Vs.

1. Officer in Charge

Police Station

Thihagoda.

2. Hon. Attorney General

Attorney General's Department

Colombo 12.

Respondents

3. Yaddehige Saman

Suspect – Respondent

(Currently at Remand Prison)

Before: Menaka Wijesundera J.

Neil Iddawala J.

Counsel: Sharmal Herath with Shabdika Wellappili on the instructions of Wellappili associates for the Petitioner.

Malik Azeez, SC for the 1st and 2nd Respondents.

Argued on: 19.01.2023

Decided on: 21.02.2023

MENAKA WIJESUNDERA J.

The instant application has been filed to obtain bail for the suspect namely Yaddehige Saman under the provisions of the **Assistance to and Protection of Victims and Witnesses act**.

The allegation against the suspect had been made by **Kasun Pushpa kumara** who has made a statement to police on **31.5.2022** stating that when he came to give evidence against the suspect on **5.5.2022** that the suspect while waiting for his case to be called in Magistrates Court of Matara the suspect had told the witness not to give evidence against him. As such the witness had refrained from giving evidence and the learned Magistrate also had made an observation in the case record that the witness is willfully refraining from giving evidence and had moved to remand the witness.

As such the police had reported facts under the instant act against the suspect and has recorded the statement of the above mentioned witness and he had admitted that he was under threat and duress on **5.5.2022** in Court.

The Counsel appearing for the Respondents vehemently objected to the application on the basis that the suspect had put a witness under threat and duress inside the Court premises and the learned Magistrate had observed his reluctance to give evidence in the case record which is a good enough testimony of the conduct of the suspect.

The Counsel for the suspect stated that although the suspect was arrested and produced under the instant act meaningful action is yet to be taken against the suspect by the authorities.

The law pertaining to the instant matter is that if a suspect is to be enlarged on bail under this act he has to show exceptional circumstances to obtain bail by the Court of Appeal.

The term exceptional has not been defined in the act but in the cases so far decided have held that exceptionality of circumstances have to be determined case by case.

But in the instant matter we observe that the complainant who has come to Court to give evidence has been dealt by the suspect inside Court premises which shows scant disregard for the entire Court system. As such if bail is considered for the instant suspect at this juncture, we conclude that it is a mockery of justice and violates the fundamental purpose of the act which is to safeguard the rights of victims and witnesses.

As such the instant application for bail is hereby refused.

Judge of the Court of Appeal.

I agree.

Neil Iddawala J.

Judge of the Court of Appeal.