

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

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

Court of Appeal Case No:
CA / BAIL / 0001 / 22

Magistrete's Court of Pothuvil
Case No: **B 8294/PC/ 21**

The Officer in Charge
Police Station
Pothuvil.

Complainant

Vs.

Sakkariya Mohamed Rizwan
R M Nagar
Pothuvil 27

Suspect

AND NOW

Sakkariya Mohamed Rizwan
R M Nagar
Pothuvil 27

**(Presently in remand Prison in
Batticaloa)**

Suspect – Petitioner

Vs.

1. Officer in Charge

Police Station

Pothuvil

2. Hon. Attorney General

Attorney General's Department

Colombo 12

Respondent

Before: Menaka Wijesundera J.

Neil Iddawala J.

Counsel: E.Thambiah with N. De. Zoysa for the Suspect – Petitioner.

Riayaz Bary, DSG with Indika Nelummini, SC for the State.

Argued on: 14.12.2022

Decided on: 25.01.2023

MENAKA WIJESUNDERA J.

The instant application has been filed to obtain bail to the Suspect-Petitioner namely **Sakkariya Mohamed Rizwam under the Provisions of the Assistance to and Protection of Victims of Crime and Witnesses Act.**

The facts relate to this case are that the Suspect-Petitioner (hereinafter referred to as the Petitioner) had pelted stones at the OIC, Potuwil when the OIC had tried to control a civil commotion in the area. The OIC had sustained injuries to his ear and had been hospitalized in Ampara Hospital. The said substantive matter had been referred to the Attorney General to consider filing of charges. The substantive matter had taken place on 29.09.2018. According to the Respondent the Petitioner has several other pending cases.

The incident pertaining to the instant matter is that while the Petitioner was in the remand cell at the police station he had threatened the OIC with death. Thereafter, the police had reported facts under the instant act.

The Counsel for the Petitioner stated that his client is in remand since 2021 without the substantive matter nor the instant matter being concluded.

The law pertaining to the instant matter is that an accused or a suspect produced under this act, can obtain bail only upon exceptional circumstances from the Court of Appeal. The term exceptional has not been defined in the Statute. But the literal meaning of the term is that something which is out of the ordinary, but as the Statute had not defined what is out of the ordinary, the cases so far decided have

concluded that what is out of the ordinary is something which depends on the facts of each case. Therefore, in the instant matter the exceptional circumstances or rather what is out of the ordinary is the period in remand of the Petitioner without the substantive nor the instant matter reaching a conclusion.

The objective of the instant act is to ensure the rights and the safety of victims and witnesses. But in the instant matter we note that the Petitioner had threatened a police officer on duty which is indicative of the nature of the conduct of the Petitioner. As such, we are of the opinion that this is not a fit case to be considered for bail. As such, the instant application for bail is refused.

Judge of the Court of Appeal

I agree

Neal Iddawala J.

Judge of the Court of Appeal