

IN THE COURT OF APPEAL OF THE DEMOCRATIC SOCIALIST

REPUBLIC OF SRI LANKA.

In the matter of 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
No. 4 of 2015.

Court of Appeal Case No:
CA / BAIL / 54/2022

Magistrate Court of Udugama

Case No: **B/181/2022**

Officer in Charge

Opatha Police Station

Opatha.

Complainant

Vs.

Giguruwa Gamage Hasitha Ishan,
No.21/B, School Lane,
Batuwangala West,
Neluwa.

(Presently in Remand)

Suspect

AND NOW BETWEEN

Giguruwa Gamage Ajith
Priyantha,

No.21/B, School Lane,

Batuwangala West,

Neluwa.

(Father of the Suspect)

Petitioner

Vs.

1. Officer in Charge

Opatha Police Station

Opatha.

Complainant – Respondent

2. Hon. Attorney General

Attorney General's Department

Colombo 12.

Respondent

Before: Menaka Wijesundera J.

Neil Iddawala J.

Counsel: Lakshan Dias for the Petitioner.

Panchali Vitharana, SC for the State.

Argued on: 13.12.2022

Decided on: 25.01.2023

MENAKA WIJESUNDERA J.

The instant application has been filed to obtain bail under the **Assistance to and Protection of Victims and Witnesses act no 4 of 2015.**

The suspect in the instant matter has had an affair with the complainant and they have been engaging in sexual activities and the suspect has videotaped one such incident using his mobile phone.

Thereafter the complainant and the suspect had been in constant touch but in view of the forthcoming Advanced Level examinations the mother of the complainant had advised the complainant to stop the affair until the conclusion of the exam.

The Complainant alleges that the suspect did not want to stop the affair hence he had pestered her to have contact with him but when she had refused the suspect have been angry and had released some of the pictures taken of the complainant and the suspect to some of their common friends.

As such the complainant had lodged a complaint in the police and the police had arrested the suspect for releasing the photos to the friends,

The Magistrate had enlarged the suspect on bail.

But thereafter also the complainant had lodged another complainant stating that the suspect was still harassing her.

Based on the above complaint the suspect had been produced under the instant act and the Magistrate had remanded the suspect on the basis

that the suspect had circulated the photos of the alleged complainant to some of their common friends.

The Counsel appearing for the suspect stated that the suspect had not threatened or harmed the complainant nor a witness in the substantive case and as such the suspect has not committed an offence falling under the provisions of the instant act.

The objective of the instant act is to safeguard the rights of witnesses and victims, and a suspect or accused produced or charged under this act must establish exceptional circumstances to be enlarged on bail by the Court of Appeal.

The exceptionality urged by the Counsel for the suspect is the fact that the suspect has not committed an offence falling under the provisions of the instant act.

But the Counsel for the Respondents vehemently objected and stated that this Court cannot decide whether an offence under the instant act has been committed when granting bail but she instead elaborated very succulently the manner in which the suspect is supposed to have circulated the alleged photos of the suspect and the complainant which we consider are also facts of the case.

Hence, we see no merit in the submission of the Counsel for the Respondents but we observe that the complainant has lodged the second complainant once the suspect has been enlarged on bail for the substantive matter. Hence the motive of the complainant is subject to doubt but nevertheless the exceptionality urged by the Counsel for the

suspect is the fact that the suspect had not threatened the victim nor a witness of the substantive matter.

But although the suspect is of school going age the conduct of the suspect appears to be far more superior to a school boy.

Hence upon consideration of the submissions of both parties it is the opinion of this Court that the instant application for bail should be allowed and the suspect in the instant matter should be enlarged on suitable conditions of bail.

Therefore, we direct the learned Magistrate to enlarge the suspects on suitable conditions of bail.

As such the instant application for bail allowed.

Judge of the Court of Appeal.

I agree.

Neil Iddawala J.

Judge of the Court of Appeal.