

IN THE COURT OF APPEAL OF THE DEMOCRATIC SOCIALIST REPUBLIC OF

SRI LANKA

Officer in Charge,
Police Station,
Kuttigala.

Complainant

V.

Court of Appeal Case No.
CA/BAL 36/2019

Kandambige Chandana,
No.1597/2, Welangahawela,
Padalangala.

Magistrate's Court of
Embilipitiya Case No. BR
1350/2019

Suspect

AND NOW BETWEEN

Kandambige Chandana,
No.1597/2, Welangahawela,
Padalangala.

Suspect-Petitioner

V.

1. Officer in Charge,
Police Station,
Kuttigala.

Complainant- Respondent

2. Hon. Attorney General,
Attorney General's Department,
Colombo 12.

Respondent

BEFORE : **ACHALA WENGAPPULI, J**
K. PRIYANTHA FERNANDO, J

COUNSEL : Dhananjaya Samarasinghe for the Petitioner.
Panchali Witharana SC for the Respondent.

ARGUED ON : 07.09.2020

ORDER ON : 23.09.2020

K. PRIYANTHA FERNANDO, J.

01. The Suspect-Petitioner (Petitioner) had been produced before the Embilipitiya Magistrate with two other suspects on 14.08.2019 by the Officer in Charge of Kuttigala Police station, alleging that they had committed an offence under sections 8(1), 8(2), and 9 of the Assistance to and Protection of Victims of Crime and Witnesses Act (hereinafter referred to as the Act). Taking the facts reported into consideration, the learned Magistrate had remanded the Petitioner.
02. In terms of section 10(1) of the Act, such suspect can be enlarged on bail only by the Court of Appeal under exceptional circumstances. The instant application is preferred in terms of the above provision by the Petitioner seeking bail.
03. As exceptional circumstances, the learned counsel for the Petitioner submitted that the Petitioner had been in remand for nearly 13 months and the Hon. Attorney General had failed to file the indictment. In this regard, learned counsel referred to the decided case of *Dachchaini V. The Attorney General CA PHC 55/2005 (DB) 06.10.2005* and case of *Ediriweera V. Attorney General 2006 1 Sri L.R. 25*.

04. Learned counsel further submitted that the Petitioner is the sole bread winner of his family, including his wife and 3 children.

05. Learned State counsel for the Respondent submitted that the circumstances urged by the Petitioner are common to all suspects in remand and not exceptional. They have received the IB extracts only in June 2020 and the delay was due to the Covid-19 pandemic. The victim of the instant case and the substantive matter has not given evidence yet, and if bail is granted to the Petitioner, the victim would hesitate to testify in Court due to fear of getting assaulted by the Petitioner. It was also submitted that the victim had received several injuries due to the assault by the Petitioner.

06. In the substantive case, it is alleged that the Petitioner Kandambige Chandana with others had stolen 7 bunches of bananas from the victim. On that complaint the Petitioner was produced before the learned Magistrate on 03.08.2019 and was released on bail. On the same day, it is alleged that the Petitioner with the other suspects had assaulted the victim stating that he made the complaint to the police.

07. The objective of the Act is to set out, uphold and enforce the rights and entitlements of victims of crime and witnesses and to provide for a mechanism to promote, protect, enforce and exercise such rights and entitlements, in terms of section 2 of the Act.

08. It is alleged that the assault on the victim was because he made a complaint regarding the theft of bananas. The victim had sustained several injuries. Further, after the complaint of assault was made, it took about 10 days for the police to arrest the Petitioner as he and the other suspects had been evading arrest. The victim is yet to give evidence in the substantive case. It is the bounded duty of Court to protect the victim from any kind of interference or harassment not only until he testifies in Court, but also thereafter. Hence, the circumstances mentioned above would override

the circumstances urged by the Petitioner as exceptional for granting of bail, and thus cannot be taken as exceptional to grant bail.

Application for bail is refused.

JUDGE OF THE COURT OF APPEAL

ACHALA WENGAPPULI, J

I agree.

JUDGE OF THE COURT OF APPEAL