

**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*

The Officer in Charge,
Police Station,
Bandarawela.

Complainant

Vs.

Court of Appeal
Application No : **CA/
BAL/16/21**

Magistrate's Court of
Bandarawela No : **17010**

Weerappan Loganadan,
No. 56,
Craig Estate,
Lower Division,
Bandarawela.

Suspect

And now

Loganadan Diwiyath,
No. 50,
Craig Estate,
Lower Division,
Bandarawela.

Petitioner

Vs.

The Officer in Charge,
Police Station,
Bandarawela.

Complainant – Respondent

The Hon. Attorney General
Attorney General’s Department
Colombo 12.

Respondent

BEFORE : Menaka Wijesundera J
Neil Iddawala J

COUNSEL : S. Munasinghe for the Petitioner
Erandi Dassenaik SC for the Respondents.

Argued on : 21.02.2022

Decided on : 15.03.2022

Iddawala – J

This is an application for bail filed on 22.04.2021 by the son of the suspect in Magistrate Court of Bandarawela Case No 17010 which has been instituted against the said suspect for alleged commission of offences under Section 332, 486 and 490 of the Penal Code read with Section 8(1) of the Assistance to and Protection of Victims of Crime and Witnesses Act, No. 4 of 2015.

The substantive matter in relation to this application concerns a case of public nuisance under Section 98 (1) (b) of the Code of Criminal Procedure Act No 15 of 1979 in Case No 15112 of Magistrate Court of Bandarawela. The said nuisance case was filed against the suspect for operating a pig farm where aggrieved neighbors have complained of health hazards and destruction of cultivations. The suspect was produced on 26.08.2020 and on 22.12.2020 the learned Magistrate ordered the removal of the said farm. Upon being satisfied that the said order is complied with by the

suspect, the learned Magistrate has terminated the Proceedings on 31.03.2021. Hence, the substantive matter has been concluded.

The series of events pertinent to the instant bail application is as follows. On 15.11.2020, one of the neighbours of the suspect lodged (a victim in Case No 15122) a complaint via 119 (police emergency line) alleging that the suspect has threatened his life with a knife. Pursuant to such a complaint, a B Report dated 20.11.2020 was filed under Case No 17010, where it refers to the statement made by such victim. The victim states that he was threatened by a sword-like-knife by the suspect due to the involvement of the victim in Case No 15122 filed against the suspect. The suspect was thus remanded by the learned Magistrate on 20.11.2020 and has been incarcerated to date. As such, the suspect has been in remand custody for over a year.

The basis for such remand was to ensure that the suspect does not interfere with the witnesses of Case No 15122. At the time of such arrest, investigations were still pending in Case No 15122. As previously observed by this Court in **K. D. U. Kumarasiri Alias Pathum v OIC Police Station Matale** CA BAL 35/20 CA Minute dated 11.05.2021, when enacting the Assistance to and Protection of Victims of Crime and Witnesses Act, No. 4 of 2015, “...*the legislators considered the problems faced by the victims and witnesses of crimes, such as threats, harassment, intimidations, retaliations or reprisals and other criminal offences. These are purported to dissuade them from coming forward, complaining to the police, and testifying in courts or as a punishment for complaining and testifying, thus hindering the effective administration of justice.*” (at Page 4 of the Judgment)

However, as stated above, the said Case No 15122, which is the substantive matter of the instant application, has already been concluded and the public nuisance removed. Hence, it is apparent that justice has effectively been administered and that neither the victims nor the witnesses of Case No 15122 are at a risk of being threatened or otherwise

intimidated against proceeding with the case. In such a context, here we have a case where the suspect has been languishing in prison for over a year without an indictment being served for a purported threatening of a witness/victim in a case that has already been concluded. While the State Counsel representing the respondents have assured to this Court that an indictment will be sent out against such threatening, it is clear that the period of incarceration coupled with the fact that the substantive matter has been concluded amounts to exceptional circumstances warranting the grant of a bail. This is in line with the fundamental rights guaranteed under the Constitution of Sri Lanka which stipulates that ‘the arrest, holding in custody, detention or other deprivation of personal liberty of a person, pending investigation or trial, shall not constitute punishment’ (Article 13(4) of the Constitution). For the above reasons this Court directs suspect, namely Weerappan Loganadan, to be released on bail subject to the following bail conditions:

1. Cash Bail of Rs 10,000/-
2. Two sureties to the value of 25,000/- each
3. Suspect to report to Bandarawela Police Station every 2nd and 4th Sunday of every month between 9.00am – 3.00 pm
4. The suspect is severely warned not to interfere with the witnesses of Case No 17010 under any circumstance.

Application allowed.

JUDGE OF THE COURT OF APPEAL

Menaka Wijesundera J.

I agree.

JUDGE OF THE COURT OF APPEAL