

IN THE COURT OF APPEAL OF THE DEMOCRATIC SOCIALIST

REPUBLIC OF SRI LANKA.

In the matter of an Application
for bail in terms of Section 10 of
Assistance to and Protection of
Victims of Crime and Witnesses
Act No 04 of 2015.

Court of Appeal Case No:
CA BAIL 23 / 2022

Magistrate's Court of Ratnapura
Case No: **64762/A**

Officer in Charge,
Police Station,
Nivithigala.

Complainant

Vs.

Angampulige Sumith Chanaka
Priyashantha

Suspect

AND NOW BETWEEN

Ishara Prabhashini Buluwana,
No G /14/C,
Dolegedarawatte, Pathakada,
Nivithigala.

Suspect – Petitioner

Vs.

1. Head Quarters Inspector,
Police Station,
Nivithigala.

Complainant – Respondent

2. Hon.Attorney General,

Attorney General's Department

Colombo 12.

Respondent

Before: Mennaka Wijesundera J.

Neil Iddawala J.

Counsel: Vinsent Shashikalum Perera with M. Dayananda and Sanjaya

Seneviratne for the petitioner.

Panchali Witharana SC for the Respondent.

Argued on: 27.09.2022

Decided on: 05.10.2022

MENAKA WIJESUNDERA J.

The instant matter has been filed under the Provisions of the Assistance to and Protection of Victim and Crime Witness Act No: 04 of 2015 to obtain bail the suspect namely, **Sumith Chanaka Priyashantha**.

The Complainant in the instant matter has lodged a complaint against the suspect for assault on 24. 10 2020 but the suspect had been granted bail on 30.10.2020. The suspect and the complainant are relatives and there had been a longstanding land dispute between the two parties and action under section 66 of the Primary Court act has been instituted and the Magistrate's Court of Rathnapura had delivered the order on 17.8.2021, and subsequently action under section 73 of the Primary Courts Act also has been filed against the suspect.

In the meantime the complainant had lodged a complaint against the suspect for allegedly lighting crackers in front of his house and posing a threat on 23.2.2022, and the police had reported facts under the above mentioned act on 8.3.2022 and the suspect had been remanded. The main contention of the Counsel for the Suspect is that there was a land dispute between the relations and facts have been reported under the abovementioned act but the nature of the complaint does not fall within the ambit of the act.

The State Counsel appearing for the Attorney General vehemently objected to the application and stated that the Suspect had been enlarged on bail by the Magistrate for the offence of assault and thereafter the Suspect had violated the bail conditions and had committed the instant offence.

But what surprises this Court is that if a Suspect violates a bail conditions the most prudent thing the police could have done was to report facts to the Magistrate and taken steps to remand the suspect. But instead the police have reported facts under the abovementioned act and had remanded the suspect. When Court brought this matter to the notice of the state counsel, the counsel conceded. Therefore, this Court observes that in the instant matter, the police had violated the main purpose of the act.

It is very clearly stated in the act that the act has been enacted to safeguard the rights of the victim and witnesses, but in the instant matter by producing the suspect under this act we note that the police had made use of this act in order to remand the Suspect which this Court notes with disapproval. It is further noted with disapproval that the State

condoned this act by the police and made the above submissions. The role of the Attorney General is to be amicus to Court but not to defend the police at all time.

Hence in view of the reasons stated above this Court is of the view that the suspect named in the application should be granted bail on the following conditions,

- 1) A cash bail of Rs 50000/
- 2) Two Sureties to the value of 100000/each
- 3) The suspect to report to the relevant police on every last Sunday of the month,
- 4) The suspect is severely warned not to interfere with the Complainant or the family members, and if it is reported the instant bail order would stand annulled.

As such the instant application for bail is allowed and the Registrar of this Court is hereby directed to convey the instant order to the relevant Magistrates Court.

Judge of the Court of Appeal.

I agree

Neil Iddawala J.

Judge of the Court of Appeal.