IN THE SUPREME COURT OF THE DEMOCRATIC SOCIALIST REPUBLIC OF SRI LANKA

In the matter of an application under and in terms of Article 17 and 126 of the Constitution of the Democratic Socialist Republic of Sri Lanka

SC/FR/37/2020

Madurapperumage Kanchana Priyadarshini
Madurapperuma
Pokunuwita,
Henagama,
Jayanthi Mawatha.
(Presently in remand prison Kalutara)

PETITIONER

Vs.

1. Kelum Sangeeth,
   Sub-Inspector of Police,
   Peliyagoda Special Crimes Operations Unit,
   Paliyagoda.

2. The Secretary of Defence,
   Ministry of Defence,
   Colombo 01.

3. Manjula Silva,
   Inspector of Police,
   Officer-in-Charge,

Police Station Ahangama.

4. Samarasinghe,
   Inspector of Police,
   Special Crimes Investigation Division,
   Western Province (North),
   Paliyagoda.

5. Samanlal,
   Sub Inspector of Police,
   Special Crimes Investigation Division,
   Western Province (North),
   Paliyagoda.

6. Indika
   Special Crimes Investigation Division,
   Western Province (North),
   Paliyagoda

7. Bandara,
   Police Sergeant No. 4866,
   Special Crime Investigation Division,
   Western Province (North),
   Paliyagoda.

8. Ranga,
   Police Constable 76336,
   Special Crime Investigation Division,

Western Province (North),

Paliyagoda

9. Buddika,

   Police Constable 79452,

   Special Crime Investigation Division,

   Western Province (North),

   Paliyagoda.

10. Sanjeewa,

    Police Constable 89807,

    Special Crime Investigation Division,

    Western Province (North),

    Paliyagoda.

11. Jayantha Dahanayake,

    Officer-in-Charge,

    Special Crime Investigation Division,

    Western Province (North),

    Paliyagoda.

12. Waruna Jayasundara,

    Deputy Inspector General of Police,

    Special Crime Investigation Division,

    Western Province (North),

    Paliyagoda.

13. Deshabandu Thennakoon,
Senior Deputy Inspector of Police,
Paliyagoda.

14. C.D. Wickramaratne,
Acting Inspector General of Police,
Police Headquarters,
Colombo 01.

14A. C.D. Wickramaratne,
Inspector General of Police,
Colombo 01.

15. Hon. Attorney-General,
Attorney-General's Department,
Colombo 12.

RESPONDENTS

BEFORE: **S. THURAIRAJA, PC, J.**
A.H.M.D. NAWAZ, J. AND
MAHINDA SAMAYAWARDHENA, J.

COUNSEL: Milindu Sarachchandra with Aruna Madushanka instructed by Darshika Nayomi for Petitioner.

V. Hettige, PC, ASG for the Respondents.

WRITTEN 1st, 2nd, 4th to 15th Respondents on 02nd September 2022

SUBMISSIONS: Petitioner on 29th August 2023 and 28th November 2024

ARGUED ON: 07th November 2024

DECIDED ON: 18th March 2025

THURAIRAJA, PC, J.

1. The instant case is a fundamental rights application relating to the arrest of the Petitioner and the subsequent detention pursuant to two Detention Orders, dated 30th January 2020 under the *Poisons, Opium, and Dangerous Drugs Ordinance, No. 17 of 1929* and dated 06th February 2020 under the *Prevention of Terrorism (Temporary Provisions) Act*. This Court granted leave on Articles 12, 13(1) and 13(2) of the Constitution.

2. The instant application was filed while the Petitioner was in remand custody subsequent to the first Detention Order but prior to the latter taking effect, stating that her fundamental rights are imminently threatened. During the course of these proceedings, the question before this Court changed its colour to a more complex one, with the validity of the latter Detention Oder itself being called into question. For ease of analysis, I have set out below a brief narration of facts.

FACTUAL MATRIX

3. According to the Petitioner, she and her brother, who were arrested on 30th January 2020 by the 3rd to 10th Respondents in the Bandaragama area for possession of Heroin, had subsequently been detained for 7 days at the Special Crime Investigation Division, Western Province (North), Peliyagoda by virtue of a Detention Order issued by the Magistrate's Court of Panadura in terms of Section 82(3) of the *Poisons, Opium and Dangerous Drugs Ordinance*.

4. The Petitioner states that she was interrogated for prolonged periods of time by the 1st and 11th Respondents and that she was threatened with detention under the *Prevention of Terrorism (Temporary Provisions) Act, No. 48 of 1979* (hereinafter sometimes referred to as the '*PTA*') unless she admits the involvement of one Kelum Indika with the allegations levelled against her.

5. The Respondents deny all such accusations and state that they stopped and searched a specific motorcycle pursuant to information and direction received from the 12th Respondent and proceeded to arrest its rider and the passenger, who happened to be the Petitioner's brother and the Petitioner, having found Heroin hidden in their possession. The officers had also recovered, among other things, a set of 3 keys from a wallet found in the Petitioner's possession.

6. Thereafter, the officers had gone on to search a rented house where the Petitioner and her brother made their residence. The Respondents state that Petitioner's sister-in-law was present at the said property and that she was also arrested on the same day for aiding and abetting the trafficking of Heroin.

7. The Respondents further state that they found an almirah in the said house and later discovered the keys found in the Petitioner's possession to be that of the said almirah. They had recovered a large quantity of Heroin, 10 firearms and 19 magazines from this almirah. Thereafter, the officers had informed the arrestees that they were also arrested with respect to the offence of possession of firearms without a license.

8. The journal entries dated 30th January 2020 of the Magistrate's Court Case No. B. 71557/20 indicates that the 11th Respondent has produced the Petitioner before the Panadura Magistrate within 24 hours together with a B-Report, seeking an order from the learned Magistrate to detain the suspects for 7 days for the purpose of further

investigations. Accordingly, the learned Magistrate has issued the aforementioned Detention Order dated 30th January 2020 to detain the Petitioner for 7 days.

9. While the Petitioner was so detained, on 03rd February 2020, the 11th Respondent had requested in writing from the Director of the Range Crime Division Western Province (North) that another detention order be issued against the Petitioner in terms of Section 9(1) of *PTA* for she was suspected of having committed several offences under the *PTA*.[1] This request had then made it way to the Minister of Defence, forwarded by the Director of Range Crime Division Western Province (North) through the Superintendent of the Kelaniya Division and the 12th Respondent.[2]

10. Accordingly, as the previous 7-day Detention Order issued by the Panadura Magistrate elapsed on 06th February, the Minister of Defence had issued the Detention Order dated 06th February 2020 against the Petitioner for 90 days. As it is the validity of this Detention Order the Petitioners have called into question, I shall henceforth refer to the same as the impugned Detention Order.

11. On the same day, when Case No. B. 71557/20 was called before the Panadura Magistrate, the prosecution had reported facts to the learned Magistrate regarding the investigation being carried out seeking the Magistrate to allow the detention of the Petitioner for a further 90 days as provided by the impugned Detention Order.

12. However, as the prosecution could not provide a hard copy to the court, the learned Magistrate had wisely committed the Petitioner to remand custody until 13th February 2020. The instant application was filed by the Petitioner on 12th February 2020, alleging

[1] Document marked 'R4'

[2] Documents marked 'R5', 'R6' and 'R7', respectively

an imminent infringement of her fundamental rights, while she was still in remand custody.

13. Thereafter, when the Petitioner was once again produced before the Magistrate's Court on 13th February 2020 for remand extension, the 11th Respondent had submitted a hardcopy of the impugned Detention Order to court and made submissions seeking an order committing the Petitioner to police custody to be detained at the Range Crime Division Western Province (North).

14. Having postponed the order on two occasions, the learned Magistrate had committed the Petitioner to police custody for 90 days by order dated 12th March 2020.[3] Thereafter, on 24th March 2020, after 12 days of detention under the impugned *PTA* Detention Order, the prosecution had reported facts to the Magistrate.

15. Although the Petitioner was detained only for a short period of time at the Range Crime Division Western Province (North) by virtue of the Detention Order give under the *PTA,* the Petitioner contends her detention to be illegal.

16. Her contention is rather straightforward, yet it requires a nuanced look. In essence, the Petitioner challenges the validity of the detention order, arguing that there was no Minister of Defence at the time of issuing the said detention order under the *PTA*.

LEGALITY OF THE DETENTION ORDER

17. Section 9(1) of the *PTA* (prior to the amendment by Act No. 12 of 2022) provided that,

> *"Where the **Minister** has reason to believe or suspect that any person is connected with or concerned in any unlawful activity, the **Minister** may order that such person be detained for a period not exceeding three months in the first instance, in such*

[3] Journal Entry dated 12th March 2020 of Panadura Magistrate's Court Case No. B. 71557/20

*place and subject to such conditions as may be determined by the **Minister**, and any such order may be extended from time to time for a period not exceeding three months at a time:*

Provided, however, that the aggregate period of such detention shall not exceed a period of eighteen months…"[4]

18. It is very clear that detention orders under Section 9(1) of the *PTA* can only be issued by the Minister—the Minister of Defence to be specific, as the *PTA* was listed under laws and ordinances to be implemented by the Minister of Defence, by then President Gotabaya Rajapaksa, in Gazette Extraordinary No. 2153/12 dated 10th December 2019.[5]

19. The primary question this Court must consider, then, is whether the Petitioner was correct in her assertion that there was no Minister of Defence at the time when the impugned Detention Order was issued.

20. As the Petitioner contended, this Detention Order has, in fact, been signed by then President Gotabaya Rajapaksa in his capacity as the President. The Respondents did not dispute this fact. The Petitioner argued that the very fact that it was signed by Gotabaya Rajapaksa as the President of the Republic instead of the Minister of Defence was a defect in the said Detention Order.

21. I am not inclined to agree with this position. So long as an order, decision or the like is made by a person who has such authority in terms of the law to act in the manner has, it matters not what seal he may or may not use, for such pedantic procedural defects are unlikely to cause serious prejudice.

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[4] Emphasis added

[5] Produced marked 'A' appended to the Written Submissions of the Petitioner dated 29th August 2023

22. The incumbent President, as of the date of this judgment, indeed has the legal authority to make such detention orders as the Minister of Defence may be empowered to make. This is so by virtue of Article 44(3) of the Constitution, as amended by the 20th Amendment, which provides that *"[t]he President shall be the Minister in charge of the subject of Defence…"*.

23. However, the Twentieth Amendment, which was certified on 29th October 2020, was not in effect at the time material to the instant application, viz. 06th February 2020, the date on which the Impugned Detention Order was issued.

24. The amendment which was in effect at this point in time was the Nineteenth Amendment. Article 43 of the Constitution (as amended by the Nineteenth Amendment) provided that,

> *"*
>
> *(1) The President shall, in consultation with the Prime Minister, where he considers such consultation to be necessary, determine the number of Ministers of the Cabinet of Ministers and the Ministries and the assignment of subjects and functions to such Ministers.*
>
> *(2) The President may, on the advice of the Prime Minister, appoint from* ***among Members of Parliament****, Ministers, to be in charge of the Ministries so determined…"*[6]

25. Similarly, Article 44(1) provides for the President to appoint Ministers who are not members of the cabinet, on the advice of the Prime Minister, and that, too, *"from among Members of Parliament"*.

[6] Emphasis added

26. Very clearly, under the Constitution as amended by the Nineteenth Amendment to the Constitution, only a Member of Parliament could be appointed a Minister, be it a Cabinet Minister or not. However, the transitional clauses in the Nineteenth Amendment, which were cited by the Petitioner as well as the Respondents, also warrant consideration.

27. Section 50 of the Nineteenth Amendment to the Constitution states,

> *"During the period* ***commencing on the date on which this Act comes into operation*** *(other than the provisions of section 9, in so far as it relates to paragraph (1) of Article 46 and the provisions of sections 15, 28, 29, 30 and 31) and* ***ending on the date on which the next General Election of the Members of Parliament is concluded****,:-*
>
> (a) *the President may, with the concurrence of the Prime Minister, assign to himself any subject or function and may, with like concurrence, determine the Ministries to be in his charge…"*[7]

28. Section 51 therein states,

> *"Notwithstanding anything to the contrary in the Constitution, the* ***person holding office as President on the date of commencement of this Act****,* ***so long as he holds the Office of President*** *may assign to himself the subjects and functions of Defence, Mahaweli Development and Environment and determine the Ministries to be in his charge for that purpose and accordingly, any reference in any written law to the Minister to whom such subject or function is assigned, shall be read and construed as a reference to the President."*[8]

[7] Emphasis added

[8] Emphasis added

29. Section 50 empowered the then President to determine any ministry to be in his charge with the Prime Minister's concurrence for a period of time starting from the date the Act came into effect until the next general election. The Act, Nineteenth Amendment to the Constitution, was certified on 15th May 2015. A General Election was then held on 17th August 2015. The President at the time was Maithripala Sirisena, the 7th President of Sri Lanka. The term of the 8th President, Gotabaya Rajapaksa, did not begin till 17th November 2019.[9] That is well after the period contemplated in Section 50 of the Nineteenth Amendment to the Constriction Act.

30. Section 51 limits its applicability, very clearly, to the President holding office on the date of the commencement of the Act. As such, only the 7th President, Maithripala Sirisena, could assign to himself—as he did assign to himself—the subject of Defence by virtue of this Section.

31. Clearly, then, neither Section 50 nor Section 51 have any bearing on the instant application and the impugned Detention Order.

32. It is clear from an overall reading of the constitutional provision relating to the assignment of ministries that there were no provisions for the President to assign himself the subject of Defence after the 7th President (during whose tenure the Nineteenth Amendment came into effect) relinquished office—that is until the Twentieth Amendment to the Constitution, which was certified on 29th October 2020, came into effect. Except as provided in Sections 50 and 51, only a Member of Parliament could be appointed a Minister under the Nineteenth Amendment to the Constitution.

33. The Respondents sought to argue that the President had residual power to assume any power under any legislation assigned within the purview of the Ministry of Defence,

[9] See Gazette Extraordinary No. 2150/41 dated 21st November 2019

highlighting purported overlays between the functions of the Minister of Defence and that of the President. The Respondents also highlighted Article 4(b), which states that "*the executive power of the People, **including the defence of Sri Lanka, shall be exercised by the President** of the Republic elected by the People…*".[10]

34. I find this submission unconvincing, for the general reference to 'the defence of Sri Lanka' in Article 4(b) cannot reasonably be read to mean any and all functions of the Minister of Defence. It is but a reference to the President's role as the Head of State and the Commander-in-Chief of the Armed Forces.

35. If such loose references to 'defence' can be read to grant residual power to arbitrarily assume such power and authority given by law to the Minister of Defence, what stops the President from assuming any governmental power as the Head of State, the Head of the Executive and of the Government? This submission of the Respondents is not only unsupported by reason but also democratically precarious.

36. As H.N.J. Perera, C.J. opined in ***Sampanthan and Others v. Attorney-General and Others***,[11]

> *"…it must be remembered that the President, who is the Head of State under the Constitution, is but a creature of the Constitution. His powers are only those which are specifically vested in him by the Constitution and the law. Equally, the exercise of these powers by the President are circumscribed by the provisions of the Constitution and the law…"*

[10] Emphasis added

[11] SC FR Application No. 351/2018, SC Minutes of 13th December 2018, at 37

37. As I noted elsewhere, in ***Women & Media Collective v. Attorney-General and Others (Royal Park Pardon Case)***,[12] *"[i]f ever there was an executive who could do all but 'turn a man into a woman and a woman into a man', those days are long gone."* As a creature of the Constitution, the President is strictly bound by its provisions. His powers are that of the Constitution and its limitations are his own.

38. From the discussion hereinabove, it is apparent that then President Gotabaya Rajapaksa had no authority to act as the Minister of Defence at the time material to this application as the Twentieth Amendment to the Constitution had not yet come into effect.

39. As such, the issuance of the impugned Detention Order dated 06th February 2020 by then President Gotabaya Rajapaksa is *ultra vires* the Constitution and therefore devoid of any legal validity.

ALLEGED VIOLATION OF ARTICLE 13(1) OF THE CONSTITUTION

40. Article 13(1) of the Constitution provides: "*No person shall be arrested except according to procedure established by law. Any person arrested shall be informed of the reason for his arrest.*"

41. The Petitioner made no grievances known with regard to the arrest itself; and, from the facts before us, I see no impropriety in taking the Petitioner into custody. While that may be so, Article 13(1) requires further consideration for the term 'arrest' contemplated therein means more than what it does colloquially.

42. Common is the mistake where Article 13(1) is seen as concerned only with the instance of taking one into custody while misinterpreting Article 13(2) as the only provision concerned with the detention of persons. In truth, Article 13(1) governs both 'arrests' in

[12] SC (F/R) Application No. 446/2019, SC Minutes of 06th June 2024, at para 215

the colloquial sense—i.e. the act of taking one into custody—as well as detention, for the term 'arrest' also contemplates the act of keeping persons contained in a continued state of custody. In this sense, 'arrest' and 'detention' are greatly overlapping terms. That, in my view, is why this Court in its earlier wisdom has thought it unnecessary, and perhaps unwise, to set out a definition for 'arrest',[13] as a narrow and pedantic approach would greatly restrict this Court in adjudicating those cases that fall in the grey areas.

43. As such, while there are no concerns with respect to the arrest in the instant case, insofar as taking the Petitioner into custody, the circumstances surrounding the detention of the Petitioner must be considered with care, especially in the context of my earlier finding on the legality of the Detention Order dated 06th February 2020.

44. The Petitioner was first detained pursuant to the Detention Order issued by the learned Magistrate of Panadura in accordance with Section 82(3) of the *Poisons, Opium, and Dangerous Drugs Ordinances* which provides that,

> *"The Magistrate may, upon a certificate being filed by a police officer not below the rank of Superintendent of Police or in his absence the officer acting on his behalf to the effect that it is necessary to detain such person in custody for the purpose of investigation, make an order permitting the detention of such person in police custody for a period not exceeding seven days."*

45. This first Detention Order is well-founded in law and its reasonableness can hardly be questioned considering the amount of Heroin and the number of firearms found in the Petitioner's possession. However, the impugned Detention Order dated 06th February 2020 being unlawful, the detention of the Petitioner pursuant to the said Detention Order for 12 days from 12th March 2020 to 24th March 2020 becomes *ipso facto* unlawful.

[13] See *Mahinda Rajapaksa v. Kudahetti* [1992] 2 Sri L.R. 223, at 243

46. While this may be so, the Respondents sought to argue in their pre-argument written submissions dated 2nd September 2022 that this Court does not have jurisdiction under Article 126 to hear and determine the instant application as detention of the Petitioner was done pursuant to a judicial order.

Not Executive or Administrative Action?

47. The Respondents highlighted that the learned Magistrate of Panadura made the order dated 12th March 2020 to place the Petitioner in police custody pursuant to the impugned Detention Order after considering detailed submissions from both parties. Accordingly, the Respondents argued any alleged infringement of fundamental rights to be a result of this judicial act which is not amenable to Article 126 jurisdiction.

48. It is true that the learned Magistrate has heard extensive submissions; however, Section 10 of the *PTA* makes it amply clear that a Magistrate exercises no discretion whatsoever where a detention order under Section 9 is produced before him.

49. Section 10 of the *PTA* states that,

> "*An Order made under section 9 shall be final and shall not be called in question in any proceedings or in any court of law, save and except in proceedings under Article 126, 140 or 141 of the Constitution.*"

50. I find the views of Fernando, J. in ***Weerawansa v. Attorney-General and Others***[14] to be pertinent in this regard. His Lordship held with reference to Amerasinghe, J. in ***Farook v. Raymond***:[15]

[14] [2000] 1 Sri L.R. 387, at 419

[15] [1996] 1 Sri L.R. 217

"If an officer appointed to perform judicial functions exercised the discretion vested in him, but did so erroneously, his order would nevertheless be "judicial". However, an order made by such an officer would not be "judicial" if he had not exercised his discretion, for example, if he had abdicated his authority, or had acted mechanically, by simply acceding to or acquiescing in proposals made by the police – of which there was insufficient evidence in that case.

On the other hand, if a judicial officer was required by law to perform some function in respect of which the law itself had deprived him of any discretion, then his act was not judicial."

51. As Fernando, J. has noted, where the discretion of a judge is deprived by a statute, as the *PTA* does with respect to Section 9 orders thereunder, it cannot be said that such detention was sanctioned by a judicial act. The Petitioner was not in judicial custody and it was the executive that had custody of the Petitioner. The detention, therefore, was by 'executive and administrative' action.

ALLEGED VIOLATION OF ARTICLES 13(2) AND 12(1) OF THE CONSTITUTION

52. Article 13(2) provides that *"[e]very Person held in custody, detained or otherwise deprived of personal liberty shall be brought before the judge of the nearest competent court according to procedure established by law and shall not be further held in custody, detained or deprived or personal liberty except upon and in terms of the order of such judge made in accordance with procedure established by law."*[16]

[16] Emphasis added

53. Whether or not there is a violation of Article 13(2) in a given case is a question independent from any potential violations of Article 13(1). The ambit of Article 13(2) is best explained by Amerasinghe J. in ***Channa Pieris v. Attorney-General*:**[17]

> *"…. the fact that Article 13(1) is violated does not necessarily mean that Article 13(2) is therefore violated. Nor does the violation of Article 13(2) necessarily mean that Article 13(1) is violated. Arrest and detention, as a matter of definition, apart from other relevant considerations, are "inextricably linked". However, Article 13(1) and 13(2) have a related but separate existence.* ***Article 13(1) is concerned with the right of a person not to be arrested including the right to be kept arrested except according to procedure established by law and the right to be informed of the reasons for arrest****, whereas* ***Article 13(2) is concerned with the right of a person arrested to be produced before a judge according to procedure established by law and the right not to be further deprived of personal liberty except upon and in terms of the order of such judge made*** *in accordance with procedure established by law. Article 13(1) and 13(2) are no doubt linked: For instance, the procedure under which a person is arrested may determine the period within which a person has to be produced before a judge. Moreover, as we shall see the lack of grounds for arrest or subsequent cessation of reasonable grounds might well be important in deciding whether an obligation arises to produce a person. Article 13(1) and (2) are linked but not inextricably so.*
>
> *The fact that Article 13(1) was not violated does not necessarily mean that Article 13(2) cannot be violated. For instance, a person may be arrested on grounds of reasonable suspicion and given reasons for his arrest. However, if he is not produced before a judge in accordance with a procedure prescribed by law - and that is the*

[17] [1994] 1 Sri LR 1

matter dealt with by Article13(2) - there will be a violation of Article 13(2), although Article 13(1) was not violated."[18]

54. One must look at Sections 36, 37 and 38 of the *Code of Criminal Procedure Act, No. 15 of 1979* (hereinafter '*CCPA*') for the general procedure with regard to detention of a person arrested without a warrant. However, as the arrest of the Petitioner was made under the *Poisons, Opium, and Dangerous Drugs Ordinance*, it is the special procedure set out therein that must be considered.[19] Section 82 of the *Poisons, Opium, and Dangerous Drugs Ordinance* provides,

"

(1) The provisions of sections 36, 37 and 38 of the Code of Criminal Procedure Act, No. 15 of 1979, shall not apply in relation to persons being suspected or accused of contravening any provision of Chapter V of this Ordinance.

(2) A police officer making an arrest without a warrant of any person suspected or accused of committing an offence under Chapter V of this Ordinance, shall without unnecessary delay and within twenty-four hours of his arrest, produce such person before a Magistrate having jurisdiction in the case.

(3) The Magistrate may, upon a certificate being filed by a police officer not below the rank of a Superintendent of Police or in his absence the officer acting on his behalf to the effect that it is necessary to detain such person in custody for the purpose of investigation, make an order permitting the detention of such person in police custody for a period not exceeding seven days.

(4) Upon the conclusion of the investigation or upon the completion of the period of detention, whichever occurs first, such person shall be produced before the

[18] ibid at 98-99 (Emphasis added)

[19] See Section 5 of the *Code of Criminal Procedure Act, No. 15 of 1979*

Magistrate and subject to the provisions of section 83 of this Ordinance the provisions of the Code of Criminal Procedure Act, No. 15 of 1979, shall apply to and in relation to such person."

55. Clearly, the facts before us do not reveal any violation of these procedural requirements. It is amply clear that the Petitioner had been produced before the Magistrate within twenty-four hours. However, the scope of Article 13(2) is not limited to the right of an arrestee/detainee to be brought before the nearest competent court in terms of the legal procedure. The Article also provides that a person so produced before a judge in accordance with the law "…*shall* ***not be further held*** *in custody, detained or deprived or personal liberty* ***except upon and in terms of the order of such judge made in accordance with procedure established by law***."

56. Additionally, as previously noted, what the Petitioner chiefly challenged before this Court was the legality of her detention pursuant to the Detention Order dated 06th February 2020 purportedly issued by the Minister of Defence. As concluded earlier in the judgment the said Detention Order is without a legal basis.

57. Therefore, in view of the aforementioned, I am of the view that the detention of the Petitioner on the strength of an unlawful detention order is a violation of her rights guaranteed under Article 13(2) of the Constitution, as she has been denied of her right not be held in custody, detention or deprived of her persons liberty except upon and in terms of an order of the judge of the nearest competent court in accordance with the procedure established by law.

58. Although the learned Magistrate of Panadura has made an order committing the Petitioner to police custody, that is but a mechanical act—not an exercise of judicial discretion—for the *PTA* affords no discretion to a Magistrate before whom a detention order under Section 9 of the Act is placed.

59. With respect to Article 12(1) of the Constitution, I see no necessity to engage in an exhaustive discussion. It is now trite law that Article 12(1) encompasses a scope that extends well beyond the traditional notions of comparative equality and classification.[20] It has been conceived as the antithesis of arbitrariness.[21] In a consistent line of jurisprudence, this Court has interpreted Article 12(1) to contemplate the protection of the Rule of Law itself.[22]

60. Axiomatically, there is nothing more obnoxious to the Rule of Law than government officials usurping such power not given to them by law. Especially when such persons hold the highest of offices.

CONCLUSION AND ORDERS OF THE COURT

61. As such, I find the issuance of the impugned Detention Order dated 06th February 2020 by then President Gotabaya Rajapaksa and the detention of the Petitioner pursuant to the said Order to have violated the fundamental rights of the Petitioner guaranteed under Articles 13(1), 13(2) and 12(1) of the Constitution.

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[20] *Sampanthan and Others v. Attorney-General and Others,* SC FR Application No. 351/2018, SC Minutes of 13th December 2018, at 86

[21] See *Royappa v. State of Tamil Nadu and Others* [1974] AIR 555, at 583; *Ariyawansa and Others v. The People's Bank and Others* [2006] 2 Sri L.R. 145, at 152; *Balachandra Arachchige Don Nuwan Chathuranga Padmasiri and Others v. C.D. Wickramaratne and Others,* SC/FR/46/2021, SC Minutes of 23rd November 2022, at 36; *M.A. Shamly Mohammed v. Professor Mohan De Silva and Others,* SC Minutes of 25th October 2024, at 15

[22] *Jayanetti v. Land Reform Commission* [1984] 2 Sri L.R. 172; *Shanmugam Sivarajah v. OIC, Terrorist Investigation Division and Others*, SC FR 15/2010, SC Minutes of 27th July 2017; *Wijerathna v. Sri Lanka Ports Authority,* SC FR 256/2017, SC Minutes of 11th December 2020; *Women & Media Collective v. Attorney-General and Others*, SC (F/R) Application No. 446/2019, SC Minutes of 06th June 2024, at para 610

62. In line with this finding, the State is ordered to pay the Petitioner Rs. 100,000/- as compensation.

63. This Court cannot, and does not, make any orders vis-à-vis the former President personally, as he has not been named as a respondent and was not accordingly afforded an opportunity to be heard in this case. I also deem it unreasonable to find fault with any individual officers given the complexity of the questions placed before us.

Application Allowed.

JUDGE OF THE SUPREME COURT

A.H.M.D. NAWAZ, J.

I agree.

JUDGE OF THE SUPREME COURT

MAHINDA SAMAYAWARDHENA, J.

I agree.

JUDGE OF THE SUPREME COURT