

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

The matter of an application under and
in terms of Article 126 read together
with Article 17 of the Constitution of
the Democratic Socialist Republic of Sri
Lanka.

Sansoon Salley Mohamed Azath
No. 61/A, Flower Road,
Colombo 07

SC/FR Application No. 97/2021

Petitioners

Vs.

1. Hon. Attorney-General
Attorney-General's Department,
Colombo 12.
2. C.D. Wickramaratne,
Inspector General of Police,
Police Head Quarters,
Colombo 01.
3. Nishantha de Zoysa,
Senior Superintendent of Police,
Director,
Criminal Investigations Department,
Colombo 01.
- 3A. Rohan Premaratne,
Director,
Criminal Investigations Department,
Colombo 01.
4. Jayantha Payagala,
Chief Inspector of Police,
Special Investigations Unit 1,
Criminal Investigations Department,
Colombo 01.
5. Sarath Weerasekara,
Minister of Public Security,

14th Floor
“Suhurupaya”
Battaramulla.

6. Major General (Retd.) Jagath Alwis,
Secretary,
Ministry of Public Security,
14th Floor
“Suhurupaya”
Battaramulla.

Respondents

Before : **E.A.G.R. Amarasekara, J**
Mahinda Samayawardhena, J
K. Priyantha Fernando, J

Counsel : Faisz Musthapha, PC with Maithri
Gunaratne, PC and Keerthi
Tilakaratne, Bishran Iqbal instructed
by Tharmarajah Tharmaja for the
Petitioner.

Dileepa Peeris, ASG for Respondents.

Argued on : 02.09.2024

Decided on : 12.12.2024

K. PRIYANTHA FERNANDO, J

1. The Petitioner preferred this fundamental rights application alleging that the arrest and detention of the petitioner carried out by the 1st to 6th respondents were arbitrary, unlawful and are in violation of his rights guaranteed under Articles 12(1), 12(2), 13(1), 13(2), 14(1)(a), 14(1)(c) and 14(1)(e) of the Constitution.
2. Leave to proceed was granted on Articles 12(1),13(1) and 13(2) of the Constitution.

The petitioners position

3. The petitioner states that, he is the leader of a recognized political party known as the 'National Unity Alliance'. He states that he voices out issues relating to the Muslim community, regarding ethnic harmony, and reconciliation between communities.
4. On or about 9th March 2021, the petitioner has conducted a press conference. A compact disk containing the entire statement along with the transcript in Sinhala language is produced as [P-2(a)] and [P-2(b)] respectively. The petitioner states that, what he said in his statement was simply that, in respect of personal and religious matters, Muslims in Sri Lanka should be governed by Muslim law.
5. The petitioner states that several media institutions have however misquoted what the petitioner stated at the press conference, to create a misleading impression that the petitioner has attempted to create acts of violence, religious, racial or communal disharmony or feelings of ill will or hostility among different communities or religious groups. Copies of several articles of newspapers have been produced as [P-3].
6. The petitioner states that, the 5th respondent who is the Minister of Public Security has made several false and malicious statements regarding the petitioner at a press conference held on 9th March 2021. A compact disc containing the statements made by the 5th respondent is produced as [P-7]. According to P-7, the 5th respondent has stated among other things that in the event the petitioner wishes to be governed by sharia law, he should go to Saudi Arabia and that the 5th respondent would take steps to arrest the petitioner and interrogate him if the petitioner is of the opinion that Sri Lanka needs sharia law because religious extremism would lead to terrorism. Upon being aware of the false and malicious statements made against him, the petitioner has visited the Cinnamon Gardens police station on 14th March 2021 and informed the officers that if any statement was to be recorded by him or if any inquiry is needed to be conducted, he would be available at his residence. The Officer in Charge of the police station has stated that he would be contacted if necessary.
7. On 16th March 2021, an officer of the Cinnamon Gardens Police Station has phoned the petitioner. Upon asking about his whereabouts the petitioner has informed that he would be at his residence.

8. On the same day, which was the 16th of March 2021, at about 6:30 p.m. when the petitioner was at the Liberty Plaza shopping Centre situated in *Kolpity*, a group of officers identifying themselves as officers of the Criminal Investigation Department (CID) have approached the petitioner. The petitioner states that he was handcuffed, arrested and thereafter detained by the 4th respondent who is the Chief Inspector of Police of the CID. The petitioner also states that, the receipt of arrest bearing No. A394618 [P-4] dated 16th March 2021 has also been issued under the hand of the 4th respondent. The reason for arrest as provided in the receipt of arrest was that the petitioner has committed the offences under section 120 of the Penal Code, section 2(1)(h) of the Prevention of Terrorism Act (Temporary Provisions) Act (PTA) No. 48 of 1979 and section 3(1) of International Covenant on Civil and Political Rights Act No. 56 of 2007. The petitioner also states that he has also not been produced before a Magistrate consequent to the arrest.
9. The petitioner states that, on 17th March 2021, after the petitioner had been arrested, the 5th respondent had once again made certain statements to the media which were calculated and malicious which were made to create a false impression about the petitioner in the eyes of the public. The newspaper article which refers to the statements of the 5th respondent has been produced marked [P-8]. According to P-8, the 5th respondent is said to have stated that, the petitioner has been taken into police custody due to his direct or indirect involvement in the Easter Sunday Attacks and that the petitioner's recent statements about Sharia law and the State's law could ignite extremisms and would lead to terrorism. The 5th respondent is also said to have stated that the petitioner is responsible for the destruction of a Buddha statue in *Mawanella* regarding which, investigations are currently being conducted and that the petitioner is being questioned with regard to the said incidents, and that he has been arrested because he was suspected of having a hand in these acts.
10. Thereafter, on 19th March 2021, a detention order [P-5] had been issued against the petitioner under the hand of His Excellency the President. The reasons provided in the detention order said to be issued in terms of section 9(1) of the PTA were that,

“having connections with extremist terrorist suspects, aiding and abetting of extremist terrorist activities and spoken words intending to cause commission of acts of violence or religious, racial or communal disharmony or feelings of ill-will or hostility between different communities or racial or religious groups and to conduct further

investigations to ascertain this suspect's connection to aiding and abetting of the Easter Sunday Attacks”

11. The petitioner asserts that there is no factual or legal basis for the arbitrary and unlawful arrest and detention of the petitioner. He further asserts that the said detention order is impugned.

The Respondents' position

12. The 3rd respondent (the Director of Criminal Investigations Department) in his objections has admitted that in terms of section 6(1) of the Prevention of Terrorism (Temporary Provisions) Act No. 48 of 1979, he had authorized six officers of the CID to cause the arrest of the petitioner on 16th March 2021. The letter granting authority to investigate has been produced as [3R1]. In his affidavit he further deposed that, at all times he had acted according to the law and in the best interest of the public to ensure security and safety of all including that of the petitioner.
13. The 4th respondent (the Chief Inspector of Police of the Special Investigations Unit1 of the CID) who is one of the officers authorized as per 3R1, in his objections took up the preliminary objection that the petitioner has willfully suppressed material facts and that the petitioner has acted mala fide.
14. It is admitted that the petitioner had been arrested on 16th March 2021 at 06:30 p.m. near Liberty Plaza complex in *Colpetty*. He also admits that a receipt of arrest was issued at the time of arrest.
15. It was deposed that, the Director CID (3rd respondent) has received a written complaint [4R4] from three individuals on 13th March 2021 regarding the statement made by the petitioner at the press conference held on 9th March 2021. The individuals had been *Mohammad Musammil, Nimal Piyathissa* and *Gamini Waleboda* who were members of the Parliament. The complaint stated that, the statements made by the petitioner were intended to instigate hatred and propagate communal violence.
16. Thereafter, the 4th respondent has been instructed by SSP *P. Ampawila* [4R4(A)] to conduct further investigations into the said complaint and to report the progress of the said investigations to the

3rd respondent. After recording statements from the officers of media organizations which broadcasted the said press conference and persons from the public who had watched the broadcast (statements have been produced marked 4R5), the 4th respondent had submitted a report on the progress of the investigations to the 3rd respondent.

17. The 4th respondent further states that, upon being satisfied that the petitioner was reasonably suspected of having committed the offences stipulated in the receipt of arrest, the petitioner has been arrested. Thereafter the petitioner had been kept in the custody of the CID for 72 hours according to section 7(1) of the PTA. Thereafter, a detention order had been obtained as per section 9(1) of the PTA for a further period of 90 days for the purposes of investigation. The petitioner's detention had been further extended for another 90 days on 16.06.2021. Thereafter, the petitioner had been indicted under section 3(1) of the ICCPR Act in the High Court of *Colombo* and the indictment [4R7] was serviced on 25.10.2021.
18. The 4th respondent in his objections also deposed that Investigations had been conducted to ascertain if there is any involvement by the petitioner in the destruction of a Buddha Statue in *Mawanella* which had also been highlighted by the Commission of inquiry to investigate and inquire into the Bomb Attacks on 21st April 2019. The petitioner had been produced before the Chief Magistrate and was remanded by an order of the learned Magistrate on 17th August 2021. A B-report [4R8] bearing No. B. 48514/1/21 was filed in the Chief Magistrate's Court on the said date reporting facts on the investigation in relation to the petitioner's involvement in the destruction of the said Buddha Statue in *Mawanella*.
19. The 4th respondent in his affidavit deposed that, the petitioner has misrepresented the facts in the petition and states that the Commission of inquiry to investigate and inquire into and report or take necessary action on the Bomb Attacks on 21st April 2019 has in fact referred to the petitioner. The relevant pages of the report have been produced marked 4R2 and 4R2(a). However, the entirety of the report is not produced before this Court.

Counter Objections of the Petitioner

20. The petitioner in his counter objections states that, the document produced as 3R1 whereby the 3rd respondent had authorized six

officers of the CID to cause the arrest of the petitioner is not a genuine document and that it appears to have been prepared for the purposes of this case.

21. The petitioner denies the allegations of willful suppression and misrepresentation and state that these allegations are vague and indefinite.
22. Upon the 4th respondent instituting proceedings in the Magistrate's Court by B-report bearing No. B-48514/1/21, the Counsel for the petitioner in that case had made an application to discharge the petitioner under section 120(3) of the Code of Criminal Procedure on the basis that no charge could be maintained upon the reports filed in that case. The learned Magistrate by his order dated 14th September 2021 [A1] observed that the allegations made against the petitioner are frivolous and without cause or substance.
23. The petitioner further states that, the 1st respondent (the Hon. Attorney General) had indicted the petitioner in the High Court of *Colombo* in case bearing No. HC/2778/2021 alleging that he had committed offences under PTA and ICCPR. After trial, the learned Judge of the High Court by his judgment [B1] has acquitted the petitioner from all charges.
24. The two main positions taken up by the petitioner throughout the proceeding of this application was that, the arrest of the petitioner was unreasonable, illegal and unfounded and that the detention order issued was illegal.
25. I will first consider the alleged violation of Articles 13(1) and 13(2) of the Constitution in light of the arrest that was made on 16th March 2021 and the detention order that was made in respect of the petitioner.

Alleged Violation of Article 13(1) of the Constitution.

26. It was the submission of the learned President's Counsel for the petitioner that, the burden of establishing that the arrest and detention were lawful was on the respondents.

27. With regard to the arrest that was carried out, it was the position of the learned President's Counsel for the petitioner that the arrest that was carried out was unreasonable, illegal and unfounded.
28. The learned President's Counsel for the petitioner submitted that, the document 3R1 through which the 3rd respondent had authorized six officers to carry out the arrest of the petitioner is a deficient document as there is no proper delegation in terms of section 6(1) of the PTA. It was his submission that, section 6(1) of the PTA empowers the conferment of the specific power of arrest upon 'a reasonable suspicion', however, the document 3R1 does not refer to any conferment of a power to arrest. It simply says "*to perform all acts specified in this Act in connection with the terrorist activities of the petitioner*". Further, the document 3R1 doesn't specify any particular offence or state that the petitioner is reasonably suspected of having committed any offence.
29. Furthering on the issue of reasonable suspicion, the learned President's Counsel in his written submissions cited the case of ***Sita Gunasekara V. A.T. De Fonseka and 2 others 55 NLR 246*** which dealt with a regulation in similar terms framed under the Public Security Ordinance. The learned President's Counsel submitted that, in *Gunasekara(supra)* it was held that, the person who authorizes such an arrest must as a condition precedent himself, form the opinion that the suspect was reasonably suspected of committing a declared offence. It was submitted by the learned President's Counsel that 3R1 does not indicate that the 3rd respondent had made such an opinion and that neither the 3rd respondent nor the 4th respondent in their objections have disclosed any reasons or material on which they arrived at the reasonable suspicion to arrest the petitioner.
30. The learned Additional Solicitor General (ASG) for the respondents cited the case of ***Weerawansa V. The Attorney General and Others [2000] 1 SLR 387*** where it was stated that, it is well settled law that there has to be a reasonable suspicion of an unlawful activity which arose on the basis of the complaint and it should be in accordance with section 6(1) PTA. His Lordship *Fernando J.* further commented that, not only must the Minister of Defense subjectively have the required belief or suspicion, but there must also be objectively, reason for such belief. It was the submission of the learned ASG that the respondents in this case had followed the relevant provisions of the PTA. The respondents maintain that the comments made by the petitioner at the press conference were vicious.

31. Citing the case of ***Dissanayake V. Superintendent of Mahara Prisons [1991] 2 SLR 249*** the learned ASG for the respondents submitted that, it is well settled that the validity of arrest is determined by applying the objective test. This is the case whether the arrest was carried out under the normal law, under emergency regulations or under PTA.
32. It was submitted by the learned ASG that, on the available material, it is not the duty of the Court to determine if the arrest should have been made or not, but the question for Court is to determine whether there was material for a reasonable officer to cause such arrest. He asserts that in deciding this, the proof of the commission of the offence is not required and that a reasonable suspicion or reasonable complaint of the commission of the offence would suffice. It was submitted that the petitioner was arrested on reasonable grounds based on strong and cogent evidence elicited.
33. It was further submitted by the learned ASG for the respondents that, as mentioned in the B-Report [4R8] the CID has sought the advice of the Attorney General before proceeding to arrest the petitioner. It was submitted that, in such an instance, the Attorney General only determines if there is a prima facie violation of a Penal Provision. Thereafter, it is the discretion of the investigating agency to arrest the offender on the basis of reasonable suspicion. However, at the hearing of this application, the learned ASG submitted that the Attorney General never advised to arrest the petitioner.
34. Article 13(1) of the Constitution reads,

“No person shall be arrested except according to procedure established by law. Any person arrested shall be informed of the reason for his arrest.”
35. It is admitted by all parties that the arrest of the petitioner was carried out on 16th March 2021. The receipt of arrest [P-4] that has been issued under the hand of the 4th respondent sets out that the petitioner has committed the offences under section 120 of the Penal Code, section 2(1)(h) of the Prevention of Terrorism Act and section 3(1) of International Covenant on Civil and Political Rights Act No. 56 of 2007. On perusing the receipt of arrest, it is evident that the petitioner had been arrested in relation to the comments made by the petitioner at the press conference held on 9th March 2021.

36. When addressing the issue as to whether the petitioner has been arrested according to the procedure established by law, it is important to consider section 6(1) of the Prevention of Terrorism (Special Provisions) Act (PTA), as the petitioner had been arrested in terms of the PTA.

37. Section 6(1) of the PTA sets out that,

“Any police officer not below the rank of Superintendent or any other police officer not below the rank of Sub-Inspector authorized in writing by him in that behalf may, without a warrant and with or without assistance and notwithstanding anything in any other law to the contrary

(a) arrest any person ;

(b) enter and search any premises ;

(c) stop and search any individual or any vehicle, vessel, train or aircraft; and

(d) seize any document or thing, connected with or concerned in or reasonably suspected of being connected with or concerned in any unlawful activity.”

38. It is the position of the petitioner that the arrest that was carried out by the 4th respondent was contrary to law and thereby the fundamental rights of the petitioner were violated.

39. It is the allegation of the petitioner that the document 3R1 issued by the 3rd respondent is a deficient document as there is no proper delegation in terms of section 6(1) of the PTA. It is observed that 3R1 does not specify any particular offence the petitioner is reasonably suspected to have committed. As pointed out by the petitioner, the document 3R1 issued by the 3rd respondent states that *“By virtue of powers vested on me in terms of part to in sections 6(1) of the Prevention of Terrorist Act No; 48 of 1979 I do hereby authorize the following officers to perform all acts as specified in this act in connection with terrorist activities of,..”*.

40. The 4th respondent is one of the authorized officers as per 3R1. The 4th respondent admits in his objections that, he had in fact carried out the arrest of the petitioner. It was his position that he was satisfied that the petitioner was reasonably suspected of having committed the offences stipulated in the receipt of arrest. It is also the position of the 4th respondent that he had conducted investigations into the

complaint that was sent, recorded statements from the officers of media organizations which broadcasted the press conference, and had also recorded statements from the public who had watched the broadcast. The 4th respondent states that he had also submitted a report on the progress of the investigation to the 3rd respondent. This particular report however, has not been produced before this Court.

41. When ascertaining as to whether reasonable grounds existed for the arrest to be carried out, it is important to consider the case of ***Sita Gunasekara V. A.T. De Fonseka and 2 others 55 NLR 246***, which was concerning an arrest made under emergency regulations. That case also deals with the issue of ascertaining ‘reasonable grounds for suspecting the commission of an offence’. In *Sita Gunasekara (supra)*, the Superintendent had informed the ASP to carry out the arrest. It was stated that, it was the superintendent and not the ASP himself who suspected that the petitioner had been concerned in an offence under emergency regulations. It was stated that, “...an officer who arrests a person suspected of an offence must himself entertain the suspicion”
42. The facts of the above case are quite distinct to the case at hand. In the above case, the ASP carried out the arrest without conducting any inquiries and seemingly without entertaining suspicion. However, when considering the case at hand, the 4th respondent had recorded statements from the officers of media organizations which broadcasted the press conference, had also recorded statements from the public and had himself carried out the investigations. It is vital to note that, as explained in *Sita Gunasekara(supra)*, the ‘reasonable suspicion’ must be entertained subjectively.
43. However, in the case of ***RTLA Weerawansa V. Attorney General [2000] 1 SLR 387*** which dealt with an arrest and detention made under the PTA, His Lordship *Fernando J.* stated that,

“... not only must the Minister of Defense subjectively have the required belief or suspicion, but there must also be objectively, reason for such belief.”
44. When considering the case of *Weerawansa(supra)* the burden is on the 4th respondent to prove that he had subjectively formed the required suspicion before carrying out the arrest of the petitioner. Additionally, he must also prove that there was objectively reason for such belief.

45. This Court is very well aware that what is to be determined is whether there existed material to entertain a reasonable suspicion that the petitioner was concerned or connected with any unlawful activity at the time of arrest of the petitioner. This Court will only look at the status quo at the time the arrest of the petitioner was made.
46. Accordingly, when considering the transcript of the press conference [P-2(b)] in its entirety, there seems to be nothing to the effect that creates or instigate hatred or propagate communal violence. It is in fact on ethnic harmony rather than to the contrary. A plain reading of the transcript [P-2(b)] does not objectively create ‘a reasonable suspicion’.
47. Statements that were made at the press conference stripped out of its context is not sufficient to create a reasonable suspicion that the petitioner has committed an unlawful activity, or offences under the PTA as stipulated in the receipt of arrest. The 4th respondent in his objections take up the position that he had formed the necessary reasonable suspicion by recording statements from the officers of media organizations which broadcasted the said press conference and persons from the public who had watched the broadcast [4R5]. However, on an objective standard, there seems to be no sufficient material to form a ‘reasonable suspicion’ that the petitioner is connected with or concerned in any unlawful activity. The learned Magistrate in his order dated 14.09.2021 has found that the speech (statement) made by the petitioner in its entirety was to promulgate ethnic harmony and was not to promote ethnic violence. The learned High Court Judge in his judgment dated 02.12.2021 has also concluded that the prosecution has failed to prove that the statement made by the petitioner was to create ethnic or religious disharmony.
48. Further, it is also noted that, in the B-report 4R8, the CID has stated that the arrest of the petitioner was carried out on the advice of the Hon. Attorney General. This position is denied by the learned ASG for the respondents. The CID has clearly included a false assertion in the B-report [4R8] in order to carry out the arrest of the petitioner. This shows malice on the part of the CID.
49. Therefore, neither the 3rd respondent, nor the 4th respondent have satisfied that there was a reasonable suspicion that the petitioner was concerned or connected with any unlawful activity. Further, they have also acted with malice in carrying out the arrest of the petitioner.

50. As the procedure established by law in terms of the PTA has therefore not been followed by the 3rd and the 4th respondents in carrying out the arrest, the fundamental rights guaranteed to the petitioner in terms of Article 13(1) has been violated by the actions of the 3rd and the 4th respondents.
51. When addressing the position of the 5th respondent who is the Minister of Public Security, the petitioner stated that the 5th respondent had made certain statements to the media which were calculated and malicious and made to create a false impression about the petitioner in the eyes of the public.
52. It was submitted by the learned ASG that, the 5th respondent had made a comment responding to the petitioner’s references at the press conference. It was submitted that however, the criminal investigations that were launched against the petitioner were not based on the claims of the 5th respondent, it was based on the statements of the witnesses and other material.
53. In his statement to the media made on 9th March 2021 [P-7], the 5th respondent has clearly stated that the petitioner will be arrested.

“...මෙහෙ ඉදන් ඡරියා නීතිය ගෙන කතා කරන්න බැහැ අපේ රටේ තියනවා එක නීතියක් හිතීන් ඡරිය නීතිය අවශ්‍ය නම් එයාට සෞදි අරාබියට යන්න ඕනෑ මෙහෙ ඉදන් ඡරිය නීතිය අවශ්‍ය කියනවා නම් එය හෙට අනිද්ද වන කොට මම ඇත්ත වශයෙන් එයාව අත්අඩංගුවට අරගෙන ප්‍රශ්න කරනවා...”

Thereafter, on 16th March 2021 the petitioner has been arrested.

54. When perusing the newspaper article which refers to the statements of the 5th respondent [P-8], it is observed that, he is said to have stated that the petitioner has been taken into police custody due to his direct or indirect involvement in the Easter Sunday Attacks. According to P-8, he has also stated that the petitioner’s recent statements about the Sharia law and the State’s law could ignite extremism and would lead to terrorism. Further, he is also said to have stated that the petitioner is responsible for the destruction of a Buddha Statue in *Mawanella*. P-8 further quotes the 5th respondent where he had said, “We are currently conducting investigations and Salley is being questioned. We will be able to see if he is involved in these extremist acts once the investigation is complete. He has presently been arrested because he was suspected of having a hand in these crimes”.

55. According to P-8, the 5th respondent had stated that, the petitioner has been taken into custody due to his involvement in the Easter Sunday Attacks. However, the receipt of arrest does not mention anything in relation to the Easter Sunday Attacks or in relation to the destruction of a Buddha Statue. There is no objection filed by the 5th respondent denying the statements in the documents P-7 and P-8 nor has he denied making such statements.
56. When considering the statements of the 5th respondent in P-7, and the subsequent arrest that was carried out, it is clear that the 5th respondent had caused the arrest of the petitioner. Thereby the fundamental rights guaranteed to the petitioner in terms of Article 13(1) has been violated by the acts of the 5th respondent as well.

Alleged Violation of Article 13(2) of the Constitution.

57. The second position taken up by the learned President's Counsel for the petitioner was that the detention order which was issued in respect of the petitioner was illegal.
58. It was the submission of the learned President's Counsel that, there had been no disclosure of the material upon which the detention order [P-5] had been issued. It was submitted that, the obligation was on the respondents to disclose the reasons for the issuance of the said detention order. In support of his position, the learned President's Counsel cited the case of ***Weerawansa V. Attorney General [2000] 1 SLR 387 at page 403*** where the detention order was said to be invalid as no material justifying a reasonable suspicion of unlawful activity had been placed. It was emphasized that, there must be material placed before His Excellency the President for the exercise of that discretion.
59. The learned President's Counsel submitted further that, the 4th respondent in his objections has only stated that "a detention order was obtained" and no material regarding by whom such order was obtained, or on what material such order was obtained has not been disclosed. Since there has been no material before His Excellency the President, the learned President's Counsel submits that the detention order has been issued mechanically.

60. It is the submission of the learned President's Counsel that, the detention order is unreasonable, unwarranted, and illegal and therefore are in violation of the fundamental rights guaranteed to the petitioner in terms of the Constitution.

61. With regard to obtaining the detention order, it was submitted by the learned ASG in contention that the CID has to justify its necessity by providing evidence available to His Excellency the President. It is submitted that the respondents at all times followed the applicable provisions of law in procedure in respect of the petitioner.

62. Article 13(2) of the Constitution reads,

“Every 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 of personal liberty except upon and in terms of the order of such judge made in accordance with procedure established by law.”

63. Section 7(1) of the PTA states that,

“Any person arrested under subsection (1) of section 6 may be kept in custody for a period not exceeding seventy-two hours and shall, unless a detention order under section 9 has been made in respect of such person, be produced before a Magistrate before the expiry of such period and the Magistrate shall, on an application made in writing in that behalf by a police officer not below the rank of Superintendent, make order that such person be remanded until the conclusion of the trial of such person:

Provided that, where the Attorney-General consents to the release, of such person from custody before the conclusion of the trial, the Magistrate shall release such person from custody”

64. According to Weerawansa(supra),

“A "person arrested under section 6(1)" necessarily means a person arrested because he was "connected with or concerned in or reasonably suspected of being connected with or concerned in any unlawful activity". That phrase does not include a person arrested for other reasons (e. g. under the Customs Ordinance), or for no reason: such persons will continue to enjoy the full

protection of Article 13. A pre-requisite for detention under section 7(1) is a valid and proper arrest under section 6(1): an arrest in conformity with section 6(1), and not one which is contrary to that section, or which is only a pretended or purported arrest under that section. "Under" in this context has the same meaning as "in pursuance of" which was similarly interpreted (in relation to Emergency Regulations 18 and 19) by Amerasinghe, J, in Channa Pieris v. A. G.(1). In other words, while the general rule is that all arrests and consequent detentions are subject to the Constitutional safeguards in Article 13, the exception created by the PTA will apply only where the stipulated pre-condition of an arrest under section 6(1) exists. Those safeguards can never be circumvented by a false assertion or a mere pretence that an arrest was under section 6(1)."

65. Section 9(1) of the PTA sets out 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 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 twelve months."

66. The 3rd and the 4th respondents have failed to submit to this Court that there was sufficient material to justify obtaining of the detention order. Although the respondents assert that, in obtaining the detention order the CID has justified the necessity of the detention order by providing evidence to His Excellency the President, no such material that was relied on in obtaining the detention order, that justifies the detention order has been placed before this Court. As a detention order directly impacts the personal liberty of a citizen, simply stating that the respondents at all times followed the applicable provisions of law in procedure is not sufficient to discharge this responsibility.

67. A detention order that has not been obtained properly is illegal. This would inevitably mean that detaining the petitioner on such an illegal

detention order without being produced before a Magistrate is contrary to Article 13(2) of the Constitution.

68. Therefore, in light of the illegality of the detention order, the fundamental rights guaranteed to the petitioner in terms of Article 13(2) of the Constitution have been violated by the Acts of the 3rd respondent and the 4th respondent as they have failed to place any material before this Court that they submitted before the Minister in obtaining the said detention order.

Alleged violation of Article 12(1) of the Constitution.

69. Article 12(1) of the Constitution provides that,

“All persons are equal before the law and are entitled to the equal protection of the law”

70. In case of ***Ariyawansa and others V. The People’s Bank and others [2006] 2 Sri LR 145 at 152*** *Bandaranayake J.* stated that,

“The concepts of negation of arbitrariness and unreasonableness are embodied in the right to equality as it has been decided that any action or law which is arbitrary or unreasonable violates equality.”

71. Therefore, the arrest made which was not in accordance with the procedure established by law and the unlawful nature of the detention order is violative of the protection afforded to the petitioner in terms of Article 12 (1) of the Constitution.

Declaration and Compensation

72. In the above premise, I declare that the fundamental rights that have been guaranteed to the petitioner in terms of Articles 12(1) and 13(1) has been violated by the 3rd, 4th and 5th respondents. I also declare that the fundamental rights guaranteed to the petitioner in terms of Article 13(2) of the Constitution have been violated by the 3rd and 4th respondents.

73. As per Article 126(4) of the Constitution, the Supreme Court is empowered to grant such relief as it may deem just and equitable in the circumstances in respect of any petition referred to it under Article 126(2). Therefore, in the circumstances of this case, considering the

discomfort and the losses that were suffered by the petitioner due to the arbitrary acts of the 3rd, 4th and 5th respondents, the State is directed to pay a sum of Rs. 75,000 (Seventy-Five-Thousand) to the petitioner.

JUDGE OF THE SUPREME COURT

JUSTICE E.A.G.R. AMARASEKARA

I agree

JUDGE OF THE SUPREME COURT

JUSTICE MAHINDA SAMAYAWARDHENA

I agree

JUDGE OF THE SUPREME COURT