

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

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

Pankumburage Rohitha Anura Kumara,  
Malmeekanda, Bodhiya Asala,  
Opanayaka.

**Petitioner****SC /FR/ Application No 194/2013**

Vs,

1. H. Harisan Hettihewa,  
Inspector of Police,  
Police Station, Boralesgamuwa.
2. Lakshman Alwis,  
Inspector of Police,  
Police Station, Boralesgamuwa.
3. Jinadasa (22085)  
Police Sergeant  
Police Station, Boralesgamuwa.
4. Kariyawasam,  
Inspector of Police,  
Police Station, Opanayaka.
5. Upali,  
Sub-Inspector of Police,  
Police Station, Opanayaka.
6. W.M.M. Wickramasinghe,  
Senior Superintendents of Police,  
Nugegoda Division,  
Police Station, Mirihana.
7. Inspector General of Police,  
Police Headquarters,  
Colombo 01

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

**Respondents**

**Before:** S.E. Wanasundera PC J  
B.P. Aluwihare PC J  
Vijith K. Malalgoda PC J

**Counsel:** Ms. Thushari K. Hirimuthugodage for the Petitioner  
Gamini Hettiarachchi for the 2<sup>nd</sup> Respondent  
Sanjeewa Dissanayake, SSC for the Attorney General

Argued on: 09.02.2018

**Judgment on: 22.05.2018**

**Vijith K. Malalgoda PC J**

Petitioner to the present application namely Pankumburage Rohitha Anura Kumara of Malmeeekanda, Opanayaka had come before this court alleging that his fundamental rights guaranteed under Articles 12 (1), 13 (2), 13 (5) and 14 (1) (h) of the Constitution had been violated by the 1<sup>st</sup> to the 7<sup>th</sup> Respondents. When this matter was supported before the Supreme Court for leave to proceed on 27/07/2013, this court after considering the submissions, had made the following order;

“Having heard submissions of counsel this court grants leave for an alleged violation in terms of Articles 12 (1), 13 (1) and 13 (2)

The Petitioner has indicated to the state that some of the Respondents have not involved in this incident and that she would be satisfied if relief is granted against the 2<sup>nd</sup> Respondent”

In the said circumstances the State Counsel continued to appear only for the Attorney General and the 2<sup>nd</sup> Respondent against whom leave to proceed was granted and relief was claimed, was represented by his counsel.

The Petitioner was a Junior Health Assistant at National Cancer Institute, Maharagama since 2006. On 16<sup>th</sup> March 2013 the Petitioner had quit his job without informing the authorities and left for his village in Opanayaka since he could not face some of his friends from whom he had borrowed monies. In the meantime the Petitioner was served with a letter of interdiction dated 18.04.2013 by Director, National Cancer Institute, Maharagama.

Somewhere around 23<sup>rd</sup> March 2013 the Petitioner had got to know by news, that one Medical Laboratory Technician of National Cancer Institute, Maharagama named Thilaka Nandani Jayasinghe had been murdered on 22.03.2013.

When the Petitioner was at home, on 4<sup>th</sup> May 2013 around 2.30 p.m. the 2<sup>nd</sup> and the 5<sup>th</sup> Respondents whom they identified as officers attached to Boralesgamuwa Police Station, had visited his house and had taken him to Opanayaka Police Station in order to question him in connection with the death of the said Thilaka Nandani Jayasinghe.

The two officers were clad in civil and had come to the Petitioner’s house in a three-wheeler. Petitioner had gone along with the two officers to Opanayaka Police Station, and waited for nearly one hour at the said Police Station to meet the Office-in-Charge (4<sup>th</sup> Respondent) since he was busy with some meetings. Finally the 2<sup>nd</sup> Respondent who met the 4<sup>th</sup> Respondent without the Petitioner, had informed him that he will have to take him to Boralesgamuwa Police Station to record his statement. According to the Petitioner, he was never arrested by the 2<sup>nd</sup> or the 5<sup>th</sup> Respondent at any stage, but he was made aware by them that he will be taken to Boralesgamuwa Police Station in order to record a statement with regard to the death of Thilaka Nandani Jayasinghe.

Since 4<sup>th</sup> night the Petitioner was at Boralesgamuwa Police Station and on the 5<sup>th</sup>, after he was questioned by the 1<sup>st</sup> Respondent the Office-in-Charge, had put him in to the cell around 3.00 a.m.

Two friends of the Petitioner, who visited the Police Station on 6<sup>th</sup> and 7<sup>th</sup> May, had signed a bail bond at the Police Station on 7<sup>th</sup> and the Petitioner too had signed a book on the same day but was never released on bail.

Out of the two friends who visited the Petitioner at Boralesgamuwa Police Station one Dushan Ajith Nilanga had submitted an affidavit confirming the above position and had stated that,

- a) He, along with one Sudeera Udeshika Jayalath Premarathne, had visited the Petitioner at Boralesgamuwa Police Station on 7<sup>th</sup> around 9.30 a.m.
- b) When they met the 2<sup>nd</sup> Respondent, he informed them that he can release the Petitioner on a bail bond.
- c) The said Sudeera Udeshika Jayalath Premarathne stood as the surety and signed a register along with Rohitha (the Petitioner) before a police officer unknown to them.
- d) Even after signing the bail bond the Petitioner was never released and all attempts to meet the 2<sup>nd</sup> Respondent failed thereafter.

As further submitted on behalf of Petitioner, he was finally produced before the Magistrate's Court of Nugegoda on the 10<sup>th</sup> May under the Poisons Opium and Dangerous Drugs Ordinance for allegedly committing an offence under the said Act and he had been taken back to the Police Station to be detained for a further period of 7 days, under the provisions of the said Act. The Petitioner was finally granted bail by the Magistrate Nugegoda on 16.05.2013, when the police filed plaint under section 78 of the Poisons Opium and Dangerous Drugs Ordinance. According to the charge sheet which is produced marked P-1 it was alleged that the Petitioner was in possession of 40 mg of heroin on or about 09.05.2013.

However, as submitted by the Petitioner he was never apprehended by police on 09.05.2013 with a quantity of heroin as alleged in P-1, but he was kept at Boralesgamuwa Police Station from 4<sup>th</sup> night until he was produced before the Magistrate's Court of Nugegoda on 10<sup>th</sup> May 2013.

In the said circumstances the Petitioner had alleged that;

- a) The 2<sup>nd</sup> Respondent had failed to explain the reasons for his arrest on 04.05.2013 when he was first taken to Opanayaka Police Station
- b) He was unlawfully detained at the Boralesgamuwa Police Station for more than 5 days
- c) He was not enlarged on police bail even though a bail bond was signed at the Police Station on 07.05.2013
- d) He was never arrested by the officers attached to the Boralesgamuwa Police Station with a quantity of heroin on 09.05.2013 as alleged in the charge sheet produced marked P-1
- e) The officers of the Boralesgamuwa Police Station had misled the Hon. Magistrate, Nugegoda when they reported the above facts before the Magistrate on 09.05.2013 and obtain an order to detain the suspect for a further period of 7 days under the provisions of the Poisons Opium and Dangerous Drugs Ordinance.

In addition to the above position taken up by the Petitioner, it was further submitted during the argument before this court that, the learned Magistrate Nugegoda had discharged the Petitioner from the case filed against him by the Boralesgamuwa Police referred to above, since the only witness to the said case, the 2<sup>nd</sup> Respondent failed to appear before the Magistrate's Court on several trial dates.

Having considered the material placed before this court on behalf of the Petitioner, as referred to above I will now proceed to consider the position taken up by the Respondents before this court.

As observed above, it was submitted on behalf of the Petitioner that the Petitioner was satisfied if relief is granted only against the 2<sup>nd</sup> Respondent. The learned Senior State Counsel who represented the Attorney General (8<sup>th</sup> Respondent) brought this to the notice of this court and submitted that, in the said circumstances no objections were tendered on behalf of the other Respondents. The 2<sup>nd</sup> Respondent who was represented by his own counsel had tendered objections on behalf of him.

In the said objection tendered before this court the 2<sup>nd</sup> Respondent had taken up the position that;

- a) He was attached to the Boralesgamuwa Police Station as Officer-in-Charge of the crimes branch as at 23.03.2013

- b) Medical Laboratory Technician of the National Cancer Institute, Maharagama named Thilaka Nandani Jayasinghe had been murdered on 23.03.2013
- c) He being the Officer-in-Charge of crimes branch was assisting the investigations into the said offence
- d) He received reliable information, that the petitioner and the deceased had close relationship and during the relevant period, the petitioner had not reported to duty and had left the Cancer Hospital.
- e) On inquiries made, he received information that the petitioner is a resident from Opanayaka, and had left to Opanayaka with PC 79603 on 05.05.2013 in order to arrest the petitioner with the permission he obtained from the Senior Superintendent of Police of his Division
- f) He visited the house of the petitioner at Malmeeekanda, Opanayaka and questioned him with regard to his involvement with the deceased. Since he could not satisfy with the explanation provided by the petitioner, the petitioner was arrested at the said address at 19.30 hours, after explaining the reasons for his arrest i.e. that he was suspected for the death of Thilaka Nandani Jayasinghe
- g) He informed the said arrest to the Officer-in-Charge of the Opanayaka Police Station and thereafter proceeded to Police Station Boralesgamuwa.
- h) After his return on the 6<sup>th</sup> morning he produced the petitioner at the reserve after informing the Officer-in-Charge of his Police Station and the Senior Superintendent of Police of the area
- i) When a suspect is brought to the Police Station, all the responsibilities with regard to release on bail, producing before court, detaining in the police custody and conducting inquiry, is vested with the Officer-in-Charge of the Police Station and therefore the 2<sup>nd</sup> Respondent has no responsibility on those matters, but he was aware of the fact that the petitioner was released on bail
- j) He re-arrested the petitioner on 09.05.2013 at Katuwawala on some information and at the time of his arrest the petitioner was in possession of one packet of heroin. This arrest was made around 18.15 hours. After his arrest he was once again produced at the reserve along with the production taken into custody.

When going through the objections tendered on behalf of the 2<sup>nd</sup> Respondent I observed that there exists a major discrepancy with regard to the date of arrest of the Petitioner. According to the Petitioner, the so called arrest took place on 4<sup>th</sup> May but the notes tendered on behalf of the 2<sup>nd</sup> Respondent including “out” and “in” entry of the 2<sup>nd</sup> Respondent indicate that the arrest took place on 5<sup>th</sup> May 2013 at 19.30 hours and was produced at Boralesgamuwa Police Station at 08.30 hours on 6<sup>th</sup> May 2013.

The only way the accuracy of the above notes can be tested, is by comparing them with the other notes made at Boralesgamuwa Police Station and/or Opanayake Police Station, but with the own application made on behalf of the Petitioner, this court is deprived of ascertaining the correctness of the positions taken up by both parties before this court. In this regard I am mindful of the submissions made by the learned Senior State Counsel and therefore this court is unable to make any conclusions with regard to the date of arrest of the Petitioner.

As observed by this court, the Petitioner’s complaint before this court can be summarized as follows;

- a) That he was not explained the reasons for his arrest on 04.05.2013
- b) That he was detained illegally at Boralesgamuwa Police Station until he was enlarged on bail by the Magistrate, Nugegoda on 16.05.2013
- c) That he was never arrested on 09.05.2013 with a quantity of heroin by the officers attached to Boralesgamuwa Police station at Katuwawala

However the Petitioner has admitted in his pleadings that the 2<sup>nd</sup> Respondent had made him to understand that the Petitioner was taken from his house at Malmeeekanda to Opanayaka Police Station at the very first instance and thereafter from Opanayaka Police Station to Boralesgamuwa Police Station for the purpose of recording a statement with regard to the murder of Thilaka Nandani Jayasinghe. It was further revealed that both the said Thilaka Nandani Jayasinghe and the Petitioner were attached to National Cancer Institute, Maharagama and the Petitioner had kept away from his work place during the time the said murder had taken place and in the said circumstances it is clear that the investigators who investigated into the death of the said deceased, had reasons to suspect the Petitioner’s involvement. In this regard the 2<sup>nd</sup> Respondent

had produced his out entry and therefore it is evident from the material before this court that the 2<sup>nd</sup> Respondent along with PC 79603 had gone to Opanayaka looking for the Petitioner.

The 2<sup>nd</sup> Respondent further admits meeting the Petitioner and questioning him with regard to the death of the deceased Thilaka Nandani Jayasinghe, but he was not satisfied with the answers he received from the Petitioner and therefore decided to arrest him and explained the said reasons for the arrest to him.

When considering all the circumstance referred to above, I see no reason to disbelieve the 2<sup>nd</sup> Respondent on the question of arrest, since there is adequate material placed before this court by the 2<sup>nd</sup> Respondent that there was a reason for the arrest of the Petitioner and in fact the 2<sup>nd</sup> Respondent had left for Malmeeekanda, Opanayaka along with PC 79603 with the permission of the Senior Superintendent of Police of the area for that purpose.

The next issue before this court is to consider the questions of illegal detention of the Petitioner by the 2<sup>nd</sup> Respondent. As alleged by the Petitioner he was detained at Boralesgamuwa Police Station initially until 10<sup>th</sup> May without any court order and subsequently till the 16<sup>th</sup> on a court order obtained by submitting incorrect information. Petitioner admits the 1<sup>st</sup> Respondent the Officer-in-Charge of the Police Station questioning him during this period and obtaining his signature to some forms and his friend signing a bail bond.

As revealed during the argument before this court, investigation, detention and release of a suspect who was produced before a Police Station, is the function of the Officer-in-Charge of the said Police Station and not with the other officers. The Petitioner had further submitted that the 2<sup>nd</sup> Respondent spoke to his friend when he came to the Police Station prior to signing the bail bond. The affidavit submitted by Dushan Ajith Nilanga confirms the fact that the Petitioner was kept in custody, even though a bail bond was signed on behalf of the Petitioner by Sudeera Udeshika Jayalath Premarathne on 7<sup>th</sup> May 2013. According to Nilanga all efforts to meet the 2<sup>nd</sup> Respondent thereafter failed until the Petitioner was produced before court. The 2<sup>nd</sup> Respondent in his objection admits his knowledge with regard to releasing the Petitioner on bail, but had taken up the position that he has nothing to do with the detention and/or release of the Petitioner. He only submits documentary proof of the re-arrest of the Petitioner.

Due to the own decision of the Petitioner not to proceed against any other Respondents, this court is deprived of the most important material which needs to consider,

- a) Whether the Petitioner was detained illegally at Boralesgamuwa Police Station from 05.05.2013 to 16.05.2013
- b) Whether the Petitioner was in fact enlarged on bail prior to his arrest on 09.05.2013.

The 2<sup>nd</sup> Respondent, who admits the re-arrest of the Petitioner on 09.05.2013, had submitted his notes of arrest and the notes pertaining to the production of the suspect and the productions at the reserve but has failed to submit any document with regard to the release of the suspect prior to 09.05.2013.

During the argument before this court, our attention was drawn to the fact that the so called initial arrest was with regard to an ongoing investigation in to an unsolved murder, and in the said circumstances it was unlikely that a person who was suspected of that offence could enlarge on police bail during the investigation and therefore the court should reject the fact when it was submitted that the Petitioner was re-arrested by the 2<sup>nd</sup> Respondent on 09.05.2013 with a quantity of heroin. The above position taken up by the Petitioner is further strengthen from the fact that the Petitioner was subsequently discharged from the Magistrate's Court proceedings filed against him for possessions of 40 mg of heroin for non-prosecution of the case due to the repeated absence of the material witness namely the 2<sup>nd</sup> Respondent.

As observed earlier I am not inclined to conclude that the initial arrest of the Petitioner by the 2<sup>nd</sup> Respondent is illegal but, the legality of the subsequent detention after he was produced at the Boralesgamuwa Police Station on 06.05.2013 at 08.30 hours as documented before this court is in doubt.

In this regard the 2<sup>nd</sup> Respondent had failed to submit any material to establish that the Petitioner was enlarged on police bail prior to 09.05.2013. As this court has already observed, the material the 2<sup>nd</sup> Respondent had furnished with regard to the re-arrest on 09.05.2013 is doubtful and I am not inclined to act upon the notes tendered on behalf of the 2<sup>nd</sup> Respondent with regard to the above arrest.

Due to the own decision of the Petitioner not to proceed against the Respondents other than the 2<sup>nd</sup> Respondent, some of the important material with regard to the detention of the Petitioner and those who were Responsible for violations of the Petitioner's fundamental rights are not before this court.

However as concluded in the case of *Sri Thaminda, Dharshane and Mahalekam V. Inspector General of Police 2007 ii SLR at 294* by Saleem Marsoof J that,

“Despite the failure on the part of the Petitioner to identify those who violate the fundamental rights, they are entitled to a declaration that their fundamental rights have been violated by executive and administrative action.”

Even though 2<sup>nd</sup> Respondent had taken up the position that, he being the officer in charge of the crimes division, he is not responsible for the investigation, detentions, discharge and/or enlarging bail, his subsequent conduct, clearly revealed his involvement with regard to the detention of the Petitioner.

In the said circumstances I declare that the fundamental rights of the Petitioner guaranteed under Articles 12 (1), and 13 (2) of the Constitution had been violated by the 2<sup>nd</sup> Respondent and several other Respondents who were not identified in these proceedings.

I further make order directing the 2<sup>nd</sup> Respondent to pay Rs. 50,000/- and state to pay Rs. 100,000/- as compensation to the Petitioner. The state is further directed to pay Rs. 50,000/- as cost for this case.

Judge of the Supreme Court

**S.E. Wanasundera PC J**

I agree,

Judge of the Supreme Court

**B.P. Aluwihare PC J**

I agree,

Judge of the Supreme Court