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

S.C (FR)Application No. 108/2010

Kelum Dharshana Kumarasinghe
Attorney at Law
No. 38, Bodhirukarama Lane
Galborella, Kelaniya.

PETITIONER

FOR & ON BEHALF OF

1. L.M.R. Pushpasiri,
   C/o, Swarna Saloon,
   Mapitigama, Alawwa.

2. S. D. G. Dharmasiri
   201/02, Dissage Watta,
   Suriyagama, Kadawatha.

3. J. K. Rathnasiri Mahamagahena
   Karaputugala, Kamburupitiya.

4. D.M.R. Banda
   105/01A, Gala Junction
   Kiribathgoda.

5. G. W. Jayarathna,
   Sooriyapaluwa,
   Kadwatha,

6. P. D.A. Rohan,
42/1, Wihara Mawatha,
Naligama, Ragama.

7. R. M. Ariyarathna,
Yapahuwa Junction
Mahawa.

8. H.A.S. Geethadeva,
413, Maligathenna,
Weyangoda.

9. P.H. Wasantha
Batadoowa, Batapola,
Meetiyagoda.

10. G.M.A. Bandara
11, Roswatta, Polgahawela.

11. M.G. Donald,
126A, Giyagala Watta,
Garuwalgoda West,
Agalugaya, Habaraduwa.

12. H.P.D.S. Pathirana
189/2, Dewahera,
Nittambuwa.

13. H. D. Reshan,
Randolawatta, Mitiyagoda.

DETAINEES

Detained at the Criminal Investigations Department

Vs.

1. S. Hettiarachchi
   Additional Secretary
   Ministry of Defence, Public Security,
   Law and Peace, Colombo 3.

2. Mahinda Balasooriya
   Sri Lanka Police Department
   Police Headquarters, Colombo 1.

3. Nandana Munasinghe
   Deputy Inspector General of Police
   Criminal Investigations Department
   Secretariat Building, Colombo 1.

4. Vass Gunawardena,
   Senior Superintendent of Police
   S.S.P Office, Kurunegala Police Station
   Kurunegala.

5. Withana,
   Inspector of Police,
   Police Station, Gokarella,
   Kurunegala.

6. I.P., C.D.I. Paranagama,
   Inspector of Police
   O.I.C., Special Investigations 1,
   Criminal Investigations Department,
   Colombo 1.

7. Prasanna Wickramasooriya,
   Chairman,
   Airport Aviation,
   Sri Lanka Airport, Katunayake.

8. S.I. Jayawardena
Police Station, Kurunegala.

9. Hon. Attorney General
Attorney General's Department,
Colombo 1.

RESPONDENTS

BEFORE: Chandra Ekanayake J.

P. B. Aluwihare P.C., J. &

Anil Gooneratne J.

COUNSEL: Upul Jayasuriya with

Sandumal Rajapakshe and

Erandi Jayasuriya for Petitioners

Asad Navavi S.S.C. for the Respondents except the 7th Respondent

The 7th Respondent is absent and unrepresented

ARGUED: 26.05.2015

DECIDED ON: 28.07.2015

GOONERATNE J.

Petitioner to this Fundamental Rights Application, has filed this application against the Respondents as per Article 126(2) of the Constitution on behalf of 13 detainees who were detained at the relevant period and time at the Criminal Investigations Department. On 30.09.2010 this court granted leave to proceed for alleged violations of Articles 12(1), 12(2), 13(1) and 13(2) of the Constitution. It is averred in the petition that the detainees are all persons who served the Sri Lanka Army as non-ranking officers. It is stated in the petition that the said detainees have never been convicted of any offence previously. It is also pleaded that the detainees in question are held against their will at the C.I.D along with scores of other detainees who were engaged in the propaganda campaign supporting former Army Commander, General Fonseka, at the Elections held and concluded on 26.1.2010.

The second para of the petition describes the violations for which each of the Respondents are held liable by the Petitioner. The allegations are

more particularly leveled against the 1st, 4th, 7th and 8th Respondents, which could be stated as follows.

(a) 1st Respondent for issuing detention orders in violation of the rights of the detainees.

(b) 4th Respondent influenced other Respondents to fabricate false charges along with the 7th Respondent.

(c) 7th Respondent initiated the abduction of detainees, without having any power to do so.

(d) 8th Respondent was responsible for detention of detainees.

It is pleaded that no reasons whatsoever had been adduced to the 1st to 13th detainees for their arrest and detention at the point of arrest and detention or thereafter by the Respondents concerned. It is the case of the Petitioner as presented on behalf of the detainees that all of them commenced a journey to go to Anuradhapura on a pilgrimage to dedicate a vow at the sacred Bo Tree at Anuradhapura to invoke blessings of the Triple Gem for the victory of the Presidential Candidate, General Sarath Fonseka. The team of the pilgrimage party consisted of the above detainees and 7 other civilians. During the course of the journey they had stopped the bus in which all of them were travelling, and at Gokarella to have tea. Whilst having tea the 7th Respondent along with some

thugs surrounded them and abducted the 1st to 13th detainees as described in the petition. It is stated that the 7th Respondent at that point of time contacted the 4th Respondent over the mobile phone. Thereafter all of the detainees and the civilians were taken to the Gokarella Police Station. It is the position of the Petitioner that when the detainees were taken to the police station all of them were unarmed. It is also stated that there was no reason to have them arrested. The reason for arrest not notified.

In the petition filed of record the following matters, inter alia are pleaded and learned counsel for the petitioner drew the attention of this court to same.

> After they were arrested by the Gokarella police at about 1.30 p.m the detainees have been transported to the police station of Kurunegala and subsequently statements were recorded. Thereafter they were further questioned by the police and handed over to the CID.

> The Petitioner states that during the time when statements recorded from the 1st to 13th Detainees following transpired;

(a) 1st to 13th detainees were assaulted by the said Vas Gunawardana (4th Respondent) at the Gokarella Police station.

(b) 1st detainee was taken away by aforesaid Vas Gunawardana and forced him to give a statement against the Presidential Candidate Sarath Fonseka stating that aforesaid Sarath Fonseka has sent them to kill the President and has guaranteed the safety of the 1st detainee if he is willing to do so.

(c) When the 1st detainee refused to do so he was again assaulted by the aforesaid SSP Vas Gunawardena.

(d) On the way to Kurunegala from the police station of Gokarella they were treated badly and were put under the seats of the carriage with a barrage of filthy words at the behest of SSP Vas Gunawardana.

It is also disclosed in the petition filed of record that the detainees were produced before the learned Magistrate of Kurunegala on 26.01.2009 at about 8.00 p.m. A 'B' report bearing No. B 347/2010 is also mentioned on producing the detainees before the learned Magistrate, who had remanded the detainees until 05.02.2010 (vide P2/P3). It is pleaded that investigations were in progress to ascertain whether they were engaged in offences under Section 140 and 113(b) of the Penal Code, and also to check whether they were Army deserters. It is pleaded by the Petitioner that the 'B' report does not divulge any offence and the detainees were kept as detainees only for the purpose to ascertain whether they were Army deserters.

On or about 28.01.2010 a motion was filed in the Magistrate's Court to obtain bail, but the learned Magistrate made order on 03.02.2010 refusing bail. Subsequently it is pleaded in the petition that the case had been called again on 05.02.2010 and a further 'B' report was filed by the CID alleging that investigations are pending and the detainees and others are being investigated as to whether the detainees were engaged in a conspiracy against the Government and detention orders were issued on the detainees. Proceedings in the Magistrate Court are submitted marked P4 to P7. On 08.02.2010 when the matter was taken up before the Magistrate the CID produced detention orders marked P8 to P21 inclusive of the 'B' report.

The Respondent's position could be gathered from the pleadings of the 4th & 6th Respondents and the application for the detention order submitted to this court by motion dated 14.10.2010. I would refer to the main points urged by the Respondents as follows:

(1) In the affidavit of the 6th Respondent it is stated inter alia that the 1st to 13th detainees are no longer held in detention as they were discharged by court on 22.02.2010.

(2) The 6th Respondent further states that on 25.01.2010 the day before the Presidential Election, the Gokarella Police arrested 1 – 13th detainees and 7 other civilians in a place called 'Kiriwavula located in the Gokarella Police area, as the detainees and the civilians could not give a plausible explanation as to the reason to be gathered in that place. As such the police for security reasons had to ensure that the above detainees and others were gathered not for any sinister motive and they were handed over to the CID.

(3) Detainees were produced before the learned Magistrate on 26.01.2010 and ordered the detainees to be remanded till 05.02.2010.

(4) Investigations were conducted to ascertain as to why the detainees were gathered in the Gokarella area and also to find out whether the detainees were Army deserters.

(5) 6th Respondent on 05.02.2010 requested the learned Magistrate to hand over the detainees to the CID.

(6) Investigations were conducted expeditiously and as there were no incriminatory material could be found the detainees were produced before the Magistrate's Court on 22.02.2010 and accordingly discharged. It is pleaded that the detainees could have been held under detention till 09.06.2010. However the CID expeditiously concluded investigations within 14 days.

(7) The 4th Respondent in his affidavit inter alia state that the persons who were arrested were duly informed of the reason for arrest. The 4th Respondent's affidavit disclose the following. The 4th Respondent states:

(8) (a) On 25th January 2010 (ie the day before the Presidential Election) around 17.40 p.m. I was informed by DIG Anura Senanayake who was in charge of election related matters within the North Western Province that a group of persons who had arrived in a bus at Kiriwawula in the Gokarella Police area were behaving in a suspicious manner and directed me to ascertain why this group had gathered at this location.

(b) In pursuant to this information I directed the 5th respondent who was the officer in charge of Gokarella Police Station to go to the said location and ascertain the reason for the arrival of this group of persons. Accordingly the 5th respondent went to the place where these persons were gathered and questioned them as to what had brought them to Gokarella. This group had comprised of 13 ex-army personnel and 7 civilian. When being questioned these men had given contradictory answers which had given rise to further suspicion about their arrival in the Gokarella area. Because of their unconvincing response to the police questioning and because this was the Presidential Election period these persons were arrested and taken to the Gokarella Police Station to conduct further inquiries. At

this time there was no conclusive proof that the ex-army personnel were army deserters.

(c) I was informed of this move by the 5th Respondent and consequently I went to the Gokarella Police Station. Statements of the arrested persons were recorded by the Police and these persons were handed over to the Criminal Investigations Department for further investigations on this day itself.

The 4th Respondent denies that he used any force or assaulted any one of the detainees.

The above would be the version of both parties to this application. However I would proceed to give my mind to the factual position initially which led to the arrest of the detainees. The 6th Respondent in his affidavit state that the detainees were arrested as they could not give a plausible explanation as to what brought them to the place they were gathered. The 4th Respondent in his affidavit takes up the position that he directed the 5th Respondent, Inspector of Police Gokarella, to go to the place where the detainees and civilians were gathered and find out the reason for their arrival at that place. The 4th Respondent also state that when being questioned contradictory answers given

by the detainees give rise to further suspicion about their arrival at Gokarella. It is also stated by the 4th Respondent that there was no conclusive proof that the detainees were Army deserters. The 5th Respondent's notes are produced marked 4R1.

Perusal of 4R1, I find that 12 persons whose statements were recorded and arrested had categorically stated that they are on their way to 'Anuradhapura'. Another person has stated that they are on a pilgrimage. (no reference to destination) .

Another had stated that he is on tour to Jaffna and Killinochchi. Two others have stated that they are proceeding to Polonnaruwa. Having given each persons' destination, many have stated that they are proceeding to Arnuradhapura to devote a vow. It is observed that a few have stated that the purpose of the visit to Anuradhapura is to bestow blessings on General Fonseka who was the Presidential Candidate. What is 'contradictory', from a reasonable mans point of view, having perused the entirely of '4R1' is rather doubtful. Majority of the detainees named in 4R1 does not given any contradictory views on destination, nor have they been reluctant to express their purpose of travel. There is no identifiable fault that could be gathered from the statements of each

one of them as far as the destination, direction of travel and the purpose of travel. Even to get to Jaffna and Killinochchi, or Polonnaruwa the route has to be the same route. There is nothing extraordinary in such a position, or as to how such a journey becomes so suspicious. Further the bus driver himself confirm the destination as 'Anuradhpura'. The detainees and the civilians in that group as described by the Petitioner was in a group supportive of a propaganda campaign. What is wrong in them gathering at a point to have tea? It is quite normal. Detainees being present at the place and the contents in 4R1 cannot give rise to any suspicion, as 4R1 gives plausible explanation, of travel and purpose. This would fortify the position of the detainees that arresting them was illegal.

To look at the entirety of 4R1 to be fabricated statements, still I find it difficult to accept that the author of 4R1 (if fabricated) did so to demonstrate a contradictory position? What could be gathered from 4R1, has to be any normal persons reaction to questioning by the police. To support a candidate at a general or Presidential Election is each person's wish and choice, the way he or she wants to support. There is absolutely no illegality that could be inferred from the contents of 4R1, which statements were recorded from the detainees. Further it is common ground to expect our local people to be gathered as a group prior to

an election. (the group which consists of 20) It is unfortunate that both 4th & 6th Respondents thought it fit to swear an affidavit of this nature, lacking in cogent reasons regarding arrest, and for both of them to express a view of a 'contradictory' position, without an acceptable basis, before the Supreme Court.

In order to demonstrate the required illegality the Petitioner alleges fabrication of false charges without any basis and stress that there were no reasons adduced by the Respondents to arrest and detain, the detainees. It was also contended by learned counsel for the Petitioner that the detainees were never informed of the reasons for their arrest. In the affidavit of the 4th Respondent it stated that the detainees were informed of the reason for arrest. The 4th Respondent in his affidavit more particularly para 8(b) states inter alia that because of their (detainees) unconvincing response to the police questioning and it was the Presidential Election period, detainees were arrested and taken to the Gokarella police to conduct further inquiries.

The only document produced by the Respondent was document marked 4R1 and pg. 1 of 4R1 gives the date 25.01.2010. time 2000. It is recorded that the suspects and the bus bearing No. 63 - 1234 taken into custody by the

police officer of the rank described therein. Other than the statements recorded as stated above of the several detainees and 7 other persons there is no indication whatsoever in 4R1 that the detainees were informed of the reason to arrest. 4R1 refer to 4th Respondent's role in this entire episode and the directions given by the above stated Deputy Inspector General of police. All that could be gathered from 4R1 seems to be to collect information at any cost to implicate the detainees, which is a very remote possibility of an offence to be committed in anticipation, and nothing else. The purported arrest seems, to be highly questionable as it is very doubtful whether such arrest was according to procedure established by law. Even if deprivation of personal liberty is in certain circumstances permissible, what is projected in 4R1 in reality seems to be arbitrariness.

The law enforcement officers had in mind a possible coup to overthrow the Government by unlawful means, and therefore directions were given to apprehend the detainees by a higher officer of the police to find out whether they were also Army deserters. The application for a detention order submitted to court by motion dated 14.10.2010 and the detention order itself

bear testimony to this fact. However Respondents although made a serious effort to implicate the detainees, could not succeed in their attempt. As such as pleaded by the Respondents since no incriminatory material came up against the detainees they were produced before court and were discharged on 22.2.2010. Before I proceed further I would wish to refer to a case of an extra judicial arrest.

> In Pelawattage (AAL) for Piyasens v O.I.C Wadduwa and other, the arrest of the petitioner merely because he was unable to explain his presence near a certain hotel at Kurunegala was held to be violative of Article 13. The man was 'wanted' in connection with offences committed in earlier years elsewhere. Kulatunga, J. said "If Piyasena was a wanted man in respect of offences committed in 1990 and 1992, and the 2nd respondent had information that Piyasena was at Kurunegala, there was nothing to prevent the 2nd respondent obtaining a warrant for his arrest. To permit extra-judicial arrests would be detrimental to liberty. Interested parties can get involved in such exercises. It would also encourage torture in the secrecy of illegal detention. We cannot encourage illegality to help the police to apprehend criminals. The end does not justify the means." (S.C Application 494/93 & S.C minutes of 22.3.1995)

I also find an averment, at para 8 of the 4th Respondent's affidavit, which gives the impression to this court that it was the first available information the 4th Respondent received from a DIG who was involved in election related matters within the North Western Province, about the detainees who were

supposed to be behaving in a suspicious manner. That was the first information that led to the ultimate arrest of the detainees. If the DIG concerned, Anura Senanayake as described in the affidavit provided information of a group of persons who arrived in a bus in the Gokarella police area was behaving in a suspicious manner and a direction given to inquire, more information on the matter should be elicited. At least an affidavit giving details of facts that led to the arrest should have been sworn by way of an affidavit by the said DIG, Senanayake and such material should have been placed before this court, to test and verify the veracity of the statements contained in the affidavits of 4th and 6th Respondents.

When the Law Enforcement authorities concerned take steps to deprive persons of their personal liberty by arrest and detention, the Apex Court need to be informed of all details of such arrest and detention, if such arrest is challenged in court. In the absence of such details and cogent reasons to arrest the detainees would naturally fortify the case of the detainees, who have placed material of illegal arrest by the state machinery which seems to have been abused at that point of time. The liberty of an individual or a group of persons, as per

Article 13(1) is a matter of great constitutional importance. This liberty should not be interfered with, whatever the status of that person or persons arbitrarily or without legal justification.

The concept of 'arrest' and 'detention' within the frame work of our Constitutional law consists of numerous judgments of the Apex Court with a variety of views expressed by judges who heard those cases from various points of view. Whatever it may be, the guarantee extended by the Constitution to safeguard the personal liberty of the citizen is paramount. However before I proceed any further (although with the available facts I have already observed of illegal arrest), I wish to incorporate the following excerpts from the judgment reported in Channa Pieris and Others Vs. A.G and Others (Ratawesi Peramuna Case). – Digest to Sri Lanka Law Reports Vol. (1) 1994 pg. 2/3

The Ratawesi Peramuna was an anti-government organization. However as a matter of law, merely vehement, caustic and unpleasantly sharp attacks on the government, the President, Ministers, elected representative or public officers are not per se unlawful

Per Amerasinghe, J.

(a) "The right not to be deprived of personal liberty except according to a procedure established by law is enshrined in Article 13(1) of the Constitution, Article 13(1) prohibits not only the taking into custody but also the keeping of persons in a state of arrest by imprisonment or other physical restraint except according to procedure established by law."

(b) "Legitimate agitation cannot be assimilated with incitement to overthrow the government by unlawful means. What the third respondent is supposed to have heard, even according to the fabricated notes he has preferred, was a criticism, of the system of Government, the need to safeguard democracy, and proposals for reform."

(c) "The call to 'topple' the President or the Government did not mean that the change was to be brought about by violent means. It was a call to bring down persons in power by removing the base of public support on which they were elevated.

If the throwing down was to be accomplished by democratic means, the fact that the tumble may have had shocking or traumatic effects on those who might fall is of no relevance. It is the means and not the circumstances that have to be considered.

The obvious purpose of Regulation 23(a) is to protect the existing government not from change by peaceable, orderly, constitutional and therefore by lawful means, but from change by violence, revolution and terrorism, by means of criminal force or show of criminal force.

The entirety of the case of the Respondents no doubt rest on suspicion and nothing else. This would mean an unconfirmed or partial belief, especially that something is wrong or someone is guilty. It is necessary to have some idea of 'suspicion' and 'prima facie' proof as both these factors may tend to assist court to resolve a case of arrest and detention, in the area of fundamental rights. The following case law seems to be on point. In Hussien Vs. Chong Fook Kam (1969) 3 A. E. R 1626 Lord Devlin said ….

"Suspicion in its ordinary meaning is a state of conjecture or surmise where proof is lacking: 'I suspect but I cannot prove.' Suspicion arises at or near the starting- point of an investigation of which the obtaining of prima facie proof is the end. When such proof has been obtained, the police case is complete, it is ready for trial and passes on

to its next stage. It is indeed desirable as a general rule that an arrest should not be made until the case is complete. But if arrest before that were forbidden, it could seriously hamper the police. To give power to arrest on reasonable suspicion does not mean that it is always or even ordinarily to be exercised. It means that there is an executive discretion. In the exercise of it many factors have to be considered besides the strength of the case. The possibility of escape, the prevention of further crime and the obstruction of police inquiries are examples of these factors ….

…..There is another distinction between reasonable suspicion and prima facie proof. Prima facie proof consists of admissible evidence. Suspicion can take into account matters that could not be put in evidence at all. There is a discussion about the relevance of previous convictions in the judgment of Lord Wright in McArdle v Egan, (1933) 150 L.T. 412. Suspicion can take into account also matters which, though admissible, could not form part of a prima facie case. Thus the fact that the accused has given a false alibi does not obviate the need for prima facie proof of his presence at the scene of the crime; it will become of considerable importance in the trial when such proof as there is, is being weighed perhaps against a second alibi; it would undoubtedly be a very suspicious circumstances…."

In fact as observed above this is a case of suspicion only which lacks prima facie proof. That is the reason why the detainees were discharged after a period of arrest and detention may be after 1 ½ to 2 months of being kept in custody. I would go to the extent of observing that, at least a good part of that period to be an apparent deprivation of personal liberty of all the detainees.

In this case, by motion of 14.10.2010 as directed by court the application for detention order had also been produced, which is part and parcel of the record. Consequently detention orders P9 to P21 are also included in the record, which orders were produced by the petitioner. I also find annexed to the application for detention, addressed to the Secretary, Ministry of Defence dated 05.02.2010, two reports by the officer in charge of the Special Unit of the C.I.D addressed to Assistant Director C.I.D and report of Assistant Director C.I.D to Director C.I.D. It would be rather prolix if I am to incorporate the two reports in this judgment since the application to Secretary, Defence incorporates what is stated in the two reports.

A perusal of the relevant portions of the application dated 05.02.2010, and the several Detention Orders demonstrates a mechanical process, adopted by the Secretary, Defence, which lacks his own opinion.

The Detention Order (P9 - P12) issued as per 19(1) of Emergency Regulations No. 1 of 2005, the gist of it refers to:

(a) 19(1) order

(b) Gazette No. 1405/14 of 13.8.2005 and powers vested as per Regulations 19 and para 1 of same.

(c) Based on facts presented to Secretary, he is of opinion, that

(d) the named detainees who are in custody, would commit offences under the said regulations along with

(e) An armed group of persons who are planning to collect weapons and ammunitions to commit an offence or attempting to commit an offence to overthrow the Government.

(f) Named detainees are suspected of aiding and abetting the acts in (e) above which would result in public unrest and breach of peace.

The question is, as to how the concerned Additional Secretary of Defence who issued the Detention Order, formed an opinion of a possible attempt to commit an offence or whether he had reasonable grounds to form an

opinion as per the relevant regulations. The application of 05.02.2010 addressed to Secretary Defence, the 1st & 2nd pages of same up to para 3 refers to certain investigation (not involving the detainees). Para 4 of same refer to the contradictory position taken by the detainees. (I have already dealt with that

position). Para 5 is a doubtful view, expressed by the Deputy Inspector General of Police, C.I.D that the detainees were acting on instructions of a retired Colonel of the Army, which information or material are not available or referred to in the affidavits of the 4th & 6th Respondents. Para 6 again refer to suspicion. Para 7 refer to the necessity of keeping the detainees in continued custody for the purpose of extensive investigation.

The 1st Respondent to this application has not sworn an affidavit. As such I had to refer to the Detention Orders (P9 – P12) and ascertain as to how the 1st Respondent formed an opinion to issue Detention Orders. The opinion has been formed by the 1st Respondent only on facts presented to him by the official or officials who submitted the application for detention referred to above. Such material was only hearsay/vague and without sufficient material that the detainees would act in a prejudicial manner to national security or maintenance of public order.

In Jayaratne and Others Vs. Chandrananda de Silva, Secretary, Ministry of Defence & Others 1998(2) SLR 129/130…

Eleven petitioners were arrested and detained by virtue of orders issued by the 1st respondent purporting to act under Emergency Regulation 17(1) on the basis that their detention was necessary to prevent them from acting in a manner prejudicial to public order. The 1st respondent stated in his affidavit that the detention orders were issued at the request of the Director CID and on the basis of material submitted to him alleging that there were threats directed at the Presidential Commission investigating the incidents at Batalanda; that there was information that the detainees (Police Officers) whose names transpired before the Commission were attempting to leave the Island and that there was a possibility that they would inflict violence on the Commissioners themselves and witnesses who have testified before the Commission.

1. Communicating the purpose or object of the arrest does not satisfy the Constitutional requirement that the reasons for the arrest must be disclosed.

2. the material available to the 1st respondent was vague and was pure hearsay. He could not reasonably have formed an opinion adverse to the petitioners on such material. Consequently, he did not entertain, and could not have entertained, a genuine apprehension that the petitioners would act in a manner prejudicial to the national security or the maintenance of public order.

3. The 'balance of convenience' is not a defence that can be advanced for upholding the arrest and preventive detention of the petitioners. A reasonable apprehension of past or future wrong doing is an essential prerequisite for the deprivation of personal liberty.

I refer to an extract from the text of "our Fundamental Rights of personal security and physical liberty. A.R.B. Amerasinghe Pg. 93.

REASONABLE GROUNDS FOR SECRETARY'S ORDERS: Although others may assist the Secretary in carrying out his orders, the orders must be his own, I explained the matter in the case of Malinda Channa Pieris

> "This court must be satisfied that (a) the Secretary (b) was of such opinion before Regulation 17(1) can be invoked as a procedure established by law empowering a deprivation of personal liberty. The Secretary should be able to state that he himself came to form such an opinion. In *Weerakoon Vs. Weeraratne* Kulatunga, J. found that the Secretary had acted mechanically as a rubber stamp at the behest of the police and placed his signature on papers submitted to him… Kulatunga, J in *Sasanasiritissa Thero and others Vs. De Silva and others* observed that the Secretary and his Additional Secretaries has ''signed orders mechanically on the request of their subordinates" and the Court found that the Secretary and Additional Secretaries "never held the opinion they claim to have entertained". It is a matter of personal judgment. And so, for instance, an affidavit supporting the detention from his successor in office would be of no avail.

The application for detention is dated 05.02.2010 and the Detention Order is also of the same date. This is nothing but a mechanical process, designed to deprive the personal liberty of the detainees. Inability of the Law Enforcement Authority and the executive to successfully implicate the detainees ultimately resulted in the discharge of them on 22.02.2015 by the learned Magistrate. There was absolutely no material to frame any kind of charges against the detainees as from the date of arrest and producing them before the Magistrate, or thereafter.

The Petitioner has taken up the position of assault on the detainees and also a particular assault on detainee No. 1 by the 4th Respondent. I do not think that this court could arrive at such a conclusion in the absence of a report or material in that regard. However there can be no doubt that there was no material on which the 1st Respondent could reasonably have formed an opinion as referred to in Detention Order P9 to P21, nor can I hold that the detainees were acting in a manner prejudicial to national security or public order or inflict violence on the Government or was part of a coup to overthrow the Government.

Court therefore holds that the fundamental rights guaranteed under Article 12(1), 13(1) and 13(2) of the Constitution of the Democratic Socialist Republic of Sri Lanka have been infringed by 3rd, 4th, 5th, 6th & 8th Respondents. Thus we direct the State to pay each detainee a sum of Rs. 20,000/-, as compensation and Rs. 25,000/- as costs.

JUDGE OF THE SUPREME COURT

Chandra Ekanayake J.

I agree.

JUDGE OF THE SUPREME COURT

P.B. Aluwihare P.C., J.

I agree.

JUDGE OF THE SUPREME COURT