IN THE SUPREME COURT OF THE

DEMOCRATIC SOCIALIST REPUBLIC OF SRI LANKA

In the matter of an application in terms of Article 126 read with Article 17 of the Constitution of the Democratic Socialist Republic of Sri Lanka.

SC. FR. NO. 87/2021

1. M. I. M. Iynullah, AAL
No. 182/2,
2nd Floor,
Hulftsdorp Street,
Colombo 12.

For and on behalf of:

2. Wasala Mudiyanselage Upali Ratnayake
Polpithigama,
Daladagama,
Mahawa.

3. Kumara Pathirannehelage Niranjala Priyadarshi Hemamali
Polpithigama,
Daladagama,
Mahawa.

PETITIONERS

Vs.

1. C. D. Wickramaratne
Inspector General of Police,
Police Headquarters,
Church Road,
Colombo 01.

2. Nishantha De Zoysa
Senior Superintendent of Police,
Director,
Criminal Investigation.

3. Lalith Dissanayake
Chief Inspector,
Officer-in-Charge,

Special-Unit.

2 and 3 above, both of:
Criminal Investigation Department,
Colombo 01.

4. CI H. P. Y. W. Herath
Officer-in-Charge,
Police Station,
Mahawa.

5. CI R. P. U. Ratnamalala
Officer-in-Charge,
Police Station,
Mahawa.

6. Hon. Attorney General
Attorney General's Department,
Hulftsdorp,
Colombo 12.

RESPONDENTS

BEFORE : **P. PADMAN SURASENA, J.**
A. L. SHIRAN GOONERATNE, J. &
MAHINDA SAMAYAWARDHENA, J.

COUNSEL : Chrishmal Warnasuriya with Pramodya Thilakarathne instructed by M.I.M. Iyunullah for the Petitioners.

Shaminda Wickrema, SSC for the Respondents.

ARGUED ON : 29-04-2024

DECIDED ON : 30-01-2025

P. PADMAN SURASENA, J.

Out of the three Petitioners mentioned in the caption, the 1st Petitioner is the Attorney-at-Law who had filed this Petition on behalf of the 2nd Petitioner who was in detention

at the time of filing this Petition. The 2nd Petitioner is a Police Sergeant attached to the Police Narcotics Bureau (hereinafter referred to as the PNB). The 3rd Petitioner is the wife of the 2nd Petitioner.

The 2nd Petitioner alleges that he was arrested on **23-06-2020**, by the officers of the Criminal Investigations Department (hereinafter referred to as the CID). The 2nd Petitioner further alleges that the CID officers gave no reason for his arrest. The 2nd Petitioner has also alleged that he was thereafter detained under the Prevention of Terrorism Act No. 48 of 1979 as amended (hereinafter referred to as PTA), under three consecutive Detention Orders each of which was for ninety days. The Petitioners have stated in the amended Petition dated 18th May 2021, that they have produced these three consecutive Detention Orders marked **P 13(a)**, **P 13(b)** and **P 13(c)**. The 3rd Respondent has produced the same Detention Orders marked **3 R 5**, **3 R 6**, **3 R 7** and the subsequent Detention Order marked **3 R 8**.

In contradistinction to the Petitioners' version, the position taken up by the 3rd Respondent is that it was on **25-06-2020**, that the CID had arrested the 2nd Petitioner and brought the 2nd Petitioner to the premises of the CID on 26-06-2024 for the purposes of questioning. It is also the position of the 3rd Respondent that the CID arrested the 2nd Petitioner on **25-06-2020** upon reasonable suspicion of his involvement in certain crimes.

Upon this Petition being supported, this Court by its Order dated 23-11-2022, had granted Leave to Proceed in respect of the alleged infringements of the Fundamental Rights of the Petitioners guaranteed under Articles 11, 12(1), 13(1), 13(2), 13(3), 13(5), 14(1)(g) and 14(1)(h) of the Constitution.

In light of the above assertions, the primary issue I have to address in this proceeding is the issue as to whether the claim by the 2nd Petitioner that he was arrested by the CID on **23-06-2020** has been established. It is to the said issue that I would now turn.

It is the position of the 2nd Petitioner that he was suddenly *placed under arrest*,[1] along with four other police officers attached to the PNB, by the 3rd Respondent who had accompanied several individuals clad in civil attire claiming to be from the CID. The submission of the learned Counsel who appeared for the Petitioners in the course of the hearing was that the 2nd Petitioner was arrested on 23-06-2020, while in the premises of PNB which is his own workplace as averred by the 2nd Petitioner himself at paragraph 08 of the Written Submissions of the Petitioners.

In order for the Respondents to make an arrest of an officer of the PNB within the premises of the PNB itself as alleged by the Petitioners, it would undoubtedly follow that such superior officers of the PNB as required would have been made aware of the intention to carry out such an arrest and consequently it would only be on the granting of permission by such superior officers that the 2nd Petitioner would be arrested. In such circumstances it would be prudent that the Petitioner names such superior officers of the PNB as Respondents in the instant petition.

However, I observe that the Petitioners have chosen not to name any PNB officer as a Respondent and also chosen not to attribute any responsibility to any PNB officer for placing the 2nd Petitioner under arrest inside the PNB premises itself.

As stated above, it is the 2nd Petitioner's stated position in this case that he was arrested while carrying out his duties in the premises of the Police Narcotics Bureau. Therefore, whoever who was instrumental in placing the 2nd Petitioner under arrest, had physically kept him in custody within the PNB premises. In such a scenario, the primary responsibility or at its least, a considerable amount of some shared responsibility for such illegal act must be placed in the hands of those who are responsible for the administration of the PNB premises for it is not the case of the Petitioners that the PNB is a part of the CID. If that is the case, why didn't the Petitioners make/name any or all officers responsible for the affairs of the PNB as persons who are responsible for arresting the 2nd Petitioner within the PNB premises.

[1] Paragraph 08 of the Written Submissions dated 04th April 2023.

This lapse on the part of the Petitioners in my view, is fatal to the maintainability of this Petition. This is because it is those responsible for running the affairs of the PNB who would not only become responsible for such an act but would also be the best persons to explain (if such an incident had in fact taken place), the circumstances under which such incident had occurred within the precincts of the PNB. This is further aggravated by the fact that the 3rd Respondent has denied that the CID had arrested the 2nd Petitioner within the PNB premises on 23-06-2020. On the above material, I am unable to hold that the Petitioners have succeeded in establishing that the 2nd Petitioner was arrested on 23-06-2020, in the premises of PNB which is his own workplace.

As a result of the above conclusion, what prevails before me now, is only the position taken up by the CID that it had arrested the 2nd Petitioner on 25-06-2020 and subsequently brought the 2nd Petitioner on the next day i.e., on **26-06-2020** to the CID for questioning. Thus, the next issue I have to decide in this proceeding is the issue as to whether there was any justification for the CID to cause the arrest of the 2nd Petitioner on **25-06-2020**.

Although the CID has arrested the 2nd Petitioner under the provisions of the PTA, let me first consider the power to arrest a person conferred on a Police officer under the Code of Criminal Procedure Act No. 15 of 1979. Under Section 32(1)(b) of the Code of Criminal Procedure Act, a Police Officer is authorized to arrest without a warrant, any person:

i. who has been concerned in **any cognizable offence** or
ii. against whom a reasonable complaint has been made or
iii. against whom a credible information has been received or
iv. against whom a reasonable suspicion exists of his having been so concerned.

Suffice it to state here at this stage that one CI Ruwan Kumara of the PNB had made a complaint to the CID disclosing that the 2nd Petitioner, with some other officers of the PNB were complicit in illicit drug trafficking which is prima facie, a ground to cause

the arrest of the 2nd Petitioner even in terms of Section 32(1)(b) of the Code of Criminal Procedure Act.

As would be shown shortly in this Judgment, the power of arrest under the PTA is wider than that under the Code of Criminal Procedure Act. Section 6(1) of the PTA which is found in its Chapter *'Investigation of Offences'* and which is reproduced below, would show this difference.

Section 6(1) of the PTA.

> *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****.*

The phrase emphasized above shows that while Section 32(1)(b) of the Code of Criminal Procedure Act has specified the threshold requirement to be a suspicion or being concerned in **"any cognizable offence"**, Section 6 of the PTA has specified the threshold requirement to be a suspicion or being concerned in a different category of things identified as **"an unlawful activity**".

The Interpretation Section of the PTA (Section 31) has defined this term in the following manner.

Section 31 of the PTA.

> *"**unlawful activity**" means any action taken or act committed by any means whatsoever, whether Within or outside Sri Lanka, and whether such action was taken or act was committed before or after the date of Coming into operation of all or any of the provision of this Act **in the commission** or **in connection with the commission of any offence under this Act** or any act committed prior to the date of passing of this Act, which act would, if committed after such date, constitute an offence under this Act.*[2]

This means that any action taken or act committed, in connection with the commission of any offence under this Act, would be an unlawful activity. Thus, such 'action taken or act committed' although on its own may not constitute an offence (therefore would not constitute a cognizable offence in any case), would still fall under the definition of an 'Unlawful Activity', if such action taken or act committed, was done in connection with the commission of any offence under PTA.

In the case of *Dissanayaka v Superintendent Mahara Prison and others*,[3] Kulatunga, J. held as follows:

> *"The expression "unlawful activity" as defined in Section 31 of the (Prevention of Terrorism) Act is of wide import and encompasses any person whose acts "by any means whatsoever" are connected with "the commission of any offence under this Act". **This would include a person who has committed an offence under the Act**".*[4]

Therefore, one could observe that the threshold requirement under Section 32(1)(b) of the Code of Criminal Procedure Act for the existence of 'a reasonable suspicion or being concerned of any cognizable offence' has been reduced under Section 6(1) of the PTA to a threshold requirement of the existence of 'a reasonable suspicion or being connected with or concerned in any unlawful activity'. The said "unlawful activity"

[2] Emphasis added.
[3] 1991 (2) SLR 247, 248-249.
[4] Emphasis added.

could be any action taken or act committed by any means whatsoever, in the commission or in connection with the commission of any offence under this Act.

Let me now consider whether the decision of the 3rd Respondent to proceed to arrest the 2nd Petitioner, in terms of Section 6(1) of the PTA could be justified.

In *Dissanayaka's* case,[5] Kulatunga, J. stated the following to highlight the importance of examining the material to decide the validity of the arrest.

> *"Nevertheless, it is for the Court to determine the validity of the arrest objectively. The Court will not surrender its judgement to the executive for if it did so, the fundamental right to freedom from arbitrary arrest secured by Article 13(1) of the Constitution will be defeated. The executive must place sufficient material before the Court to enable the Court to make a decision, such as the notes of investigation, including the statements of witnesses, observations etc. without relying on bare statements in affidavits".*

Having that in mind, let me now turn to some of the material placed before Court, by the 3rd Respondent who was the Officer-in-Charge of the Special Unit of the Criminal Investigation Department. He is the officer who had conducted the investigation into the complaint received, from Chief Inspector Ruwan Kumara of the PNB. He has filed an affidavit explaining the circumstances which led to the arrest of the 2nd Petitioner. He has also annexed all relevant documentation marked from **3 R 1** to **3 R 11**.

Let me now refer to the circumstances which led to the arrest of the 2nd Petitioner. It was CI Ruwan Kumara of the PNB who had disclosed that the 2nd Petitioner, a Police Sergeant attached to the PNB who with some other officers of the PNB were complicit in illicit drug trafficking. It was on that basis that the CID had brought the 2nd Petitioner to the CID on 26-06-2020. This was because the CID had found the contents revealed

[5] Supra.

from CI Ruwan Kumara's statement credible. It was on that basis that the CID had proceeded to arrest the 2nd Petitioner as the CID officers had entertained a reasonable suspicion that the 2nd Petitioner was involved in some unlawful activities within the meaning of the PTA.

As per the Affidavit of the 3rd Respondent, dated 03rd March 2023, following the arrest of one Chaminda Daya Priyankara Mallawaratchi alias Tile Chaminda for the possession of Heroin, preliminary investigations in to the matter gave rise to suspicion that the 2nd Petitioner was involved in drug trafficking, thereby committing an offence under Section 54A(b) of the Poisons, Opium and Dangerous Drugs Ordinance. It was further revealed that the 2nd Petitioner had ties with one Gihan Fonseka (a close associate of Makadura Madush, whom he says is an infamous member of an organized crime group) and other drug traffickers in remand. The 3rd Respondent has further averred in his Affidavit, that the preliminary investigations had disclosed that apart from large scale drug trafficking, the Petitioner was involved in/concerned with several unlawful activities including collecting weapons, sale of weapons to members of organised crime groups, collecting weapons through organised crime groups, promotion of terrorism, financing or abetting to finance terrorism. It was on that material that the CID had proceeded to obtain Detention Orders in terms of Section 7 of the PTA. The 3rd Respondent has produced the first Detention Order to detain the 2nd Petitioner for ninety days from 29-06-2020, marked **3 R 5**.

The 3rd Respondent proceeds to detail events of the Petitioner's involvement in drug trafficking and weapons dealings at paragraph 16 of the Affidavit dated 03-03-2023, which were revealed in the course of the further investigations. The investigating officers, following such investigations, had recovered a sum of thirty-one million one hundred and forty-five thousand upon a statement made by the 2nd Petitioner (as evident through the notes, marked **3 R 3**). The said sum of money was found upon the 2nd Petitioner's directions, and is said to be the proceeds from the unlawful activity which the 2nd Petitioner is alleged to have carried out. The investigations have revealed that the Petitioner was involved in or has carried out numerous unlawful activities which include the following:

- Loading into a vehicle, several bags of Heroin, belonging to one Sub Inspector of Police, on 30-04-2020 at Matara. The Petitioner is alleged to have distributed the said bags of Heroin to traffickers at various locations.
- Stealing and trafficking of narcotics, which were taken into custody by the SL Navy and handed over to the PNB.
- Selling to organised criminal groups, several hundreds of kilos of Heroin and five pistols which were taken in to custody by the PNB on 15-05-2020.
- Dealing 60-70 kilograms of Heroin with the aforementioned 'Tile Chaminda' and hiding the said Heroin in his (2nd Petitioner's) residence in Daladagama which was said to have been delivered to a person named Rajitha Asanka.
- Substitution of foreign substances in place of Heroin which was taken into custody by the PNB, and selling the removed Heroin to criminal groups locally and abroad.
- Collecting of weapons (namely T-56 rifles, pistols, bullets, revolvers) with the involvement of criminal groups.

As per the B-report filed, in case No. B 35602/01/2020 before the Magistrate's Court of Colombo, marked **3 R 9**, the investigating officers, apart from the sum of monies mentioned above, had recovered the following items from the possession of the suspects including the 2nd Petitioner;

- Three T-56 rifles,
- Six magazines for T-56 rifles,
- Five pistols,
- One 0.38 Caliber revolver,
- Eighty-one bullets used for T-56 rifles,
- Forty 9 mm live ammunition rounds,
- Heroin amounting to 11 kilos, 888 grams and 256 milligrams,
- Two electronic scales.

The said report shows that the investigations were ongoing with regard to a property purchased in the name of the 3rd Petitioner (2nd Petitioner's wife) for a sum of Rupees Eight Million, their residence and bank accounts worth Rupees Ten Million. This fact is

also evident through examining the B-report relevant to case No. 36128/01/20 before the Magistrate's Court of Colombo produced by the 2nd Petitioner, marked **P 10**.

It is the position of the 2nd Petitioner (as averred in Paragraphs 22-24 of the Amended Petition) that his wife financed the above properties using the proceeds from a papaya plantation run independently by her and also that their residential premises was obtained by way of a government grant.

However, the only explanation afforded by the 2nd Petitioner as to the manner in which his wife (3rd Petitioner) came into possession of the above properties is limited to bare averments in their respective Affidavits. The Petitioners have failed to support these averments with any other documentary evidence. Further, there is no explanation given as to origins of the sum of thirty-one million one hundred and forty-five thousand recovered from the possession of the 2nd Petitioner.

In *Dissanayaka's* case,[6] Kulatunga, J. stated that it is not the duty of the Court to determine whether on the available material the arrest should have been made or not. This statement is included in the following excerpt taken from that Judgment.

> *"…. Where the power to arrest without a warrant is couched in the language of Section 6(1) of the PTA it is well settled that the validity of the arrest is determined by applying the objective test. This is so whether the arrest is under the normal law....., under the Emergency Regulations..... or under the P.T.A. However, it is not the duty of the Court to determine whether on the available material the arrest should have been made or not. The question for the Court is whether there was material for a reasonable officer to cause the arrest.... Proof of the commission of the offence is not required; a reasonable suspicion or a reasonable complaint of the commission of the offence suffices....."*

[6] Supra.

In my view, having regard to the facts and circumstances of this case, the explanation offered by the 2nd Petitioner and his wife as to why so much of cash and valuable properties were found in their possession by the CID team, is not strong enough to dispel the existence of the reasonable suspicion entertained by the 3rd Respondent that the 2nd Petitioner could be reasonably suspected of or be concerned in any unlawful activity. Moreover, I must also be mindful that the time at which the 3rd Respondent had entertained the afore-said reasonable suspicion was the time of the arrest of the 2nd Petitioner and the said reasonable suspicion was confirmed by the subsequent investigations conducted and the recoveries from the possession of the 2nd Petitioner.

While the credibility of the witnesses must be left for the trial Court, I am unable at this stage, to accept the submission of the learned Counsel for the Petitioners that the CID or PNB had fabricated evidence against the Petitioner. As has already been stated above, the Petitioners have not made PNB officers as Respondents in their Petition. I have no reason not to allow the law to take its own course in this instance. In these circumstances, I hold that the arrest of the 2nd Petitioner caused by the CID is justified in terms of Section 6(1) of the PTA.

Another argument advanced by the learned Counsel for the Petitioners is that it was unlawful for the CID not to have produced the 2nd Petitioner before any Court of law up until the filing of the Amended Petition dated 18-05-2021.[7] This is, therefore, the submission made by the learned Counsel for the Petitioners that the CID had failed to produce the 2nd Petitioner before a competent Court within the time limits specified either under the PTA or ordinary law (Section 37, CCPA).

It is necessary first to reproduce here, Section 7 of the PTA which deals with the applicable law pertaining to the stage at which a person arrested under Section 6(1) of the PTA must be produced before a Magistrate.

[7] Para 40 of the Amended Petition dated, 18-05-2021.

Section 7 of the PTA:

(1) *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.

(2) Where any person connected with or concerned in or reasonably suspected to be connected with or concerned in the commission of any offence under this Act appears or is produced before any court other than in the manner referred to in subsection (1), such court shall order the remand of such person until the conclusion of the trial:

Provided that, if an application is made under the hand of a police officer not below the rank of Superintendent to keep such person in police custody for a period not exceeding seventy-two hours, the Magistrate shall authorise such custody and thereupon the order of remand made by the Magistrate shall remain suspended for the period during which such person is in police custody.

(3) A police officer conducting an investigation under this Act in respect of any person arrested under subsection (1) of section 6 or remanded under subsection (1) or subsection (2) of this section-

(a) shall have the right of access to such person and the right to take such person during reasonable hours to any place for the purpose of

interrogation and from place to place for the purposes of investigation; and

(b) may obtain a specimen of the handwriting of such person and do all such acts as may reasonably be necessary for fingerprinting or otherwise identifying such person;

In the case of *Weerawansa v The Attorney-General and others*,[8] Fernando, J. held that if a Detention Order under section 9(1) is obtained within 72 hours of arrest, there is no necessity to produce the detainee before the Magistrate. In Fernando J's words, it is as follows:

"If a Detention Order under section 9(1) is obtained within 72 hours of arrest, non-production before a judicial officer is excused by section 7(1)."

However, I must also mention here for the sake of completeness that in *Weerawansa's case,* Fernando, J. went on to hold that the CID had no right to keep the Petitioner in that case in custody without producing him before a Magistrate, in terms of Section 7(1) as Court had not accepted the assertion by the Respondent in that case that the Petitioner had been arrested by the CID in accordance with Section 6(1) of the PTA.

As stated above, the CID had arrested the 2nd Petitioner on 25-06-2020. The CID as per Section 7(1) of the PTA has kept the 2nd Petitioner in custody for a period not exceeding seventy-two hours. Thereafter, the CID had kept him in custody till the Detention Order dated 29-06-2020 (**3 R 5**) was made in terms of Section 9 of the PTA. Thus, the said period of custody in CID has not exceeded seventy-two hours as per Section 6(1) of the PTA. Therefore, there is no violation of law by the CID in that instance.

Another argument advanced by the learned Counsel for the Petitioners is that some of the Detention Orders issued against the 2nd Petitioner are not valid. The 2nd

[8] 2000 (1) SLR 387.

Petitioner was detained under four consecutive Detention Orders, i.e., the detention orders dated 28-06-2020 (**3 R 5**); the detention order dated 25-09-2020 (**3 R 6**); the detention order dated 25-12-2020 (**3 R 7**); the detention order dated 25-03-2021 (**3 R 8**) produced by the 3rd Respondent.[9]

Let me now reproduce below, Section 9 of the PTA which empowers the Minister to order the detention of a person connected with or concerned in any unlawful activity.

Section 9 of the PTA (Detention Orders)

1) *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 eighteen months.

2)

(a) *At any time after an order has been made in respect of any person under subsection (1), the Minister may direct that the operation of such order be suspended and may make an order under subsection (1) of section 11.*
(b) *The Minister may revoke any such direction if he is satisfied that the person in respect of whom the direction was made has failed to observe any condition imposed or that the operation of the order can no longer remain suspended without detriment to public safety.*

[9] The 2nd Petitioner has purported to have produced these Detention Orders, marked **P 13(a)**, **P 13(b)** and **P 13(c)**.

In *Weerawansa's case*[10], Fernando, J. took the following view:

> *"Not only must the Minister of Defence,* ***subjectively****, have the required belief or suspicion, but there* ***must also be, objectively, 'reason' for such belief.****"*

I have already adverted to above, the material placed against the 2nd Petitioner. I am of the view that the said material is sufficient to pass on the objective test, the decision made by the Minister of Defence that there was sufficient basis for the issuance of the Detention Order.

The leaned Counsel for the 2nd Petitioner also advanced another argument with regard to the validity of the Detention Orders marked **3 R 5**, **3 R 6**, **3 R 7** and **3 R 8**. It is the submission of the learned Counsel for the Petitioners that it is only the Minster of Defence who has been empowered in terms of Section 9(1) of the PTA, to make Detention Orders. It is also his submission that some of the Detention Orders [marked **3 R 5**, **3 R 6**] issued to detain the 2nd Petitioner have been signed by the President and therefore not valid in law.

I observe that the designation of the signatory of the Detention Orders marked **3 R 5** and **3 R 6**, has been mentioned on those two Detention Orders as *"President"* and the designation of the signatory of the Detention Orders marked **3 R 7** and **3 R 8** has been mentioned therein as *"President and Minister of Defence".*

While it is correct that Section 9(1) of the PTA empowers the Minster of Defence to issue detention orders I cannot forget the fact that in terms of Article 44(3) of the Constitution it is always the President who must hold the portfolio of the Minister of Defence in this country.

[10] Supra at page 378.

Further, Article 44(3) of the Constitution requires that the position of the Minister in charge of the subject of Defence be filled by the President. It is as follows:

> *(3)* ***The President shall be the Minister in charge of the subject of Defence*** *and may exercise, perform and discharge the powers, duties and functions of any Minister of the Cabinet of Ministers or any Minister who is not a member of the Cabinet of Ministers, subject to the provisions of the Constitution, for not exceeding fourteen days during a period within which any subject or function is not assigned to any such Minister under the provisions of paragraph (1) of this Article or under paragraph (1) of Article 45 and accordingly, any reference in the Constitution or any written law to the Minster to whom such subject or function is assigned, shall be read and construed as a reference to the President:*
>
> *Provided however, preceding provisions of this paragraph shall not preclude the President from assigning any subject or function to himself in consultation with the Prime Minister and accordingly, any reference in the Constitution or 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.* [emphasis added]

In *SC/SD/06/2001*, this Court in determining the Constitutionality of the Seventeenth Amendment to the Constitution, stated obiter regarding the exercise of the functions of Minister of Defence, which is as follows:

> *'The relevant provision as to the exercise of the sovereignty of the People in relation to executive power is contained in Article 4(b), which reads thus:*
>
> > *"executive power of the People, including the defence of Sri Lanka, shall be exercised by the President of the Public elected by the People,"*
>
> *Therefore the executive power of the People including defend [sic] is exercised [by] the president of [the] Republic who is elected by the People.'*

Therefore, I am satisfied that the Detention Orders have been issued by the Minster of Defence who was also the President of the Country at that time.

The condition precedent to the issuance of the Detention Order is that the issuer, the Minister of Defence, must have been satisfied that there were adequate grounds to detain the 2nd Petitioner. In the instant case, it was just the same individual who held the posts of both the President and the Minister of Defence of the country. Therefore, irrespective of the designation written underneath the signature, it was the same individual who had signed. The said individual should have signed the Detention Orders after being satisfied that there were adequate grounds to detain the 2nd Petitioner. Therefore, the main issue for the validity of the Detention Orders would be whether there were such grounds for the issuer to detain the 2nd Petitioner in custody. This is because the person who had signed the Detention Orders was indeed the Minister of Defence. I have no basis or justification to hold the Detention Orders, marked **3 R 5 and 3 R 6**, are invalid merely because the designation of the issuer has been mentioned as the President and not as the Minister of Defence in the Detention Orders, marked **3 R 5 and 3 R 6**. Moreover, I am of the view that this argument is so technical in nature and is not capable of persuading me to declare these Detention Orders invalid on that basis, particularly in view of the material available against the 2nd Petitioner calling for the necessity to detain him in custody pending investigation into very serious crimes.

For the foregoing reasons, I hold that the Respondents have not infringed any of the Fundamental Rights of the Petitioners guaranteed by the Constitution. In the above circumstances, the Petitioners are not entitled to succeed with their Petition. I proceed to dismiss this Petition with costs.

The Petitioner in this Petition has stated that he was placed under interdiction on the allegations some of which were discussed in the course of this Judgment.[11] However, in the course of the argument, Court was informed by the learned counsel who

[11] Paragraph 20 of the Petition dated 04-03-2021.

appeared for the Petitioner that the Petitioner has been reinstated and therefore has resumed working as a Police officer but neither the learned Counsel for the Petitioner nor the learned Senior Deputy Solicitor General has offered any explanation acceptable to Court as to how a person who is suspected to be concerned with offences of that magnitude came to be re-employed as a Police officer. I cannot forget the fact that the learned Senior Deputy Solicitor General resisted this application against granting relief to the Petitioner on the basis that there is evidence to justify both his arrest and detention. I cannot turn a blind eye to the above situation. Therefore, I direct the Inspector General of Police to look in to those matters with a view of deciding the legality/ suitability of allowing the Petitioner to continue to be employed as a Police officer. The 6th Respondent is also directed to examine the relevant facts pertaining to the aforesaid aspects and consider giving necessary advices to the Inspector General of Police.

JUDGE OF THE SUPREME COURT

A. L. SHIRAN GOONERATNE, J.

I agree.

JUDGE OF THE SUPREME COURT

MAHINDA SAMAYAWARDHENA, J.

I agree.

JUDGE OF THE SUPREME COURT