

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

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

SC/FRA/151/2022

1. Muthuheen Gedara Thisara
Nuwantha Anuruddha Bandara,
No. 867/3,
Jalasampadanagara Mawatha,
Athgala,
Gampola.

PETITIONER

Vs.

1. Deshabandu Tennakoon
Senior Deputy Inspector General of
Police
Western Province and Traffic
Police Headquarters,
Colombo 01.
2. A. G. J Chandra Kumara
Deputy Inspector General of Police
Colombo
3. Amal Edirimanne
Senior Superintendent of Police
4. Nalin Jayasundara
Assistant Superintendent of Police,
Colombo North – 01
5. Mahinda Willora Arachchi,
Assistant Superintendent of Police,
Colombo North – 02

3rd to 5th Respondents are of
No. 331,
Olcott Mawatha,
Colombo 11.

6. Nalin Sriyantha,
Officer In Charge,
Crimes investigation Division-
Colombo North,
Modara.
7. A. A. N. Darshana,
Chief Inspector,
Head Quarters Inspector,
Modara Police Station,
Colombo 15.
8. K. A. E. N. Dilruk
Assistant Superintendent of Police,
Office of the Deputy inspector
General of Police,
No. 331,
Olcott Mawatha,
Colombo 11.
9. Rohan Premaratne
Director - Criminal Investigations
Department,
Criminal Investigations
Department,
Colombo 01.
10. Kakulanda,
Inspector of Police,
Officer In Charge,
Ethgala Police Station,
Ethgala, Gampola.
11. C. D. Wickramaratne,
Inspector-General of Police,
Police Headquarters,
Colombo 01.
12. Hon. Attorney General,
Attorney General's Department,
Colombo 10.

RESPONDENTS

***M. G. T. N. Anuruddha Bandara v Deshabandu Tennakoon, Senior Deputy Inspector
General of Police and Others***
Case No. SC/FRA/151/2022

Before: Janak De Silva, J.

Dr Sobhitha Rajakaruna, J.

Menaka Wijesundera, J.

Counsel: Saliya Peiris, PC, with Thanuka Nandasiri and Manujaya De Silva for the Petitioner.

Sajith Bandara, SC, for all Respondents except the 1st and 5th Respondents on the day of the hearing.

(All Respondents were represented by the Attorney General on the day that this matter was taken up for consideration of granting leave to proceed)

Written Submissions: Petitioner : 16 January 2024 & 27 January 2026
Respondents : 26 May 2023

Argued on: 13 November 2025

Decided on: 23 July 2026

Judgement

Dr Sobhitha Rajakaruna J.

The Petitioner, in the instant Application, challenges the acts and conduct of one or more of the Respondents, alleging that they were responsible for his unlawful arrest and detention on account of his exercise of the constitutionally protected right to freedom of speech and expression. The Petitioner contends that he had legitimately criticised the then President of Sri Lanka for what he perceived to be incompetent governance and mismanagement, which, in his view, had precipitated a grave economic and political crisis, causing significant hardship to the people of Sri Lanka.

This Court granted leave to proceed in respect of the alleged infringements of the Petitioner's fundamental rights guaranteed under Articles 12(1), 13(1), and 14(1)(a) of the Constitution.

Petitioner's case

The Petitioner submits that he is a social activist who became deeply dissatisfied with the prevailing political culture in Sri Lanka and believed that democratic change was urgently required. He states that, acting as an independent citizen and not as a supporter of any political party, he used his Facebook page and other social media platforms to encourage public participation in peaceful protests against the actions of the Government and the prevailing political system. According to the Petitioner, he consistently urged the public to conduct such protests peacefully, lawfully, and without resorting to violence, notwithstanding the growing public participation occasioned by the country's economic crisis.

The Petitioner further submits that, on the night of 1 April 2022, a team of Police officers led by the 6th Respondent arrived at his residence, searched his personal belongings, seized his passport, inspected his mobile phone, laptop, email account, and social media accounts, and questioned him regarding his social media activities, including posts relating to the "*GoHomeGota 2022*" campaign and a planned peaceful protest scheduled for 3 April 2022. He states that the Police informed him that his activities were anti-State and that he had no right to protest against the President (photographs of the scene recorded on the CCTV camera at that moment is marked as 'P5(a)' to 'P5(d)' and a compact disc of the scene recorded on the CCTV camera at that time period is marked as 'X-2'). According to the Petitioner, he was thereafter taken into police custody without being informed of the reasons for his arrest, save for being told that the Police required a statement from him pursuant to the instructions of the 1st Respondent.

The Petitioner further states that, after being taken into custody, he was transported between several police establishments, including the *Ethgala* Police Station, the Divisional Crime Investigation Bureau–Colombo North, and the Criminal Investigation Department, where he was interrogated regarding his social media activities, his alleged association with Dr. Pathum Kerner, the "*GoHomeGota 2022*" campaign, his criticism of the appointment of Ven. Muruththettuwe Ananda Thero as Chancellor of the University

of Colombo, and the peaceful protests planned for 3 April 2022. He maintains that he informed the authorities that he neither organised the protests nor advocated violence, but merely supported peaceful demonstrations and encouraged participants to remain non-violent.

The Petitioner also submits that the Police misled his family members and lawyers regarding his whereabouts and sought to prevent him from obtaining legal assistance. He states that although complaints were made to the Human Rights Commission of Sri Lanka, and several lawyers arrived to represent him, the Police refused to permit legal representation while his statement was being recorded (Affidavits given by Mr. Malaka Palliyaguruge Attorney-at-Law and Mr. Chameera Prashad Haputhantri Attorney-at-Law are marked as 'P9' and 'P10'). According to the Petitioner, it was only at that stage that the 8th Respondent acknowledged that he had in fact been arrested when he was taken from his residence. The Petitioner further states that his statement was recorded without the assistance of counsel despite the presence of a large number of lawyers who had come forward on his behalf.

The Petitioner further submits that, instead of being produced promptly before the Magistrate, he was taken back to his residence in *Gampola* for a second search, allegedly with the intention of delaying his production before a Magistrate and depriving him of legal representation, as numerous lawyers had already assembled at the Magistrates' Court in Colombo (Affidavit given by Mr. Amila Suyama Egodamahawatta Attorney-at-Law is marked as 'P11'). According to the Petitioner, he was eventually produced before the learned Magistrate in the early hours of 3 April 2022 under Section 120 of the Penal Code after having been detained for more than twenty-four hours. He alleges that the Police falsely represented the time of his arrest in the 'B' Report and that CCTV footage would establish the actual time at which he had been taken into custody.

The Petitioner further contends that the allegations made against him under Section 120 of the Penal Code were baseless and unsupported by any material. He submits that the provision itself excludes criticism of the Government or the pointing out of errors in governance from its ambit. According to the Petitioner, the allegations concerning his purported association with Dr. Pathum Kerner were fabricated, and the complaint relied upon by the Police had been made only after his arrest, demonstrating that the complaint was an afterthought intended to justify an unlawful arrest.

The Petitioner also submits that although the learned Magistrate granted him bail and directed that his passport be produced before Court, the police unlawfully retained both his passport and National Identity Card, obtained a travel ban against him on fabricated allegations, and thereby restricted his freedom of movement. He states that these documents were eventually returned pursuant to an order of Court and that the learned Magistrate observed that the 'B' Report did not disclose an offence under Section 120 of the Penal Code and subsequently lifted the travel ban (A certified copy of the case record of the case bearing number 68413/06/22 of the Magistrates' Court No. 06 in Colombo is marked as "X" and a certified copy of the 'B' Report dated 01 April 2022 contained in the said case record is marked as 'P12').

The Petitioner finally submits that his arrest, detention, and prosecution were arbitrary, unreasonable, and motivated solely by his exercise of the constitutionally protected freedoms of speech, expression, peaceful assembly, and political dissent. He contends that he was arrested without being informed of the reasons for his arrest, unlawfully detained for an excessive period, prevented from participating in the peaceful protest scheduled for 3 April 2022, and subjected to malicious prosecution on false allegations.

The Petitioner, placing reliance on judicial precedents enunciated in several judgments, including *Palihawadana v. Attorney General* [1978-79-80] 1 Sri LR 65; *Joseph Perera alias Bruten Perera v. The Attorney General and Others* [1992] 1 Sri LR 199; *Shanmugam Sivarajah and Sivarajah Sarojini Devi v. The OIC, TID* (SC/FRA/ 15/2010); *Sisira Kumara Wahalathanthri and Others v. Jayantha Wickramaratne, Inspector General of Police and Others* (SC/FRA/768/2009); *Omaththa Mudalige Don Gamini v. Nishantha Silva et al.* (SC/FRA/81/2011) and *Channa Pieris and Others v. A.G. and Others* [1994] 1 Sri LR 1, argues that the Respondents infringed his fundamental rights guaranteed under Articles 12(1), 13(1), and 14(1)(a) of the Constitution.

Contention of the 1st to 12th Respondents

The 1st to 12th Respondents contended that, on 24 March 2022, the 1st Respondent received an intelligence report ('6R1') indicating that certain individuals were attempting to overthrow the then Government through protests and other violent means. The purported annexure to the report, which named the Petitioner as a person allegedly involved in inciting disaffection against the constitutionally elected President, was

forwarded to the 5th Respondent for investigation. They submitted that, based on the contents of the intelligence report, the Police entertained a reasonable suspicion that the Petitioner had committed an offence under Section 120 of the Penal Code.

The 1st to 12th Respondents further stated that, acting upon such reasonable suspicion, Police officers arrested the Petitioner during the early hours of 2 April 2022 after informing him of the reasons for his arrest, and took into custody his mobile phone and laptop for the purposes of investigation. They submitted that the Petitioner was produced, on 03 April 2022 at 12.55 am before the learned Additional Magistrate of Colombo, who enlarged him on surety bail, impounded his passport, and imposed a travel restriction. The seized electronic devices were forwarded to the Government Analyst for examination. They further stated that the travel ban was subsequently lifted by order dated 26 April 2022, the order referring the devices to the Government Analyst was recalled on 31 May 2022, and the Petitioner was ultimately discharged from the proceedings by the learned Magistrate on 21 June 2022.

The 1st to 12th Respondents contended that the arrest was lawfully effected on the basis of a reasonable suspicion arising from the intelligence report and that the existence of evidence sufficient to establish guilt beyond reasonable doubt was not a prerequisite for a lawful arrest. They maintained that the Police acted upon information received from the intelligence authorities and deferred the arrest until 1 April 2022, when the protests had allegedly escalated into violence, necessitating immediate investigative action.

Moreover, the 1st to 12th Respondents denied that the Petitioner's arrest infringed his freedom of speech and expression guaranteed under Article 14(1)(a) of the Constitution. They submitted that the arrest was undertaken solely for the purpose of investigating the allegations contained in the said intelligence report, ascertaining the truth regarding the incidents of violence, and preventing any recurrence thereof. They further contended that the freedom of speech and expression guaranteed by Article 14(1)(a) is not absolute and remains subject to the restrictions imposed by Article 15 of the Constitution.

The 1st to 12th Respondents further submitted that, as law enforcement officers, the Police were under a legal duty to investigate credible information relating to the commission of offences. In support of this proposition, they relied on *Nandasenage Lalantha Anuradha v. Headquarter Inspector of Police* (SC/FRA/369/2013), *Hill v. Chief Constable of West*

Yorkshire [1989] AC 53, *Brooks v. Commissioner of Police of the Metropolis* [2005] UKHL 24, and the determination in **SC/FRA/163/2019** concerning the Easter Sunday attacks. They contended that these authorities recognise the duty of police officers to enforce the law and investigate allegations of criminal conduct, and that any failure to investigate or arrest the Petitioner in the circumstances would itself have constituted a dereliction of their statutory responsibilities. Accordingly, they maintained that the Respondents had merely discharged their lawful duties in the manner required by law.

Evaluation

The principal issue that arises for determination is whether the arrest and detention of the Petitioner on 2 April 2022, purportedly on reasonable suspicion of committing an offence under Section 120 of the Penal Code, were lawful and compatible with the fundamental rights guaranteed under Articles 12(1), 13(1), and 14(1)(a) of the Constitution.

The Petitioner was apprehended by a team operating under the direction of the 6th Respondent. The Respondents seek to justify the arrest on the basis that the Police entertained a reasonable suspicion that the Petitioner had committed an offence under Section 120 of the Penal Code. It is necessary, at the outset, to examine the scope of Section 120¹.

That provision criminalises acts which excite or attempt to excite disaffection towards the President or the Government of the Republic, or which incite unlawful alteration of

¹ ‘Whoever by words, either spoken or intended to be read, or by signs; or by visible representations, or otherwise, excites or attempts to excite feelings of disaffection to the President or to the Government of the Republic, or excites or attempts to excite hatred to or contempt of the administration of justice, or excites or attempts to excite the People of Sri Lanka to procure, otherwise than by lawful means, the alteration of any matter by law established, or attempts to raise discontent or disaffection amongst the People of Sri Lanka, or to promote feelings of ill-will and hostility between different classes of such people, shall be punished with simple imprisonment for a term which may extend to two years.

Explanation- It is not an offence under this section by intending to show that the President or the Government of the Republic have been misled or mistaken in measures, or to point out errors or defects in the Government or any part of it, or in the administration of justice, with a view to the reformation of such alleged errors or defects, or to excite the People of Sri Lanka to attempt to procure by lawful means the alteration of any matter by law established, or to point out in order to their removal matters which are producing or have a tendency to produce feelings of hatred or ill-will between different classes of the People of Sri Lanka.

matters established by law. However, the explanation to Section 120 expressly excludes from criminal liability criticism intended to show that the President or the Government have been misled or mistaken in their measures, or criticism directed at pointing out errors or defects in governance with a view to reform.

The material placed before this Court demonstrates that the Petitioner's statements and social media posts were directed towards criticism of the then Government and the political system, particularly in the context of the alleged severe economic crisis prevailing in the country. The slogan "*GoHomeGota 2022*", which featured prominently in the allegations against the Petitioner, was subsequently examined by the learned Additional Magistrate of Colombo, who observed that it was not malicious in nature and that it was expressed in the context of ending what the Petitioner perceived to be a corrupt political culture. The said learned Magistrate further held that the Petitioner's conduct amounted to an exercise of freedom of speech and expression and that no criminal basis had been disclosed against him.

In these circumstances, the Respondents were required to demonstrate that, at the time of arrest, there existed objective material capable of giving rise to a reasonable suspicion that the Petitioner had committed an offence under Section 120. The sole basis relied upon by the Respondents is the intelligence report marked '6R1'. The intelligence information contained in '6R1' is confined to a single sentence and does not identify any particular individual. The 1st Respondent's minute (appears on the face of '6R1') addressing the 5th Respondent, refers to an annexure allegedly containing the names of the Petitioner and another person. The 1st Respondent has directed the 5th Respondent to take further steps upon the said annexure to '6R1'.

Significantly, that annexure bears neither a date nor a signature. The Respondents have failed to explain when or by whom that annexure was prepared or incorporated into the record. The unexplained appearance of such an annexure raises serious doubt as to its authenticity and reliability. This Court cannot overlook the fact that the Respondents themselves described a series of protests involving groups of persons culminating in the events of 31 March 2022, yet only two individuals were allegedly singled out as suspects under Section 120, in the said '6R1'. The absence of a satisfactory explanation for this selective identification renders the alleged intelligence basis highly questionable.

Upon careful examination of the said document marked '6R1' and its purported annexure, I am unable to conclude that it establishes the requisite reasonable suspicion.

It is well settled that a police officer may effect an arrest without a warrant where there exists a reasonable suspicion of the commission of a cognisable offence. However, such suspicion must be founded upon objective facts and cannot rest on vague, unparticularised, or doubtful material. A mere assertion that an intelligence report existed does not by itself satisfy the requirement of legality. In the present case, I am not satisfied that '6R1', viewed objectively, established reasonable grounds for suspecting that the Petitioner had committed an offence under Section 120 of the Penal Code.

The Respondents further contended that the arrest was necessitated by the violent incidents that occurred on 31 March 2022. Anyhow, no material has been produced linking the Petitioner to any act of violence, destruction of property, or unlawful conduct associated with those events. As mentioned above, the learned Magistrate ultimately discharged the Petitioner on 21 June 2022 after expressly finding that no material had been revealed connecting him with a criminal offence. Although a subsequent discharge does not automatically render an earlier arrest unlawful, it nevertheless can be a relevant circumstance in assessing whether the purported suspicion had any reasonable factual foundation.

Another matter of grave concern is the manner in which the Petitioner was produced before the Magistrate. The Petitioner was arrested at approximately 1.30 a.m. on 2 April 2022 and was produced before the learned Additional Magistrate only at about 12.55 a.m. on 3 April 2022 after being transported to several police establishments and thereafter taken back to his residence for a further search. The chronology disclosed by the record raises substantial doubt as to whether the Petitioner was produced before a Magistrate within the period contemplated by law and whether due process was strictly observed. The constitutional protection under Article 13(1) is not satisfied merely by eventual production before a judicial officer; the production must occur in a manner consistent with the safeguards intended to prevent arbitrary detention.

Equally significant is the fact that the offence alleged against the Petitioner falls within Chapter VI of the Penal Code, which deals with offences against the State. Section 127 of the Penal Code requires the sanction and authority of the Attorney-General for a

prosecution under that Chapter. The Respondents have not produced any material to demonstrate that such sanction was obtained. Although the absence of sanction may not by itself invalidate the initial arrest, it reinforces the conclusion that the prosecution was pursued without the procedural safeguards contemplated by law.

The Respondents have argued that the Police were merely discharging their statutory duties and have relied upon authorities recognising the obligation of Police officers to investigate alleged criminal conduct. There can be no dispute that the Police possess both the power and the duty to investigate offences. However, that duty must be exercised within constitutional limits.

The learned State Counsel placed reliance on the decision in *Joseph Perera alias Bruton Perera v. The Attorney General and Others* [1992] 1 Sri LR 199. In that judgment, Wanasundera J. observed:

“No police officer can predict the final outcome of a case or how a legal provision would be interpreted by the court. If they are placed in peril and heavy damages awarded in respect of their acts where prosecution were to fail, no police officer would be inclined to perform his functions and may henceforth decide to leave well alone not only doubtful cases but practically all cases, thereby bringing the administration of justice to a standstill.”

I am mindful of the rationale underlying the observations of Wanasundera J. in determining the instant Application, including the claim for compensation advanced by the Petitioner. At the same time, it is equally well settled that a police officer may effect an arrest without a warrant where there exists a reasonable suspicion that a cognisable offence has been committed. Such suspicion, however, must be founded upon objective facts capable of giving rise to a reasonable inference that an offence has been committed. It cannot rest upon vague, unparticularised, speculative, or doubtful material. Accordingly, the existence of reasonable suspicion must be assessed objectively on the basis of the facts and circumstances of each case.

I am therefore unable to conclude that the Respondents have established the existence of a reasonable suspicion that the Petitioner had committed an offence under Section 120 of the Penal Code at the time of his arrest.

Conclusion

On the totality of the evidence, I find that the Petitioner's arrest was not supported by objectively reasonable grounds, that the Respondents failed to establish a lawful basis for invoking Section 120 of the Penal Code against him, and that the arrest was effected primarily in response to his exercise of political dissent and criticism of the Government.

Accordingly, I hold that the arrest of the Petitioner was arbitrary and unlawful. The Respondents acted without sufficient material to justify a reasonable suspicion under Section 120 of the Penal Code and thereby infringed the Petitioner's fundamental rights guaranteed under Articles 13(1) of the Constitution. The arbitrary exercise of police power in the circumstances of this case also amounts to unequal treatment contrary to Article 12(1).

For the foregoing reasons, I hold that the Petitioner has established that his fundamental rights guaranteed under Articles 12(1) and 13(1) of the Constitution have been violated by the impugned acts of the 1st and 6th Respondents. Having regard to the special circumstances of this Case, I make no award of compensation or costs.

Judge of the Supreme Court

Janak De Silva, J.

I agree.

Judge of the Supreme Court

Menaka Wijesundera, J.

I agree.

Judge of the Supreme Court