

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

In the matter of an application in
respect of the violation of fundamental
Rights in terms of Article 17 and 126 of
the Constitution of the Democratic
Socialist Republic of Sri Lanka.

R. M. Saman Kumara
96/1, Hendrikka Waththa,
Diddeniya,
Hanwella.

SC/FR Application No. 190/2023

Petitioner

Vs.

1. Kariyawasam Haputhanthrige
Prabhashana Bashitha
Nayananjana
Police Station,
Hanwella.
2. Kande Badalge Suranga Sisira
Kumara
Police Station,
Hanwella.
3. Amila Govinna
Officer in Charge,
Police Station,
Hanwella.

3A. G. U. Wasantha Kumara,
Officer in Charge,
Police Station,
Hanwella.

4. C. D. Wickremaratne
Inspector General of Police,
Police Headquarters,
Colombo 01.

4A. Priyantha Weerasooriya
Inspector General of Police,
Police Headquarters,
Colombo 01.

5. Kapila Kadupitiya
Deputy Inspector General of
Police of the Western Province
South,
Mirihana,
Nugegoda.

6. Honorable Attorney General
Attorney General's Department,
Colombo 12.

Respondents

Before: **Justice A. L. Shiran Gooneratne**
 Justice K. Priyantha Fernando
 Justice Dr. Sobhitha Rajakaruna

Counsel: N. K. Ashokbharan with Shenal Fernando instructed by Piyumi Kumari for the **Petitioner**.

Boopathi Kahathuduwa with Sachintha Perera instructed by K. R. G. W. K. Kahathuduwa for the **1st, 2nd and 3A Respondents**.

Anoopa De Silva, DSG instructed by Mihiri Wicremanayake for the **4th, 5th and 6th Respondents**.

Argued on: 20/02/2026

Decided on: 02/04/2026

A. L. Shiran Gooneratne J.

FACTUAL BACKGROUND

By Petition dated 27/07/2023, the Petitioner, a 21-year-old daily wage earner, alleges that he was subjected to unlawful arrest and torture by officers attached to the Hanwella Police. On 24/04/2023, at approximately 4:30 p.m., the Petitioner, accompanied by his relative, one Shakthi Wijewardena, visited a vegetable shop in Hanwella. At that time, the 1st Respondent is alleged to have abruptly accosted the Petitioner and demanded that he accompany him to the Hanwella Police Station. Despite repeated pleas by the Petitioner to be informed of the reason for such demand, both the Petitioner and Wijewardena were apprehended without being informed of any grounds or explanation.

The Petitioner and Wijewardena were thereafter detained at the Hanwella Police Station, and approximately around 9:00 p.m, several Police Officers allegedly dragged the Petitioner from the holding cell into a closed room adjacent thereto, where he observed sticks, rods, and cloth restraints. The Petitioner states that approximately six Police Officers, including the 1st and 2nd Respondents, blindfolded him and levelled false accusations of involvement in a robbery. He was

restrained by his hands and toes, hanged by his toes, and subjected to severe assault.

The Petitioner further states that during this assault, the 2nd Respondent accused him of stealing money and gold articles from a house in his neighbourhood and demanded a confession. Despite his repeated pleas of innocence, the Police Officers allegedly continued the assault for 30 to 45 minutes before returning him to the holding cell.

Later that night, Wijewardena was released on purported “Police Bail” upon the arrival of his parents, while the Petitioner remained detained without reason. On the following day, 25/04/2023, the Petitioner’s family was denied access to him until the evening, when his father was able to speak to the 3A Respondent. The 3A Respondent has expressed his ignorance of the Petitioner’s arrest and uncertainty of any justification for such arrest, which the Petitioner contends demonstrates the arbitrary and extrajudicial manner in which the 1st to 3A Respondents acted, in violation of his rights guaranteed under the Constitution.

The Petitioner notes that despite expressing his ignorance of the Petitioner’s arrest and the reasons underlying the same, the 3A Respondent baselessly questioned the Petitioner’s father as to whether the Petitioner was a drug addict, to which the father emphatically denied. The Petitioner contends that this clearly reflects prejudice and bias towards the Petitioner by the 3A Respondent.

The Petitioner further states that his family was denied access to him while he was in police custody, on the purported ground that an order had been made from “*above*” to prevent anyone from meeting the Petitioner.

On 25/04/2023, at approximately 6:30 p.m., the Petitioner was released on bail. However, no written proof of discharge was made available to him.

Due to excruciating pain, the Petitioner was unable to walk and was admitted to the Base Hospital, Avissawella, at approximately 7:05 p.m. on the same day (25/04/2023), shortly after his release from police custody. The Petitioner's father

had then reported the incident to the hospital police post. The Petitioner was immediately admitted to the Intensive Care Unit and subsequently transferred to a Ward, where he received treatment for three days.

The Medico-Legal Examination Form (MLEF) issued by Dr. Rohan Gunaratne marked P2 recorded the following injuries:

- Impact on bilateral upper limbs with a wooden club.
- X-ray of bilateral lower limbs revealed no fractures.
- Impact on chest, abdomen, and hand.
- Pain in bilateral big toes, with difficulty in movement.

The Petitioner was discharged on 29/04/2023 after four days of hospitalisation. He states that as a consequence of the torture, he suffered not only physical pain but also severe psychological distress. The Petitioner thereafter had been referred to psychiatrist Dr. Anura Gunewardena for urgent psychiatric assessment and treatment.

On 02/05/2023, the Petitioner's parents filed a Complaint No. HRC/HO/1819 before the Human Rights Commission of Sri Lanka seeking redress for the violations of the Petitioner's Fundamental Rights. Additionally, a complaint was also lodged with the Deputy Inspector General of Police, Western Province (South). By police message form marked P5(a) and the letter dated 02/06/2023 marked P5(b), the Assistant Superintendent of Police, H. R. Wedamulla, informed the Petitioner's father that an investigation had commenced and required statements from the Petitioner, his father, and Wijewardena.

In addition, the Petitioner informed the 4th Respondent, the Inspector General of Police, by letter dated 12/06/2023 marked P6, regarding the inhumane treatment he had suffered at the hands of the Police Officers of the Hanwella Police Station.

The Petitioner states that as a direct consequence of the illegal and inhumane torture and abuse suffered at the hands of the 1st and 2nd Respondents, he has

endured significant physical and emotional trauma. He continues to struggle with excruciating pain, particularly in his toes, which prevents him from bearing weight.

The Petitioner further avers that the action or inaction of the 3A and 4th Respondents, acting in concert with the 1st and 2nd Respondents, facilitated and condoned the inhumane treatment to which he was subjected. In the backdrop of these circumstances, the Petitioner submits that he was never produced before a Magistrate, nor was any further legal action taken against him.

The Petitioner submits that 1st to 4th Respondents, or any one or more of them acted in violation of his Fundamental Rights guaranteed under Articles 11, 12(1), 12(2), 13(1), and 13(2), of the Constitution by arbitrarily and unlawfully arresting and detaining him and by subjecting him to torture and abuse in a ruthless and inhumane manner amounting to an egregious abuse of power.

On 20/11/2024, this Court granted Leave to Proceed against all the Respondents as prayed for.

PRELIMINARY OBJECTION

The 1st, 2nd and 3A Respondents, by their Written Submission dated 25/02/2026, raised a Preliminary Objection that the alleged arrest of the Petitioner took place on 24/04/2023, while the present application has been filed only on 27/07/2023, which is around three months after the alleged incident, therefore, submits that in such circumstances, the application is time-barred and must be dismissed *in limine*.

This Court notes that although the alleged arrest of the Petitioner took place on 24/04/2023 and the present application was filed on 27/07/2023, the Petitioner's parents lodged a complaint No. HRC/HO/1819 before the Human Rights Commission seeking redress for the violation of the Petitioner's Fundamental Rights on 02/05/2023. In terms of Article 126(2) of the Constitution, an application must be filed within one month of the alleged infringement, however,

where the Petitioner has actively pursued remedies before the Human Rights Commission within a period of one month since the violation of Fundamental Rights of the Petitioner, in accordance with Section 13(1) of the Human Rights Commission of Sri Lanka Act No. 21 of 1996, the time spent in furtherance of such proceedings is excluded from the computation of the limitation period.

Accordingly, the filing of this Petition on 27/07/2023, following the pursuit of remedies before the Human Rights Commission, is in compliance with Article 126(2) of the Constitution, read together with Section 13(1) of the Human Rights Commission Act. Therefore, this Court is satisfied that the Petition is not time-barred.

ALLEGATIONS OF TORTURE AND CORROBORATION BY MEDICAL EVIDENCE

By Paragraph 5 of the Objections, the 1st, 2nd and 3A Respondents; “[...] *fully and vehemently deny the assertion of assault while in custody* [...]”.

The Affidavit of the Petitioner’s relative, Shakthi Wijewardene, marked P10, corroborates the Petitioner’s account of unlawful arrest and inhumane treatment. Shakthi Wijewardene states that on 24/04/2023 at about 4:30 p.m., he and his cousin, the Petitioner, were arrested by the Police Officers of the Hanwella Police Station without any reason and detained until nightfall. At approximately 9:00 p.m., the Petitioner was taken by several Police Officers to a room adjacent to the prison cell, and around 45 minutes later, the Petitioner returned bearing clear signs of having been brutally beaten. Shakthi Wijewardene further states that the Petitioner informed him that he had been assaulted by five or six Police Officers, who also threatened to subject Shakthi Wijewardene to similar treatment. He further states that, at approximately 11:30 p.m., he was released on Police Bail following the intervention of his parents.

Wijewardene’s Affidavit provides eyewitness confirmation of the Petitioner’s arrest without cause, his subsequent torture at the hands of Police Officers, and the

threats made against the Petitioner, which strengthens the credibility of the Petitioner's narrative.

Paragraph 7 of the Objections filed by the 1st, 2nd and 3A Respondents states that, “[...] *the diagnosis contained in P2 MLEF, is inconsistent with the injuries the Petitioner purports to have suffered in photographs marked P7.*”

By order dated 20/11/2024 the Court directed the Registrar to issue Notice on Dr. Rohan Gunaratne, to issue a certified copy of P2 as well as to obtain the Medico-Legal Report (MLR) issued to the Petitioner by the Assistant Judicial Medical Officer, Dr. K. V. U. K. S. Bandara relating to the examination of the Petitioner at the District General Hospital, Awissawella.

According to the Medico-Legal Examination Form (MLEF) bearing No. 436/23, the Petitioner had complained that “*he was assaulted with a wooden club to his upper and lower limbs on both sides*” and “*he has difficulty in moving his big toes on both sides.*” The MLEF records that X-Rays of the Petitioner's feet, arms, elbows and forearms revealed no fractures.

The short history given by the patient (Petitioner) in the Medico-Legal Report (MLR) bearing No. 3093/23, dated 26/04/2023, corroborates the Petitioner's version. The MLR also reveals the following injuries;

1. *Abrasion 1x1 cm in size irregular shaped placed on the back of the right wrist.*
2. *Contusion 2x6 cm in size irregular shaped placed on the back of the right forearm.*
3. *Abraded contusion 3x4 cm irregular shaped placed on the back of the left forearm just below elbow.*

And concludes that injuries Nos. 1, 2 and 3 were caused by blunt force, were non grievous, and were compatible with the given history.

The Affidavit of the Petitioner's father, marked P9, further corroborates the allegations set out in the Petition. He states that on the night of 24/04/2023, while

attending a New Year festival in Meegoda, he was informed that his son, the Petitioner, had been arrested by the Hanwella Police. Unable to travel that night, he visited the Hanwella Police Station the following morning with his wife, but was denied permission to see his son and was given no reason for the said refusal. He affirms that although food and drinks which were purchased for the Petitioner were handed over to Police Officers, they were deliberately withheld from him. Later that day, when he inquired from the Officer-in-Charge (OIC) about the reason for the arrest, the OIC conceded that he was unaware of the matter and instead baselessly questioned whether the Petitioner was a drug addict, which the father immediately refuted.

He further states that when he and his family requested permission to see the Petitioner, they were told by a female Police Officer that an order had been given from above not to allow such access. Eventually, at around 4:00–5:00 p.m., he was permitted to see his son and observed that he had been brutally beaten. At approximately 6:30 p.m., the OIC ordered the release of the Petitioner, who was thereafter granted Police Bail. The father adds that while leaving the Police Station, it was evident that the Petitioner was in unbearable pain and unable to walk, necessitating his immediate admission to the Avissawella Base Hospital at around 7:00 p.m.

ALLEGED VIOLATIONS OF ARTICLE 11, 12(1), 12(2), 13(1) AND 13(2)

Violation of Article 11

Article 11 of the Constitution enshrines the absolute and non-derogable right of every individual to be free from torture, or cruel, inhuman, or degrading treatment or punishment.

Article 11 of the Constitution reads thus;

- 11. No person shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.***

The constitutional protection afforded under Article 11 is categorical and admits of no exceptions, thereby imposing a strict duty upon all organs of the State, and in particular law enforcement authorities, to respect and uphold this guarantee.

The Convention Against Torture and Other Cruel, Inhumane or Degrading Treatment or Punishment (commonly referred to as CAT) was adopted by the United Nations in 1987. Under Article 1(1) of the CAT, “torture” is defined thus:

Article 1

1. For the purposes of this Convention, the term "torture" means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions.

Sri Lanka became a party to the Convention Against Torture (CAT) in 1994. In line with its obligations under Article 2(1), which requires that, “*Each State Party shall take effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction.*”; Sri Lanka incorporated the Convention into domestic law through the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment Act, No. 22 of 1994.

Section 12 of the said act interprets ‘torture’ as follows;

12. ‘torture’ with its grammatical variations and cognate expressions, means any act which causes severe pain, whether Physical or mental, to any other person, being a net which is

(a) done for any of the following purposes that is to say

(i) obtaining from such other person or a third person, any information or confession; or

(ii) punishing such other person for any act which he or a third person has committed, or is suspected of having committed; or

(iii) intimidating or coercing such other person or a third person; or

(b) done for any reason based on discrimination

and being in every case, an act which is done by, or at the initiation of, or with the consent or acquiescence of, a public officer or other person acting in an official capacity.”

Furthermore, Article 5 of the UDHR reads thus;

Article 5

5. No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.

In *Channa Pieris and Others v. Attorney General and Others* [1994] 1 Sri LR 1, 105, the Supreme Court articulated a domestic framework for assessing violations of Article 11. The Court in that case held *inter alia*:

- *“The acts or conduct complained of must be qualitatively of a kind that a Court may take cognizance of. Where it is not so, the Court will not declare that Article 11 has been violated.*
- *Torture, cruel, inhuman or degrading treatment or punishment may take many forms, psychological and physical.*
- *Having regard to the nature and gravity of the issue, a high degree of certainty is required before the balance of probability might be said to tilt in favour of a petitioner endeavouring to discharge his burden of proving that he was subjected to torture or to cruel, inhuman or degrading treatment.”*

In the above case Amarasinghe J. observed thus;

“Would “the guarded discretion of a reasonable and just man lead him to the conclusion”? is the test I would apply in deciding the matter. If I am in real and substantial doubt, that is if there is a degree of doubt that would prevent a reasonable and just man from coming to the conclusion, I would hold that the allegation has not been established.”

In the present matter, the Petitioner has placed before this Court a consistent and credible account of the mistreatment inflicted upon him by the 1st and 2nd Respondents. He has narrated that he was blindfolded, restrained, hanged by his toes, and subjected to repeated and brutal assaults by a group of Police Officers, including the 1st and 2nd Respondents. The purpose of such treatment, as alleged, was to coerce a confession to a crime which the Petitioner has steadfastly denied. The deliberate infliction of pain and humiliation, coupled with the denial of access to his family and threats against his relatives, demonstrates conduct that falls squarely within the ambit of torture and cruel, inhuman, and degrading treatment prohibited by Article 11.

The findings related to the injuries to the upper limbs, chest, abdomen, and toes, together with the Petitioner being admitted to the Avissawella Base Hospital, substantiate the severity of the assault. The referral to psychiatric care further underscores the psychological trauma suffered by the Petitioner as a direct consequence of the acts complained of. This Court is therefore satisfied that the Petitioner’s narrative is not only credible but is also supported by objective medical evidence.

It is further noted that the 1st and 2nd Respondents, who were entrusted with the responsibility of upholding the law, acted in complete disregard of the constitutional safeguards guaranteed to the Petitioner. The acts of torture were not incidental or accidental but were deliberate, systematic, and carried out with the intention of extracting a confession. Such conduct constitutes a grave abuse of power and a flagrant violation of the Petitioner’s dignity and bodily integrity.

This Court reiterates that Article 11 of the Constitution is absolute in its application. The prohibition against torture and cruel, inhuman, or degrading treatment is not subject to limitation, nor can it be justified under any circumstances, including allegations of criminal activity. The actions of the 1st and 2nd Respondents, as alleged and substantiated, therefore, amount to a direct infringement of the Petitioner's Fundamental Rights under Article 11.

In *Amal Sudath Silva v. Kodithuwakku* (1987) 2 SLR 119 and *Ratnapala v. Hector Dharmasiri, HQI Rathnapura* (1993) 1 SLR 224, it was established that the Petitioners had been subjected to severe physical torture while in police custody. The rulings emphasised that, regardless of whether a suspect is a hardened criminal or otherwise, the police have no authority to inflict torture.

Violation of Article 12

Article 12(1) of the Constitution guarantees to every person equality before the law and equal protection of the law, while Article 12(2) prohibits discrimination on the grounds of race, religion, language, caste, sex, political opinion, place of birth, or any such grounds, forming the cornerstone of constitutional guarantees ensuring that all citizens are treated fairly and without prejudice by organs of the State.

Articles 12(1) and 12(2) of the Constitution reads thus;

12. (1) *All persons are equal before the law and are entitled to the equal protection of the law.*

(2) *No citizen shall be discriminated against on the grounds of race, religion, language, caste, sex, political opinion, place of birth or any one of such grounds: [...]*

In the present case, the Petitioner has demonstrated that he was unlawfully arrested and subjected to torture. The arbitrary nature of the arrest, coupled with the baseless accusations levelled against him, reveals that the Petitioner was denied equal protection of the law. While his relative, Wijewardena, who was also arrested

with the Petitioner, was released on 'Police Bail', the Petitioner was singled out and detained further, without reason or lawful basis.

The Petitioner further asserts that he was profiled and targeted due to his poor economic status. The line of questioning by the 3A Respondent, suggesting without any justification that the Petitioner was a drug addict, underscores the prejudices and biases entertained by 3A Respondent. This discriminatory conduct, rooted in unfounded assumptions about the Petitioner's socio-economic background, amounts to a violation of Article 12(2), which prohibits discrimination on arbitrary grounds. The Constitution does not permit law enforcement authorities to treat individuals differently based on prejudice or social profiling.

This Court is mindful that equality before the law requires that all persons be subject to the same legal standards and protections. The Petitioner was denied this guarantee when he was arrested without cause, detained without being produced before a Magistrate, and tortured in order to extract a confession. The Respondents' conduct demonstrates a complete disregard for equal protection owed to the Petitioner under Article 12(1).

Furthermore, the threats made against the Petitioner and his family, warning them against pursuing legal action and threatening fabricated charges, reinforce the discriminatory and arbitrary manner in which the Respondents acted. Such intimidation not only violates the Petitioner's right to equality but also undermines the broader constitutional ethos of fairness and justice.

Accordingly, this Court holds that the Petitioner's Fundamental Rights under Articles 12(1) and 12(2) of the Constitution have been infringed by the arbitrary, discriminatory, and prejudicial conduct of the 1st to 3A Respondents.

Violation of Article 13

Article 13(1) of the Constitution guarantees that no person shall be arrested except according to procedure established by law, and that any person arrested shall be informed of the reason for such arrest. Article 13(2) further provides that no person

shall be kept in custody except upon and in terms of an order of a judge made in accordance with procedure established by law, safeguarding the liberty of the individual and to ensure that the coercive powers of the State are exercised only in strict conformity with the law.

Articles 13(1) and 13(2) of the Constitution reads thus;

13. (1) *No person shall be arrested except according to procedure established by law. Any person arrested shall be informed of the reason for his arrest.*

(2) *Every person held in custody, detained or otherwise deprived of personal liberty shall be brought before the judge of the nearest competent court according to procedure established by law and shall not be further held in custody, detained or deprived of personal liberty except upon and in terms of the order of such judge made in accordance with procedure established by law.*

In the present matter, the Petitioner has consistently maintained that the 1st and 2nd Respondents arrested him without being informed of any reason for his arrest. Despite repeated pleas, neither the Petitioner nor his relative was furnished with any grounds or explanation for detention. The arrest was carried out abruptly, and in blatant disregard of the procedural safeguards mandated by Article 13(1). The failure to inform the Petitioner of the reason for his arrest constitutes a direct infringement of his constitutional Right to Liberty.

The Petitioner was detained at the Hanwella Police Station until late in the night of 24/04/2023, and continued to be held until the following day, without being produced before a Magistrate in accordance with the statutory limitations. No judicial order was obtained to justify his continued detention. This Court notes that such conduct is a clear violation of Article 13(2), which requires that custody be sanctioned only by judicial authority. The arbitrary detention of the Petitioner, without any lawful order, amounts to an egregious breach of his Fundamental Rights.

The Petitioner's account further reveals that while his relative was released on 'Police Bail', he was singled out and detained further, without reason or lawful basis. This discriminatory treatment underscores the arbitrary nature of the detention and reinforces the violation of Article 13(2).

This Court reiterates that the guarantees under Articles 13(1) and 13(2) are fundamental to the protection of personal liberty. The arbitrary arrest and detention of the Petitioner, without adherence to due process, and the failure to produce him before a Magistrate in terms of the law, constitute a flagrant violation of these constitutional safeguards. Accordingly, this Court holds that the Petitioner's Fundamental Rights under Articles 13(1) and 13(2) have been infringed by the 1st to 3A Respondents.

VIOLATIONS OF PROVISIONS IN THE POLICE ORDINANCE AND THE CODE OF CRIMINAL PROCEDURE

Section 65 of the Police Ordinance imposes a clear statutory duty upon Police Officers who arrest a person without a warrant. Such a person must forthwith be delivered into the custody of the Officer-in-Charge of the station, in order that he may either be secured until produced before a Magistrate or be released on bail if deemed prudent.

Section 65 of the Police Ordinance states thus;

65. Every person taken into custody by any police officer without warrant (except persons detained for the mere purpose of ascertaining their name and residence) shall forthwith be delivered into the custody of the officer in charge of a station in order that such person may be secured until he can be brought before a Magistrate to be dealt with according to law, or may give bail for his appearance before a Magistrate, if the officer in charge shall deem it prudent to take bail as hereinafter mentioned:

Provided always that where bail is not taken, the prisoner shall be brought before a Magistrate within twenty-four hours, unless circumstances render delay unavoidable.

The Petitioner was arrested by the 1st and 2nd Respondents and detained at the Police Station. Despite being held overnight, the Petitioner was never produced before a Magistrate within twenty-four hours as required by law. The Respondents failed to comply with the statutory obligation to either release the Petitioner on bail with proper documentation or produce him before judicial authority. This Court is compelled to observe that the Respondents' actions amount to a direct violation of Section 65 of the Police Ordinance. The Petitioner was unlawfully detained beyond the permissible period, without judicial sanction, and without adherence to the procedural safeguards mandated by law.

Moreover, Section 36 of the Code of Criminal Procedure imposes a clear obligation upon a Peace Officer arresting without a warrant to, without unnecessary delay, take or send the person arrested before a Magistrate having jurisdiction in the case.

Section 36 of the Code of Criminal Procedure reads thus;

36. *A peace officer making an arrest without warrant shall without unnecessary delay and subject to the provisions herein contained as to bail take or send the person arrested before a Magistrate having jurisdiction in the case.*

The failure to comply with the statutory requirement of Section 36, renders the arrest and detention unlawful.

Section 37 of the Code of Criminal Procedure further reinforces this safeguard by prohibiting the detention of a person arrested without a warrant for a period longer than is reasonable under the circumstances, and in any event not exceeding twenty-four hours exclusive of travel time to the Magistrate.

Section 37 of the Code of Criminal Procedure reads thus;

37. No peace officer shall detain in custody a person arrested without a warrant for a longer period than under all the circumstances of the case is reasonable, and such period shall not exceed twenty-four hours exclusive of the time necessary for the journey from the place of arrest to the Magistrate.

As discussed earlier in this judgment, the Petitioner was detained well beyond this statutory limit without being produced before a Magistrate or provided with any lawful justification for his continued detention.

Thus, this Court observes that the 1st to 3A Respondents acted in blatant disregard of the statutory safeguards enshrined in Sections 36 and 37 of the Code of Criminal Procedure as well.

TIME OF ARREST

The Petitioner has stated that he and his relative were arrested on 24/04/2023 at approximately 4:30 p.m. In contrast, the 1st and 2nd Respondents assert that the arrest occurred at approximately 01:50 a.m. on 25/04/2023, as reflected in documents marked R1(9) and R2(10).

According to the Objections filed by the 1st and 2nd Respondents;

“[...] on 25/04/2023, police messages were relayed to five police stations within the area, namely Meegoda, Kosgama, Athurugiriya, Pugoda and Padukka, inquiring whether the suspect, Senanayake Mudiyanseelage Saman Kumara of 96/1, Diddeniya, Hanwella [the Petitioner], was wanted in connection with ongoing investigations at those stations.”

However, the police message attached to the Objections of the 1st and 2nd Respondents, marked R1(11) and R2(12), the alleged suspicious activities of the Petitioner, is incomplete due to material details not found in that message. Compounding this discrepancy, the 2nd Respondent’s investigation notes in the GCIB indicate that the Petitioner’s arrest was only entered on 01/05/2023 at 2:00

p.m., as evidenced by R2(18). The investigation notes entered in the GCIB record state that the Petitioner was arrested at approximately 1:50 a.m. on 25/04/2023.

The 1st, 2nd and 3A Respondents, in their Objections, also claim that the Petitioner was released on Police Bail at 7:00 p.m. on 25/04/2023, and have produced the Bail Out Entry R1(14) R2(17), and R3A(18) respectively. The said Bail Out Entry records the date of bail as 25/04/2023 and the time as 7:00 p.m.

The unexplained belatedness and the inadequacy of material details in entries cast serious doubt on the reliability of the Respondents' version of events and weaken the credibility of the purported time of arrest claimed by the Respondents.

In light of Section 37 of the Code of Criminal Procedure, which expressly prohibits the detention of a person arrested without a warrant for a period exceeding twenty-four hours (exclusive of the time required to produce the suspect before a Magistrate), the contradictions in the Respondents' account of the arrest assume particular significance. The Petitioner's assertion of arrest on 24/04/2023 at approximately 4:30 p.m. stands irreconcilable with the Respondents' claim of arrest on 25/04/2023 at approximately 1:50 a.m., a discrepancy compounded by an incomplete police message and belated entries in the GCIB. These contradictions, together with the unexplained discrepancies in the documentation, cast serious doubt on the reliability of the Respondents' version of events.

In the absence of credible contemporaneous records, the Court cannot safely rely on the Respondents' narrative to determine compliance with the twenty-four-hour rule. On the contrary, the manner in which the arrest and detention have been recorded suggests a deliberate attempt to obscure the true timeline, thereby raising the inference of a likelihood to conceal unlawful detention.

This discrepancy between the Petitioner's account and the Respondents' documentation pertaining to the arrest raises serious concerns as to the credibility of the Respondents' version of events.

REASONABLE SUSPICION TO ARREST

The power of arrest without warrant must be exercised strictly within the confines of the law, and only upon the existence of reasonable suspicion that the person has committed, is committing, or is about to commit a cognizable offence. The requirement of reasonable suspicion is not a mere formality but a substantive safeguard against arbitrary deprivation of liberty.

The doctrine of ‘Reasonable Suspicion to Arrest’ requires that an arrest be grounded in specific, articulable facts that would lead a prudent officer to believe that the person has committed or is about to commit a cognizable offence. In **SC/FR Application No. 368/2016** [Supreme Court minutes 30/05/2023], K. Priyantha Fernando, J. emphasised that;

“In light of the ‘reasonable suspicion to arrest’, I do concede that a certain degree of discretion must necessarily be awarded to the police for the due performance of their duties and maintenance of public order. However, allowing the police to arrest on suspicion where it is not reasonable would create room for violations of liberty to take place. Therefore, the discretion granted should not extend to the extent where it would amount to an arbitrary violation of liberty and should be strictly where there exist reasonable grounds for such arrest. Even in such a situation, the police must always be mindful that their assumptions may be incorrect.”

In paragraph 14 of the Objections dated 03/02/2026, the 3A Respondent, provides the reason for the Petitioner’s arrest as;

“[...] I summoned Inspector of Police (IP) Sisira and PC 11868 Nayananjana to my office and inquired into the circumstances of the incident. I state that they explained to me that there was sufficient intelligence indicating the petitioner's involvement in multiple criminal activities. In relation to this specific case, they stated that the suspect had behaved in a suspicious manner during the encounter in the early morning hours and, when questioned

regarding the reason for his presence, failed to provide satisfactory or acceptable answers. Based on these facts and the information gathered from informants, the suspect was arrested for the purpose of questioning in connection with multiple crimes that had occurred within the jurisdiction of Hanwella Police Station.”

This demonstrates that the 3A Respondent relied on vague ‘intelligence’ and an unsubstantiated source of information, without placing any justifiable facts or material before this Court. Reasonable suspicion requires objective, verifiable grounds and not mere unsubstantiated allegations or hearsay. The claim that the Petitioner “*behaved in a suspicious manner*” and “*failed to provide satisfactory answers*” when questioned is inherently subjective. Suspicion based solely on demeanour or silence cannot amount to reasonable suspicion under constitutional standards.

Thus, the 3A Respondent’s justification demonstrates arbitrariness rather than lawful suspicion. The arrest was carried out without any objective basis, violating the requirement of reasonable suspicion. This renders the arrest unlawful *ab initio*, and the subsequent detention and torture amount to aggravated violations of the Petitioner’s Fundamental Rights.

STATE RESPONSIBILITY

In *Kanda Udage Malika v D. M. Aberathna and Others* [2014] SC/FR/157/2014, (Supreme Court Minutes 21/05/2021), Thurairaja PC, J. cited with approval Soza J. in *Goonewardene v. Perera and Others* [1983] 1 Sri LR 305, stated thus;

“It is illogical to hold the state responsible for acts committed by such officers in pursuing their personal vengeance without the authorization or knowledge of the persons in authority. This was also highlighted in Goonewardene v. Perera and Others [1983] 1 Sri LR 305 (Soza, J.) as follows,

'The State no doubt cannot be made liable for such infringements as may be committed in the course of the personal pursuits of a public officer of to pay off his personal grudges. But infringements of Fundamental Rights committed under colour of office by public officers must result in liability being cast on the State.'

In light of the above, the phrase 'colour of office is not limited to whether or not the officers were in official uniform but includes factors surrounding the conduct of the officers and the authority given to them. In the instant case the acts committed by the errant officers were not committed under the supervision or the orders of a senior officer. The state has not in any manner approved nor shall approve such conduct. In considering the facts laid before this court the acts of the officers were conducted in their personal capacity and not in the 'colour of office.'"

In the present case, the principle of State Responsibility necessarily extends to the supervisory and command structures of the police. The 3A Respondent, as the Officer-in-Charge of the Hanwella Police Station, bore the immediate duty to ensure that arrests and detentions within his jurisdiction were carried out strictly in accordance with the law, and his failure to prevent or remedy the unlawful arrest and torture of the Petitioner renders him directly liable.

The Petitioner formally notified the 4th Respondent, the Inspector General of Police, by way of a letter dated 12/06/2023 (P6), detailing the inhumane treatment he had endured at the hands of officers attached to the Hanwella Police Station. Copies of the said letter were also forwarded to the President, the Secretary of Defence, the National Police Commission, and the Senior Deputy Inspector General of Police, thereby placing the matter before the highest supervisory and executive authorities responsible for ensuring accountability within the police force.

In response, the Assistant Superintendent of Police informed the Petitioner's father that an investigation had commenced and that statements from the aggrieved

parties were required for the purpose of conducting the investigation. The said investigation coincided with the Petitioner's complaint made to the Human Rights Commission.

CONCLUSIONS

In conclusion, this Court finds that the arrest and detention of the Petitioner were carried out in blatant disregard of the constitutional safeguards enshrined in the Constitution, as well as the statutory protections contained in the Police Ordinance and the Code of Criminal Procedure Act.

The 1st, 2nd, and 3A Respondents, entrusted with the solemn duty of upholding the law, instead acted in a manner that was arbitrary, discriminatory, and cruel, thereby subjecting the Petitioner to torture and unlawful deprivation of liberty. Such conduct constitutes a grave abuse of power and a flagrant violation of the Fundamental Rights guaranteed to every citizen.

Accordingly, I hold that the Petitioner's Fundamental Rights guaranteed under Articles 11, 12(1), 12(2), 13(1), and 13(2) of the Constitution have been infringed by the 1st, 2nd, and 3A Respondents. This application is accordingly allowed.

The jurisprudence of this Court has consistently recognized that compensation is an appropriate and necessary remedy for victims of unlawful arrest, detention, and torture. This Court fortified its position in ***SC FR Application No. 378/2019*** [*Supreme Court minutes 18/06/2025*], where it was held that the Petitioner had established a violation of Article 12(1) by the Respondents, thereby affirming the guarantee of equal protection of the law. In the said matter, the Court emphasized that victim compensation is well within the ambit of Fundamental Rights jurisdiction, and that it is the obligation of offending officers to personally bear liability for restitution. The Supreme Court accordingly directed the Respondents to pay compensation from their personal funds together with costs of litigation. This precedent underscores the principle that unlawful arrest, detention, and torture not only infringe constitutional rights but also attract personal liability on

the part of the perpetrators, thereby strengthening the jurisprudence of accountability and victim redress.

Accordingly, the 1st, 2nd and 3A Respondents are directed to each pay a sum of Rupees 75,000/-, from their personal funds to the Petitioner, with full payment to be made within six months from the date of this Judgment. The Petitioner is also entitled to costs of this Application.

The Registrar is further directed to transmit a certified copy of this Judgment to the Chairman of the National Police Commission for consideration and for such action as may be deemed appropriate in relation to the conduct of the 1st, 2nd and 3A Respondents.

Application allowed.

Judge of the Supreme Court

K. Priyantha Fernando, J.

I agree.

Judge of the Supreme Court

Dr. Sobhitha Rajakaruna, J.

I agree.

Judge of the Supreme Court