

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.*

Mohammed Thufail Mohammed Milhan
41B Isnapulla Road,
Dharga Town,
Aluthgama.

SC/FRA/255/2019

PETITIONER

Vs.

1. Head Quarters Inspector
Mount Lavinia Police Station
Mount Lavinia.
2. Sub Inspector Ramanayake
Mount Lavinia Police Station
Mount Lavinia.
3. Sub Inspector Saliya
Mount Lavinia Police Station
Mount Lavinia.
4. Inspector General of Police
Sri Lanka Police Headquarters
Colombo 01.
5. Major General Ruwan Kulatunga
Chief of National Intelligence
National Intelligence Unit
Colombo.
6. Secretary to the Ministry of Defence
Ministry of Defence
5/5, Baladaksha Mawatha,
Colombo 03.

7. Hon. Attorney General
Attorney General's Department
Colombo 12.

RESPONDENTS

Before: Arjuna Obeyesekere J.

K. Priyantha Fernando J.

Dr. Sobhitha Rajakaruna J.

Counsel: Ermiza Tegal with Mark Schubert for the Petitioner.

Induni Punchihewa, SC, for the Respondents.

Argued on: 24.09.2025

Written Submissions: Petitioner - 11.11.2025

16.02.2021

1st, 2nd, 3rd, 4th, 6th and 7th Respondents - 02.07.2020

Decided on: 26.02.2026

Dr. Sobhitha Rajakaruna J.

The Petitioner was arrested on 05.05.2019 at a Jewellery Store down Main Road, Attidiya. Subsequently, investigations were carried out concerning the Petitioner, encompassing his banking records, telephone data, and the contents of his Facebook profile, all pursuant to appropriate court orders. The Petitioner was released on 10.07.2019 by the Magistrate's Court of Mount Lavinia. As per the Affidavits of I. M. A. Udaya Kumara ('1st Respondent'), Chief Inspector of Police and R. A. S. Ramanayake ('2nd Respondent'), Sub Inspector of Police, the Petitioner's name is listed in the 84th position among individuals identified as exhibiting inclinations toward the Ideologies of the Islamic State of Iraq and Syria (ISIS).

The Petitioner was detained under the Prevention of Terrorism (Temporary Provisions) Act No. 48 of 1979 ('PTA') pursuant to the relevant detention orders issued thereunder. The Petitioner contends that his arrest did not comply with the procedural requirements

stipulated by the PTA and that no sufficient grounds or reasons for the arrest were communicated to him. He further alleges that the 1st to 4th Respondents, acting on instructions or information supplied by the 5th Respondent, effected his arrest, subsequent custody, detention, and deprivation of personal liberty, thereby violating his fundamental rights enshrined in Articles 13(1) and 13(2) of the Constitution.

This Court has granted leave to proceed with the instant Application in respect of the alleged infringements under Articles 13(1) and 13(2) of the Constitution.

The Petitioner submits that, pursuant to Article 13(1) of the Constitution, every person who is arrested must be promptly informed of the reasons for such arrest. He asserts that, at the time of his apprehension, no reasons whatsoever were communicated to him. The Petitioner further maintains that the purported reliance on Section 6(1) of the PTA does not exempt the arresting officer from the constitutional and legal duty to furnish the grounds of arrest. Consequently, the Respondents cannot validly contend that the Petitioner was already aware of the reasons for his detention. Additionally, the Petitioner argues that for a valid arrest under the PTA, the arresting officer, specifically a Sub Inspector, must be expressly authorised in writing to effect such an arrest. However, there is no evidence that the 2nd Respondent had secured any such written authorisation, either on or prior to 05.05.2019, to arrest the Petitioner under the provisions of the PTA.

The Petitioner further contends that beyond the document marked '1R4', which identifies certain individuals including the Petitioner as persons exhibiting a tendency toward ISIS ideologies, the Respondents have adduced no additional evidence before this Court to establish that the 2nd Respondent or other officers held a reasonable suspicion of the Petitioner's connection to ISIS prior to effecting his arrest. The Petitioner asserts that the documents marked 'P8' and 'P9' unequivocally demonstrate his opposition to ISIS ideology.

The 1st to 4th, 6th, and 7th Respondents (collectively referred to as the "Respondents") rely on the Detention Order dated 08.05.2019 (marked as 'X1'). They submit that the Petitioner was arrested pursuant to this order, which was issued under Section 9(1) of the PTA. The said order, bearing the signature of the then Minister of Defence (who was also the President), directed that the Petitioner be detained at the Mount Lavinia Police Station for a period of three months commencing on 08.05.2019. A subsequent Order dated

08.07.2019 (marked as 'X2'), issued under Section 9(2)(a) of the PTA, read together with Article 44(2) of the Constitution, suspended the earlier Detention Order of 08.05.2019. Throughout their submissions, the Respondents maintain that the entire investigation concerning the Petitioner was conducted strictly in accordance with and under the authority of the provisions of the PTA.

The Respondents submit that officers attached to the Mount Lavinia Police Station were duly informed of the suspicions concerning the Petitioner through a letter dated 20.04.2019 (marked '1R4'), issued by the Head of National Intelligence, with copies forwarded to the Terrorism Investigation Division (TID). Likewise, the 3rd Respondent received information specifically relating to the Petitioner as set out in the letter dated 02.05.2019 (marked '3R1'). On this basis, the Respondents assert that the contents of '1R4' and '3R1' provided sufficient grounds to reasonably suspect the Petitioner of being connected with or concerned in any unlawful activity falling within the scope of Section 6(1) of the PTA.

It is significant to observe that the Petitioner was arrested on 05.05 2019, whereas the detention order marked 'X1' was issued only on 08.05.2019. The Respondents, invoking Section 7(1) of the PTA, submit that a person arrested under Section 6(1) of the PTA may lawfully be held in custody for a maximum period of 72 hours. Within that timeframe, unless a detention order under Section 9 has been issued in respect of that person, the detainee must be produced before a Magistrate prior to the expiry of the 72 hours. On this basis, the Respondents maintain that the Petitioner's detention was not unlawful.

Upon examination of the material placed before this Court, it is apparent that the 1st Respondent has failed to disclose either the precise circumstances of the arrest or the specific information that was within his knowledge at the time of the arrest. Furthermore, it appears that the application for access to the Petitioner's bank records and mobile telephone details was submitted to the Court, and the request to examine the contents of his Facebook account was directed to the Criminal Investigation Department (CID), only after the arrest had already taken place.

The Respondents have failed to adduce adequate evidence to rebut the Petitioner's specific allegation that neither the document marked '3R1' nor the document marked '1R4' was ever furnished or made known to him at the time of his arrest or at any stage during his

detention. Moreover, the document marked '1R4' does not, on its face, constitute an authorisation for the arrest of the Petitioner; rather, it merely directs the relevant authorities to examine the contents thereof and to take appropriate and expeditious action accordingly. Further, even the 3rd Respondent has not disclosed either in affidavit or otherwise, the precise circumstances surrounding the arrest, nor has he revealed the specific information that was within his knowledge or possession at the material time.

Moreover, the Respondents have not furnished sufficient or persuasive grounds to refute the Petitioner's contention that the letter marked '3R1' is a fabricated or doctored document. Although '3R1' is dated 02.05.2019, the opening paragraph of the letter makes reference to a report dated 24.09.2019, bearing the reference number 'U19/497/2019'. Even if one were to accept the Respondents' explanation that this discrepancy was merely an inadvertent error, it is implausible that both the date (September 2019) and the corresponding reference number (incorporating "2019") could have been mistakenly included, given that the letter itself predates September 2019 by several months.

The Headquarters Chief Inspector of Police at Mount Lavinia Police Station, by letter dated 08.05.2019 (marked '1R13'), requested the Deputy Inspector General of Police, Western Province, to issue a Detention Order authorising the detention of the Petitioner for a period of 90 days commencing on 08.05.2019, in order to facilitate further investigations. In light of '1R13', the Petitioner had been arrested at 1:00 p.m. on 05.05.2019, such that the initial 72-hour period of custody under the PTA expired at 1:00 p.m. on 08.05.2019. Pursuant to the aforementioned letter '1R13', the Deputy Inspector General of Police, Western Province, on the same day (08.05.2019), addressed a communication to the Minister of Public Security seeking the issuance of a Detention Order. The Detention Order itself, marked 'X1', is also dated 08.05.2019. Upon review, the Court finds no compelling or substantial evidence to confirm that the Detention Order was in fact issued precisely on 08.05.2019, following the two-tiered administrative process involved in requesting and obtaining such an Order.

Furthermore, the Respondents have not placed before this Court sufficient material to adequately address or refute the Petitioner's allegation that even as late as 29.05.2019, the 1st Respondent was unable to produce or provide a copy of the Detention Order when requested to do so by the Petitioner's Attorney-at-Law when the Petitioner was produced before the Magistrate, on 11.06.2019. Anyhow, as pointed out by the Petitioner himself,

the Supreme Court held in *Channa Pieris and Others v. Attorney-General and Others (Ratawesi Peramuna Case)* [1994] 1 Sri L.R. 1 that the failure to provide the Petitioners with copies of the Detention Orders does not infringe any constitutional right.

The Supreme Court case of *Sansoon Salley Mohamed Azath v. Hon. Attorney-General*, SC/FR/97/2021, SC Minutes 12.12.2024 is a case where the Petitioner had been taken into custody upon a Detention Order due to his alleged involvement in the Easter Sunday Attack. The Court observed that the receipt of arrest does not mention anything in relation to the Easter Sunday Attacks or in relation to the destruction of a Buddha Statue. His Lordship Justice K. Priyantha Fernando made the following observation in the said case:

‘This Court is very well aware that what is to be determined is whether there existed material to entertain a reasonable suspicion that the petitioner was concerned or connected with any unlawful activity at the time of arrest of the petitioner. This Court will only look at the status quo at the time the arrest of the petitioner was made.’

In conclusion, having carefully considered the submissions of the Petitioner and the Respondents, together with the materials placed before this Court, it is evident that there were no strong or sufficient material available at the time of the Petitioner's arrest on 05.05.2019 to entertain a reasonable suspicion that he was concerned in or connected with any unlawful activity within the purview of the provisions of the PTA. The documents relied upon by the Respondents, principally ‘1R4’ and ‘3R1’, fall far short of establishing objective grounds for such suspicion. ‘1R4’ merely identifies the Petitioner as one among many individuals purportedly exhibiting tendencies toward ISIS ideologies and directs further inquiry, without constituting authorisation for arrest or providing concrete evidence of involvement in unlawful acts under PTA. ‘3R1’, dated 02.05.2019, contains an irreconcilable reference to a report dated 24.09.2019, rendering its authenticity highly questionable and undermining any claim of reliability. The Respondents have failed to produce compelling evidence to rebut the Petitioner's assertion that this document was fabricated or doctored.

The failure to inform the Petitioner of the reasons for his arrest at the time of apprehension, coupled with the lack of disclosure of key documents during detention and the inability to produce the Detention Order even upon request as late as 29.05.2019, compounds these deficiencies. In the circumstances, the arrest and initial detention of the Petitioner were

effected without compliance with the procedural safeguards enshrined in the PTA and without satisfying the Constitutional imperative of reasonable suspicion.

Accordingly, I declare that the fundamental rights of the Petitioner guaranteed under Article 13(1) of the Constitution have been infringed by the 2nd Respondent, who has admittedly arrested the Petitioner on 05.05.2019 and recorded his statement. Having regard to all the relevant circumstances of this case, the 2nd Respondent is hereby directed to personally pay the Petitioner a sum of Rs. 30,000 (Thirty Thousand) from his own funds and the State is directed to pay the Petitioner a sum of Rs. 20,000 (Twenty Thousand) as compensation for the losses, inconvenience and hardship caused by this arbitrary arrest. The instant Application is allowed to the extent indicated above.

Judge of the Supreme Court

Arjuna Obeyesekere J.

I agree.

Judge of the Supreme Court

K. Priyantha Fernando J.

I agree.

Judge of the Supreme Court