

**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/32/2022**

Ms. Tharmaraja Tharmaja,  
No. 34/39,  
St. Sebastian's Hill,  
Colombo 12.

**PETITIONER**

On behalf of;

Mohammed Naleer Mohammed Fazil,  
Agara,  
Narangoda,  
Pannala.

Currently remanded at: The Colombo Remand  
Prison, Colombo 09.

**REMANDEE**

**Vs.**

1. Sub-Inspector Deepal Padma Kumara,
2. Director,

The 1<sup>st</sup> and 2<sup>nd</sup> Respondents of;  
the Criminal Investigations Department,  
Colombo 01.

3. Officer-in-Charge,
4. Chief Inspector T.R.K. Pathirana,  
Officer-in-Charge, Investigation Unit 02
5. Director,

The 3<sup>rd</sup> to 5<sup>th</sup> Respondents of;  
The Counter Terrorism Investigation Division,  
Colombo 01.

6. Inspector General of Police,  
Police Headquarters,  
Colombo 01.
7. Hon. Attorney General,  
Attorney General's Department,  
Colombo 12.

**RESPONDENTS**

8. Mr. Gotabaya Rajapaksa,  
Former President,  
Malalasekera Mawatha,  
Colombo 07.

And of;  
No. 26,  
Pangiriwatta Mawatha,  
Mirihana,  
Nugegoda.

**ADDED-RESPONDENT**



*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/33/2022**

Ms. Tharmaraja Tharmaja,  
No. 34/39,  
St. Sebastian's Hill,  
Colombo 12.

**PETITIONER**

On behalf of;

Salibu Amirdeen Mohammed Fariz,  
Rathmahara,  
Narangoda,  
Pannala.

Currently remanded at: The Colombo Remand  
Prison, Colombo 09.

**REMANDEE**

**Vs.**

1. Sub-Inspector Deepal Padma Kumara,
2. Director,

The 1<sup>st</sup> and 2<sup>nd</sup> Respondents of;  
the Criminal Investigations Department,  
Colombo 01.

3. Officer-in-Charge,
4. Chief Inspector T.R.K. Pathirana,

Officer-in-Charge, Investigation Unit 02

5. Director,

The 3<sup>rd</sup> to 5<sup>th</sup> Respondents of;  
The Counter Terrorism Investigation Division,  
Colombo 01.

6. Inspector General of Police,  
Police Headquarters,  
Colombo 01.

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

**RESPONDENTS**

8. Mr. Gotabaya Rajapaksa,  
Former President,  
Malalasekera Mawatha,  
Colombo 07.

And of;  
No. 26,  
Pangiriwatta Mawatha,  
Mirihana,  
Nugegoda.

**ADDED-RESPONDENT**



*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/34/2022**

Ms. Tharmaraja Tharmaja,  
No. 34/39,  
St. Sebastian's Hill,  
Colombo 12.

**PETITIONER**

On behalf of;

Mohammed Mohammed Akram,  
Agara,  
Narangoda,  
Pannala.

Currently remanded at: The Colombo Remand  
Prison, Colombo 09.

**REMANDEE**

**Vs.**

1. Sub-Inspector Deepal Padma Kumara,
2. Director,

The 1<sup>st</sup> and 2<sup>nd</sup> Respondents of;  
the Criminal Investigations Department,  
Colombo 01.

3. Officer-in-Charge,
4. Chief Inspector T.R.K. Pathirana,

Officer-in-Charge, Investigation Unit 02

5. Director,

The 3<sup>rd</sup> to 5<sup>th</sup> Respondents of;  
The Counter Terrorism Investigation Division,  
Colombo 01.

6. Inspector General of Police,  
Police Headquarters,  
Colombo 01.

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

**RESPONDENTS**

8. Mr. Gotabaya Rajapaksa,  
Former President,  
Malalasekera Mawatha,  
Colombo 07.

And of;  
No. 26,  
Pangiriwatta Mawatha,  
Mirihana,  
Nugegoda.

**ADDED-RESPONDENT**

**BEFORE** : **P. PADMAN SURASENA, CJ**  
**JANAK DE SILVA, J**  
**K.M.G.H. KULATUNGA, J**

**COUNSEL** : Pulasthi Hewamanna with Fadhila Fairoze instructed by  
Brintha Chandragesh for the Petitioner.

Sajith Bandara SC for the Respondents.

**ARGUED ON** : 19-01-2026

**DECIDED ON** : 27-05-2026

**P. PADMAN SURASENA, CJ**

At the outset, with the concurrence for the learned Counsel for all the parties, Court amalgamated the hearing of the following cases, namely; SC/FR/32/2022, SC/FR/33/2022, and SC/FR/34/2022.

All Counsel agreed that it would suffice for this Court to pronounce one Judgment in respect of all these cases since the issue agitated in all these cases is the same.

The Petitioner in all three cases is an Attorney-at-Law and states that this application filed on behalf of the above-named Remandees in SC/FR/32/2022, SC/FR/33/2023, and SC/FR/34/2022. (hereinafter referred to as 'the Remandees') in terms of Rule 44(3) of the Supreme Court Rules, which reads as follows:

*"An application may be made by an Attorney-at-Law on behalf of any person whose fundamental right or language right has been, or is about to be infringed, without a proxy in his favour, provided that -*

*(a) The Petition contains an averment to the effect that such application is made on behalf of such person, who is named therein;*

*(b) Either such person or such Attorney-at-Law is named in the Petition as the Petitioner; and*

*(c) Such Petition is signed by such Attorney-at-Law or by an instructing Attorney-at-Law appointed by him.*

*Such Attorney-at-Law shall furnish the particulars referred to in sub-rule (5) of this rule, and may instruct another Attorney-at-Law to appear without executing any proxy or other document in his favour."*

The Respondents named in all three applications are the same. Petitioner complains that the Remandees were arrested and placed in remand custody by the 1<sup>st</sup> Respondent (a who, at the relevant time, was a Sub-Inspector attached to the Public Complaints Unit of the Criminal Investigations Department (CID)) without any justification. The 2<sup>nd</sup> Respondent is the Director of the CID where the Remandee was detained. The 3<sup>rd</sup>, 4<sup>th</sup> and the 5<sup>th</sup> Respondents are, respectively, the Officer-in-Charge of the Counter Terrorism Investigation Division Colombo (CTID), the Officer-in-Charge of Investigation Unit 02 of the CTID and the Director of the CTID, which carried out investigations pertaining to the Remandee.

Admittedly, the Remandees were arrested by the CID as suspects in terms of the Prevention of Terrorism Act (PTA).

I had the occasion to consider the legality of an arrest of a person under PTA in SC/FR/51/2021.<sup>1</sup> I would like to make the following quotation from that Judgment which would be self-explanatory:

"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.<sup>2</sup>*

---

<sup>1</sup> SC Minutes 30-01-2025

<sup>2</sup> Emphasis added.

*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,<sup>3</sup> 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**".<sup>4</sup>*

*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" 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.."*

---

<sup>3</sup> 1991 (2) SLR 247, 248-249.

<sup>4</sup> Emphasis added.

The 1<sup>st</sup> Respondent, in his affidavit dated 03<sup>rd</sup> March 2023, has explained the circumstances which led to the arrest of the Remandees in the instant cases. I will set out below some factual positions revealed from the said affidavit.

There was a terrorist attack with bombs exploding at eight different locations around the country on 21<sup>st</sup> April 2019 (Easter Sunday Attacks) and investigations commenced country wide upon the guidance provided by the specialized agencies including Sri Lanka Police, Armed-forces and Intelligence Agencies.

The law enforcement authorities through the above information from time to time had identified a number of persons whom they had suspected as having connections to the aforesaid bomb explosions. The Complaint's Unit of the CID was conducting investigations into the collection of explosive material for the preparation of suicide bombs which were used during the Easter Sunday Attacks by a group led by Mohommad Hashim Mohommad Zaharan (Zaharan Hasheem). Investigations into a person named Mohommad Mustapha Mohommad Haris, who was involved in supplying the said explosive materials, revealed he was associated with one Meera Saheeb Mohommad Nafli, identified as the regional leader in the Kurunegala area of the criminal organization led by Zaharan Hasheem. The said Mohommad Nafli had organised a group of individuals, including the Remandees, to attend a 'training camp' in Shanthipura, Nuwara Eliya, said to have been organised by Zaharan Hasheem. The 1<sup>st</sup> Respondent states that investigations had revealed that such training camps organised by Zaharan Hashim had been used by him to provide weapons and training to followers whilst advocating extremist religious ideologies (vide statements by Mohommad Haris and Mohommad Nafli, produced, marked **1R-1** and **1R-2** respectively).

Upon information obtained from the statement of the said Mohommad Nafli, a team of officers including the 1<sup>st</sup> Respondent had left in order to arrest such persons who were suspected of taking part in the said training camps. The Remandees were arrested by the 1<sup>st</sup> Respondent, on the suspicion of being concerned in cognizable

offence and was detained in terms of S. 6(1) of the PTA, pursuant to the written authority of the Woman Superintendent of Police of the CID (**1R-4**) on the same day.

The CID had recorded two statements from the persons referred above as Mohommad Haris (**1R-1**) on 02<sup>nd</sup> May 2019 and Mohommad Nafli (**1R-2**) on 09<sup>th</sup> May 2019. Perusal of these statements reveals that the Police had questioned them with regard to their connections to one Zaharan Hashim; their involvement in relation to the event held in Shanthipura Nuwara Eliya; the participation of the Remandees in the said event held in Shanthipura Nuwara Eliya, etc. The statements further reveal that the two individuals were acquainted with the person named Zaharan Hashim and were invited to a 'lecture' to be held in Shanthipura Nuwara Eliya. Mohommad Haris has admitted to having supplied Zaharan Hashim with explosives. As stated by Mohommad Nafli, the Remandees accompanied him and Mohommad Haris for the supposed lecture in Shanthipura Nuwara Eilya. The Petitioner admits that the Remandees participated in the said 'lecture' in Shanthipura Nuwara Eliya and that the person named Zaharan who was instrumental in carrying out the Easter Sunday Attacks, was present and conducted the said 'lecture'.

In these circumstances, we are unable to accept the submissions of the learned Counsel for the Remandees that the CID had arrested the Remandees on the mere basis that the Remandees belonged to a certain Community.

The purpose of arresting a person on being suspected of having any connection with any unlawful activity is to continue with the investigation into that particular suspected activity. As has already been stated above, we are convinced that there were suspicious circumstances, namely; the participation by the Remandees in a lecture conducted by Zaharan Hashim who was instrumental in the Easter Sunday Attacks; the Remandees attending said lecture in the company of the person known as Mohommad Haris who has admitted to supplying explosives which were used in the Easter Sunday Attacks; the Remandees' acquaintance with the person known as Mohommed Nafli who was revealed as a regional leader of the Kurunegala area of the criminal organization headed by Zaharan Hasheem. These circumstances in our view,

would have been sufficient to raise some suspicion in the minds of the Police Officers who decided to arrest the Remandees. Therefore, we are not inclined to accept the contention of the learned Counsel for the Remandees that the CID arbitrarily arrested the Remandees.

The next question before this Court is whether the subsequent detention of the Remandees has been unlawful.

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.

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*,<sup>5</sup> 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

---

<sup>5</sup> 2000 (1) SLR 387.

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 Remandees on 29-08-2019. As admitted by the Learned Counsel for the Remandees,<sup>6</sup> on the very same day, the Remandee was detained at the CID office in Colombo under the Detention Order dated 29-08-2019 (**5R-1(a)**) which 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 Remandees is that some of the Detention Orders issued against the Remandees are not valid. The Remandees were detained under one Detention Order and five consecutive extensions of Detention Orders. These Detention Orders in respect of all three Remandees have been produced by the 5<sup>th</sup> Respondent with identical markings as follows: the Detention Order dated 29-08-2019 [**5R-1(a)**]; the extension of Detention Order dated 26-11-2020 [**5R-2(a)**]; the extension of Detention Order dated 24-02-2020 [**5R-3(a)**];<sup>7</sup> the extension of Detention Order dated 24-05-2020 [**5R-4(a)**];<sup>8</sup> the extension of Detention Order dated 22-08-2020 [**5R-5(a)**];<sup>9</sup> and the extension of Detention Order dated 20-11-2020 [**5R-6(a)**]<sup>10</sup>.

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

#### Section 9 of the PTA (Detention Orders)

---

<sup>6</sup> Paragraph 7(a) of the Petitions dated 27-01-2022

<sup>7</sup> Petitioner has produced this marked **P-3(a)**

<sup>8</sup> Petitioner has produced this marked **P-3(b)**. However, the date in the Detention Order **P-3(b)** differs from **5R-4(a)**. This issue has been addressed at page 18 below.

<sup>9</sup> Petitioner has produced this marked **P-3(c)**

<sup>10</sup> Petitioner has produced this marked **P-3(d)**

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.*

In Weerawansa's case<sup>11</sup>, 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 Remandees. 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.

---

<sup>11</sup> Supra at page 378.

The learned Counsel for the Remandees also advanced another argument with regard to the validity of the Detention Order **5R-1(a)** and the extension of Detention Orders **5R-2(a)**, **5R-3(a)**, **5R-4(a)**, **5R-5(a)** and **5R-6(a)**. It is the submission of the learned Counsel for the Remandees that it is only the Minister 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 [i.e. **5R-3(a)**, **5R-4(a)**, **5R-5(a)**] issued to detain the Remandees 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 **5R-2(a)**, **5R-3(a)**, **5R-4(a)** and **5R-5(a)** has been mentioned on those Detention Orders as "President" and the designation of the signatory of the Detention Orders marked **5R-1(a)** and **5R-6(a)** have been mentioned therein as "President and Minister of Defence".

While it is correct that Section 9(1) of the PTA empowers the Minister 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.

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 Minister 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]*

The contention of the learned Counsel for the Remandees, is that prior to the enactment of the 20<sup>th</sup> Amendment to the Constitution, the President could not assign to himself any subjects or functions under Article 44(2) of the Constitution.<sup>12</sup> Article 44(1) and (2) reads as follows:

*(1) The President may, on the advice of the Prime Minister, appoint from among Members of Parliament, Ministers who shall not be members of the Cabinet of Ministers.*

*(2) The President may, in consultation with the Prime Minister where he considers such consultation to be necessary, determine the assignment of subjects and functions to Ministers appointed under paragraph (1) of this Article and the Ministries, if any, which are to be in charge of, such Ministers.*

While it is correct that Section 9(1) of the PTA empowers the Minister of Defence to issue detention orders, I cannot forget the fact that in terms of Article 51 of the Constitution (Prior to the enactment of the 20<sup>th</sup> Amendment), the President may assign to himself the portfolio of the Minister of Defence in this country. Article 51 (Prior to the enactment of the 20<sup>th</sup> Amendment) reads as follows:

*"Notwithstanding anything to the contrary in the Constitution, the person holding office as President on the date of commencement of this Act, so long as he holds the Office of President may assign to himself the*

---

<sup>12</sup> Paragraph 67 of the Written Submissions of the Petitioner dated 13-10-2023.

*subjects and functions of **Defence**, Mahaweli Development and Environment and determine the Ministries to be in his charge for that purpose and accordingly, any reference in 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."*

Further, 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 Minister of Defence who was also the President of the Country at that time.

In addition to the above contentions, the learned Counsel for the Remandee in respect of SC/FR/33/2022, argues that there is a discrepancy with the Detention Order produced with the Petition, marked **P-3(b)**. The said Detention Order **P-3(b)** is dated 24-05-2019 and signed by former President Gotabaya Rajapaksa. The Petitioner argues that this cannot be the case as the dating of the Detention Order is prior to the election of former President Gotabaya Rajapaksa as President. However, the 5<sup>th</sup> Respondent has correspondingly produced the Detention Order marked as **5R-4(a)** which correctly depicts the date of issuance as 24-05-2020. Thus, it is clear that the date in the Detention Order issued to the Petitioner was but a mere typographical error in relation to the year. This is further obvious from the fact that the date in **P-3(b)** was prior even to the arrest of the Remandees. Thus, this contention of the learned Counsel for the Remandee in SC/FR/33/2022 is not a tenable one.

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 Remandees. 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 Remandees. Therefore, the main issue for the validity of the Detention Orders would be whether there were such grounds for the issuer to detain the Remandees in custody. This is because the person who had signed the Detention Orders was indeed the Minister of Defence.

Therefore, the Petitioner is not entitled to succeed with these Petitions.

We decide to dismiss the Petitions without costs.

**CHIEF JUSTICE**

**JANAK DE SILVA, J**

I agree.

**JUDGE OF THE SUPREME COURT**

**K.M.G.H. KULATUNGA, J**

I agree.

**JUDGE OF THE SUPREME COURT**