

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/411/2019

Budagama Mudalige Thamila Dinushi
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Attorney-at-Law
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Colombo 12.

For and on behalf of

Menikpura Hakuru Indika Pushpakumara
of No. 541/E, Hipankanda,
Welapahalawattre, Nawadagala

PETITIONER

Vs.

1. Sub Inspector of Police,
Balendran
Formerly attached to the Police Station,
Uragasmanhandiya.
2. Inspector of Police Janaka
3. Superintendent of Police
Elpitiya Division, Elpitiya
4. Senior Deputy Inspector General of Police,
Southern Province
5. Deputy Inspector General of Police
Galle District

6. SDIG Chandana Wickreematne
Acting Inspector - General of Police
Police Headquarters - Colombo 01.

6A. Priyantha Weerasooriya
Inspector General of Police
Police Headquarters – Colombo 01.
7. General S H S Kottegoda (Rtd.)
Secretary- Ministry of Defence
15/5, Baladaksha Mawatha,
Colombo 03.

7A. General G D H Kamal Gunaratne
(Rtd)
Secretary – Ministry of Defence
Defence Headquarters Complex,
Sri Jayawardenapura, Kotte.

7B. Sampath Thuyacontha
Secretary – Ministry of Defence
Defence Headquarters Complex,
Sri Jayawardenapura, Kotte.
8. Hon. The Attorney General
Attorney General’s Department
Colombo 12.

RESPONDENTS

Before: Janak De Silva, J

Dr. Sobhitha Rajakaruna, J

Menaka Wijesundera, J

Counsel: Thishya Weragoda instructed by Thamila Dinushi Perera for the Petitioner

Induni Punchihewa, SC, for the 2nd – 8th Respondents

Written Submissions: Petitioner : 17 March 2021 & 03 September 2025

Respondents: 30 March 2021

Argued on: 23 September 2025

Decided on: 27 March 2026

Dr. Sobhitha Rajakaruna J.

The Petitioner, Attorney-at-Law, has filed the instant application on behalf of Menikpura Hakuru Indika Pushpakumara ('Detainee'), who was allegedly held in illegal custody with the 1st Respondent, at an undisclosed location. The Petitioner states that the 1st-3rd Respondents;

- I. acted and continued to act in malice, for an ulterior purpose and in gross abuse of their power
- II. did not provide reasons for the arrest, and no reasons exist for the arrest of the said Detainee
- III. did not provide reasons or basis for detainee's continued detention

The Petitioner seeks a declaration that the fundamental rights of the Detainee guaranteed by Article 11, 12(1), 13(1) and 13(2) of the Constitution have been infringed by any one/more of the Respondents. This Court on 08 November 2019 granted Leave to Proceed with the instant Application under Article 12(1), 13(1) and 13(2) of the Constitution.

Summary of the Facts narrated by the Petitioner

The Petitioner states that the Detainee, a manual labourer engaged in cinnamon planting and electrical work, resides with his sister, M.H. Inoka Priyadarshani, and brother-in-law, Lihiniyagodage Gayan Kavinda Jayasinghe. At approximately 6:30 p.m. on 26 October 2019, seven persons in civilian clothing arrived at the residence on five motorbikes and identified themselves as Police officers. After questioning the sister and brother-in-law about suspected illegal drug activities in the neighbourhood and briefly proceeding to the suspected location, the officers returned and seized the mobile phones of the sister and

brother-in-law. The Petitioner contends that the said officers conducted a search of the premises with their consent, believing them to be law enforcement officers acting under the direction of the 3rd Respondent. When questioned as to their identity, the 1st and 2nd Respondents identified themselves by name and in their official capacities.

Upon being informed that the Detainee was performing electrical work at a nearby house, the 1st and 2nd Respondents requested to be taken there. The brother-in-law drove his trishaw, accompanied by his wife, followed by the officers on motorbikes. Upon arrival, the officers located the Detainee, seized the phones of all civilians present, searched the premises, and took the Detainee into custody. He was informed, in the presence of his sister, brother-in-law, and the house owner, that a “statement” was required from him.

The Petitioner further asserts that the 1st Respondent then directed the house owner, the Detainee, and the trishaw driver, Dewabandage Pradeep Kumara, to board the trishaw, while the other officers followed on motorbikes. On the way to the main road, the 1st Respondent stopped the trishaw, provided a helmet to the Detainee, handcuffed him, and had him mount one of the motorcycles. The brother-in-law and house owner were instructed to return home; the phones of the brother-in-law and sister were returned, while the house owner’s phone was retained by the 1st Respondent.

According to the Petitioner, the sister and brother-in-law immediately reported the incident at the Uragasmanhandiya Police Station. After initial confusion and communications between the Uragasmanhandiya and Elpitiya Police Stations as to the Detainee’s custody, a complaint was recorded at the Uragasmanhandiya Police Station. On 27 October 2019, the brother-in-law received a call from the Detainee’s phone (0714311500), identified as the voice of the 1st Respondent, demanding immediate withdrawal of the complaint under threat of false imprisonment charges. Despite the threats, the sister, on the advice of an Attorney-at-Law, lodged complaints with the Human Rights Commission and subsequently with Police Headquarters. The Petitioner has annexed several still images (marked ‘X6’) extracted from Closed Circuit Television (CCTV) camera footage of the events described above.

The Petitioner contends that the Detainee was kept in illegal detention without being produced before a Magistrate within twenty-four (24) hours of his arrest, thereby violating

the fundamental rights guaranteed under Article 13(1) and Article 13(2) of the Constitution.

The Petitioner submits that although the detention of the Detainee subsequent to the judicial order may not be reviewable in the instant Application, the arbitrary and illegal actions of the Respondents that led to the issuance of such order fall squarely within the jurisdiction of this Court. The Petitioner avers that the Respondents, while holding the Detainee in illegal detention, orchestrated his charging under an offence in respect of which the Magistrate had no power to grant bail. The Petitioner submits that the deliberate act of the Respondents in removing the discretion of the Magistrate to grant bail for a collateral purpose constitutes a serious violation of Articles 13(2) and 12 of the Constitution and amounts to an extension of the initial illegal detention. The Petitioner further submits that such conduct represents a clear abuse of process calculated to obtain judicial cover for the illegal detention, which is arbitrary and capricious.

Accordingly, the Petitioner states that:

- (i) the 1st to 3rd Respondents acted and continue to act with malice, for an ulterior purpose and in gross abuse of their power, especially when they failed to produce the Detainee before a Magistrate between 26 October 2019 and 29 October 2019
- (ii) no reasons were given for the arrest of the Detainee, and no valid reasons exist for such arrest; and
- (iii) there is no reason or basis for the continued detention of the Detainee.

The Petitioner therefore submits that the Respondents have acted maliciously, arbitrarily and illegally in arresting and detaining the Detainee and that his arrest, detention and continued detention are illegal, ultra vires, unreasonable, disproportionate and constitute a gross abuse of power.

The Respondents' Contentions

The 2nd Respondent, in his Affidavit, states that on the alleged date of the incident (26 October 2019), he was not at the Police Station but was attending a training program conducted by the Sri Jayawardenepura University, pursuant to directions issued by the Inspector General of Police. A letter issued by the University confirming his participation

has been produced, marked '2R2'. It is further averred that the 2nd Respondent left the Police Station at 06:54 hrs on 26.10.2019 to attend the said program and reported back for duty only on the following day, as evidenced by documents marked 2R3 and 2R3-A.

Both the 1st and 2nd Respondents have categorically denied, by way of Affidavits dated 18 September 2020, any involvement in the arrest of the Detainee or having acted with any prejudice, bias or ulterior motive as alleged by the Petitioner.

For purposes of full disclosure, the Respondents state that the Detainee was in fact arrested by officers of the Elpitiya Police Station on 29 October 2019 for possession of Diacetylmorphine (Heroin). A statement was recorded from him, and further investigations were conducted by the Elpitiya Division-Crime Detection Bureau in respect of other cases in which the said Detainee was implicated. The 1st and 2nd Respondents became involved only thereafter, when they were assigned to carry out duties as Investigating Officers attached to the Elpitiya Division Crime Detection Bureau on special duty.

The Respondents submit that although the Petitioner has leveled serious allegations of misconduct and fundamental rights violations against the 1st and 2nd Respondents, portraying them as the officers responsible for the alleged arrest/abduction, the Petitioner has failed to adduce any credible evidence in support of the same.

In this regard, the Petitioner has relied on CCTV footage marked X6, produced along with the motion dated 12 March 2020. However, the 1st and 2nd Respondents have affirmed in their Affidavits that they do not appear in the said footage and, in any event, were not part of the team that effected the arrest of the Detainee. The same position was consistently maintained by the said Respondents before the Human Rights Commission as reflected in the document marked 'Y2'.

The Respondents further draw the attention of this Court to the complaint lodged by the sister of the Detainee at the Uragasmanhandiya Police Station on 26.10.2019 at 23:00 hrs (marked as '2R1'). The said complaint refers to seven unidentified persons and makes no reference whatsoever to the 1st or 2nd Respondents by name. However, in the Affidavit marked 'A' annexed to the Petition, the said lady claims that the 1st Respondent introduced himself and thereafter introduced the 2nd Respondent by name. The 1st and 2nd Respondents vehemently deny ever having met the said sister of the Detainee and

state that no such introduction took place. According to the Respondents, the significant discrepancy between the contemporaneous complaint ('2R1') and the subsequent Affidavit marked 'A' is highlighted, as the tenability of the position taken in the Affidavit is not corroborated by the original complaint. The Respondents have specifically denied the allegations levelled against them in the averments contained in the Affidavits marked 'A' and 'B' annexed to the Petition.

Alleged violation of Fundamental Rights

Although the police officers concerned have sought to maintain that the detainee was arrested only on 29 October 2019, the evidence clearly establishes that an incident occurred on 26 October 2019. The complaint lodged by the detainee's sister on that same day, which fully recounts the events, carries significant evidentiary weight. Having carefully examined all the material placed before this Court, I find no basis to doubt that the detainee was abducted on 26 October 2019 and held at an undisclosed location unknown to his family. The affidavits filed on behalf of the Detainee confirm that the 1st and 2nd Respondents identified themselves by name and official rank (as described in the caption of the instant Application). The Detainee's sister has consistently maintained this position, including in her testimony before the Human Rights Commission, identifying the 1st and 2nd Respondents as the officers responsible for removing the detainee on 26 October 2019.

I note, in particular, the report submitted to the Magistrate of Elpitiya (the first document in the bundle marked 'Y3'). The opening paragraph of that letter omits the date on which the complaint was received, on the stated ground that it was "not eligible." The respondents have failed to produce even a photocopy of the original document for the Court's scrutiny. The subsequent report indicates that a complaint was recorded only on 29 October 2019 and was forwarded to the Magistrate on 31 October 2019. The learned Deputy Solicitor General submitted that the Detainee was discharged on 21 March 2022 on the basis that the production was not brought to Court from the Government Analyst's Department.

Equally, the material before the Court satisfies me that the Detainee was not produced before any Magistrate until 30 October 2019. The 1st and 2nd Respondents contend that the arrest was effected on 29 October 2019 by Sub-Inspector Perera, Officer-in-Charge of

the Criminal Division. In an attempt to rebut the sister's evidence, the 2nd Respondent has produced a letter from the University of Sri Jayawardenepura, dated December 2019, purporting to show that he was attending lectures on 26 October 2019. The 1st Respondent, in his affidavit, similarly asserts that he became involved in the investigation only on or after 29 October 2019 and denies any role on the earlier date. Given that the Detainee's sister has steadfastly maintained that both Respondents identified themselves by name and rank at the time, it was incumbent upon them to rebut that evidence with cogent material within their possession. No superior officer has come forward to testify that the 1st and 2nd Respondents were not involved in the events of 26 October 2019 as expressly described by the Petitioner and the Detainee's family members.

The 1st and 2nd Respondents easily could have obtained a clarification of the Superintendent of Police-Elpitiya Division (3rd Respondent) or Senior Deputy Inspector General of Police (6th Respondent) rather than submitting a letter allegedly from a course coordinator of the University of Sri Jayawardenepura. Notably, the said 3rd and 6th Respondents have not filed affidavits in this case and failed to give any reasonable explanation as to what transpired between 26 October 2019 to 28 October 2019.

Hence, I am compelled to arrive at the conclusion that, the Respondents and the Sri Lanka Police have failed to provide any satisfactory explanation for why the Detainee was not produced before a Magistrate between 26 October 2019 and 29 October 2019. This omission constitutes a clear violation of the fundamental rights guaranteed under Articles 13(1) and 13(2) of the Constitution. The failure to take steps to prevent harm to the detainee further amounts to a violation of Article 12(1).

Conclusion

In conclusion, having carefully considered the totality of the evidence placed before this Court, I hold that the Detainee was unlawfully abducted on 26 October 2019 by the 1st and 2nd Respondents and held in illegal detention at an undisclosed location unknown to his family. The Respondents' denials, supported by affidavits and belated documentary material, fail to rebut the consistent, credible testimony of the Detainee's sister, both in her contemporaneous complaint and before the Human Rights Commission, as well as the surrounding circumstantial evidence, including the glaring discrepancies in the Police reports.

Accordingly, I declare that the fundamental rights of the Detainee guaranteed under Articles 13(1), 13(2) and 12(1) of the Constitution have been violated due to abduction of the Detainee on 26 October 2019 by the 1st and 2nd Respondents. The arbitrary abduction, the failure to produce the Detainee before a Magistrate within the period mandated by law, and the subsequent conduct of the said Respondents constitute a grave and deliberate infringement of the Detainee's Constitutional protections against arbitrary arrest and detention and equality before the law. Having regard to all the relevant circumstances of this case, the 1st and 2nd Respondents are hereby directed to personally pay the Detainee a sum of Rs. 40,000 (Forty-Thousand) each from their own funds and the State is directed to pay the Detainee a sum of Rs. 20,000 (Twenty-Thousand) as compensation for the losses, inconvenience and hardship caused by the said conduct of the respective Respondents. The instant Application is allowed to the extent indicated above.

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