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/503/2019

Lebby Thambi Jesmin,
Ellawewa,
Hijjapura,
Kebethigollawa.

PETITIONER

Vs.

1. Roshan Sanjeewa,
   Officer-in-Charge,
   Horowpathana Police Station,
   Horowpathana.

2. 28071 Premaratne,
   Police Sergeant,
   Horowpathana Police Station,
   Horowpathana.

3. 10516 Sisira,
   Police Sergeant,
   Horowpathana Police Station,
   Horowpathana.

4. 33685 Jayathilaka,
   Police Constable,
   Horowpathana Police Station,
   Horowpathana.

5. Officer-in-Charge,
Kebethigollawa Police Station,
Kebethigollawa.

6. Officer-in-Charge,
Terrorist Investigation Division,
Colombo 01.

7. Thilina Hewapathirane,
Superintendent of Police,
Anuradhapura.

8. Inspector General of police,
Police Headquarters,
Colombo 01.

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

RESPONDENTS

BEFORE : **P. PADMAN SURASENA, CJ**
MENAKA WIJESUNDERA, J
M. SAMPATH K.B. WIJERATNE, J

COUNSEL : Ermiza Tegal with Mark Schubert instructed by Tharmarajah Tharmaja for the Petitioner.

Madawa Tennekoon DSG, with Sajith Bandara SC for all the Respondents.

ARGUED ON : 08-10-2025

DECIDED ON : 30-01-2026

P. PADMAN SURASENA CJ

Petitioner complains that he was arrested and placed in remand custody by the 1st Respondent (the Officer-in-Charge of Horowpathana Police Station), without any justification. The 3rd Respondent and the 4th Respondent are, respectively, a Police Sergeant and a Police Constable attached to Horowpathana Police Station who were also involved in the arrest of the Petitioner.

Admittedly, the Petitioner was arrested by Horowpathana Police as a suspect 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.[1] 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.[2]*
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> *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,*

[1] SC Minutes 30-01-2025
[2] Emphasis added.

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,[3] *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**".*[4]

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..."

The 1st Respondent, in his affidavit dated 20th October 2022, has explained the circumstances which led to the arrest of the Petitioner in the instant case. I will set out below some factual positions revealed from the said affidavit.

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[3] 1991 (2) SLR 247, 248-249.
[4] Emphasis added.

There was a terrorist attack with bombs exploding at eight different locations around the country on 21st April 2019 and investigations commenced country wide upon the guidance provided by 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. Accordingly, the Officer-in-Charge of Horowpathana Police Station had requested, from the Senior Superintendent of Police of Anuradhapura, permission to arrest five suspects in terms of the PTA. This letter has been produced marked **1R1** and this letter contains names of 5 persons. Pursuant to this letter the SSP Anuradhapura has granted permission for the Officer-in-Charge of Horowpathana Police Station to arrest these suspects under the PTA. Thus, it was pursuant to this permission that Horowpathana Police had arrested the Petitioner on 24th May 2019.

Horowpathana Police Station had recorded a statement from the Petitioner on 25th May 2019. Perusal of the statement of the Petitioner reveals that the Police had questioned him with regard to his connections to a person named Abu Bakr; his activities in relation to an Arabic school run by Abu Bakr; his possible connections with a person called Zaharan; his participation in a lecture conducted at a mosque belonging to the terrorist organization known as Thowheed Jamath, etc.

Moreover, the Petitioner in his statement has admitted that he had participated in a lecture conducted at a mosque belonging to the terrorist organization known as Thowheed Jamath. He also states that he had ties with one Abu Bakr who had funded and built a new Mosque for those who held a different religious view of the Islamic faith.

The learned Counsel for the Petitioner has admitted in the course of her submissions that investigation against Abu Bakr is continuing to date.

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

We observe that there were five cases listed along with this case before this Court. These cases are SC/FR/500/2019, SC/FR/501/2019, SC/FR/502/2019, SC/FR/503/2019, and SC/FR/504/2019. The Respondent Police Officers in SC/FR/501/2019, SC/FR/502/2019 and SC/FR/504/2019 who arrested the Petitioners in those cases had come forward to tender an apology to the Petitioners for any pain of mind they would have had undergone due to the arrest under the above circumstances. This is because subsequently, after the completion of the investigation the investigators had decided to discharge the Petitioner. Following the tendering of the said apology, the cases SC/FR/501/2019, SC/FR/502/2019 and SC/FR/504/2019 were concluded.

When this case came up before Court on 11-11-2024, the learned Counsel for the Petitioner in SC/FR/500/2019, informed Court that the Petitioner in that case has lost his employment due to this incident of arrest. It was at that time that Court intervened and the learned Deputy Solicitor General undertook to explore the possibility of addressing the said issue to ensure the reinstatement of the Petitioners as the investigators have cleared him of any involvement in terrorist activities.

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 Petitioner's ties with the afore-said Abu Bakr (against whom the investigation is still continuing) and participation in a lecture conducted by Zaharan. These circumstances in our view, would have been sufficient to raise some suspicion in the minds of the Police Officer who decided to arrest the Petitioner. Therefore, we are not inclined to accept the contentions of the learned

Counsel for the Petitioner that Horowpathana Police arbitrarily arrested the Petitioner. Therefore, the Petitioner is not entitled to succeed with this Petition.

We decide to dismiss the Petition without costs.

CHIEF JUSTICE

MENAKA WIJESUNDERA, J

I agree.

JUDGE OF THE SUPREME COURT

M. SAMPATH K.B. WIJERATNE, J

I agree.

JUDGE OF THE SUPREME COURT