

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

In the matter of an application under Articles 17
and 126 of the Constitution of the Democratic
Socialist Republic of Sri Lanka.

1. Kamaldeen Ilham Ahmed (Minor)
2. Hameem Siththi Nihara

The 1st and 2nd Petitioners of;
128/3, Lechchami Janapadaya,
Hatharaliyadda.

S.C. (F.R.) Application No. 87/2023

PETITIONERS

Vs.

1. IP Weerakoon,
Acting Officer – in – Charge,
2. SI Wedagedara,
3. Officer-in-Charge,

The 1st to 3rd respondents of;
Police Station,
Hatharaliyadda.

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

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

RESPONDENTS

BEFORE : **Janak De Silva, J.**
Menaka Wijesundera, J.
Sampath B. Abayakoon, J.

COUNSEL : Pulasthi Hewamanna with Harini Jayawardhana for the
Petitioners

P.B. Herath for 1st, 2nd and 3rd Respondents

Varunike Hettige, ASG for 4th and 5th Respondents

WRITTEN SUBMISSIONS : By the Petitioner on 09.05.2025

By the 4th and 5th Respondents on 04.09.2014

ARGUED ON : 19.05.2025

DECIDED ON : 01.09.2025

Janak De Silva, J.

At all times material to this application, the 1st Petitioner was a minor aged 16 years and 8 months. He was a student at CP/Katu/Dehideniya Muslim Maha Vidyalaya and had just completed the G.C.E. Ordinary Level Examination. The 1st and 2nd Respondents were attached to the Hatharaliyadda Police Station. The 1st Respondent was the Acting Officer-in-Charge. The 3rd Respondent is named as the Officer-in-Charge of the Hatharaliyadda Police Station.

The events leading to this application arose from an alleged theft of jewellery from the house of one Ajmeel, who is the cousin of the 1st Petitioner and lives in a house on the same plot of land as the 1st Petitioner's house a few meters away. The 1st Petitioner was arrested by the 1st Respondent in relation to this incident and produced before the Galagedera Magistrates Court in Case No. 9068/23. The 1st Petitioner was acquitted after trial.

In this application, the 1st Petitioner is impugning his wrongful arrest, torture and detention by the 1st to 3rd Respondents. Leave to proceed has been granted under Articles 11, 12(1), 13(1) and 13(2) of the Constitution.

Article 11

In ***Channa Peiris and Others v. Attorney General and Others*** [(1994) 1 Sri LR 1] it was held that 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.

According to the 1st Petitioner, he was first tortured on 06.08.2022 during interrogation by the 1st Respondent. Upon the 1st Petitioner refusing to confess to the alleged offence, the 1st Respondent struck the soles of his feet several times with a large pole about 1 ½ inches in diameter and one meter long. The 1st Respondent directed another police officer to hold the 1st Petitioner's legs stretched out during this assault so that the soles of his feet were within easy reach of the pole.

The 1st Petitioner shouted continuously that he did not take the jewellery and pleaded with the 1st Respondent not to beat him. However, the 1st Respondent mocked him that the punishment the 1st Respondent meted out to the 1st Petitioner will be worse than the punishment he will get from *Allah*.

After the assault, the 1st Respondent got the 1st Petitioner to walk about in the room and jump up and down several times so as to inflict more pain.

The 1st Petitioner was tortured for the second time on 08.08.2022. Once again the 1st Respondent got another police officer to hold the legs of the 1st Petitioner outstretched while he struck the soles in a similar manner to the assault on 06.08.2022.

Later in the same day, a similar assault took place. This was followed by the 1st Respondent crushing some *nai miris* on a handkerchief, then mixing it with water and squeezing the *nai miris* extract into the eyes of the 1st Petitioner.

The narrative of the 1st Petitioner is corroborated by the medical evidence. On 09.08.2022, he was admitted to the National Hospital of Kandy after obtaining bail. The diagnosis card states assault as the principal diagnosis. The 1st Petitioner was referred to the Medical Officer – Legal Medicine. The Medico-Legal Report contains the following details on the nature, size, shape, disposition and site of injury:

1. *Blue coloured contusion, placed at the left sole in which the center of the contusion was placed 8 cm above the heel and 3 cm away from the medial border of the sole.*
2. *Blue coloured contusion, placed at the right sole in which the center of the contusion was placed 15 cm below the big toe and 4 cm away from the medial border of the sole.*

It appears that the 1st Respondent had attempted to prepare a narrative explaining the injuries on the sole of the 1st Petitioner. In his notes dated 09.08.2022, the 1st Respondent states that the 1st Petitioner tried to escape by running over some rocks no sooner he saw the 1st Respondent on 08.08.2022 and as such he had to put handcuffs on the 1st Petitioner.

However, as the Petitioners correctly submit, the notes of the 1st Respondent from the previous date, i.e. 08.08.2022 depicts the 1st Petitioner as having being compliant and

makes no mention of an attempt to escape. I also observe that the 1st Respondent in his evidence before the Magistrate merely states that the 1st Petitioner tried to avoid him when he had first seen the 1st Respondent.

Upon a consideration of all the foregoing circumstances, I have no hesitation in holding that the 1st Petitioner has proved that the 1st Respondent has infringed his fundamental rights guaranteed by Article 11 of the Constitution by torturing him both physically and mentally.

The 2nd Petitioner claims that her fundamental right guaranteed by Article 11 of the Constitution has been infringed by the torture of the 1st Petitioner. Of course, she had not seen the torture. However, she has testified of the deprivation of seeing the 1st Petitioner at the Police Station although she had sought for an opportunity. Moreover, when she went to the Police Station on 08.08.2022 at around 2.00 p.m., the 1st Petitioner caught a glimpse of the 2nd Petitioner and called out in Tamil to save him. The 2nd Petitioner heard the screams of her son but was forced to leave by an unidentified Police Officer.

A mother's love and feelings for a minor child, and for that matter, any child is boundless. The sayings and teachings of the Prophet Muhammad, known as *hadiths*, underscore the significance of a mother's love.

Imam Hakim's al-Mustadrak (Vol. 2, p114) Narration 2502:

عَنْ مُعَاوِيَةَ بْنِ جَاهِمَةَ، أَنَّ جَاهِمَةَ رَضِيَ اللَّهُ عَنْهُ، أَتَى النَّبِيَّ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ فَقَالَ: إِنِّي أَرَدْتُ أَنْ أَعْزُو فَجِئْتُ أَسْتَشِيرُكَ. قَالَ: «أَلَيْكَ وَالِدَةٌ؟» قَالَ: نَعَمْ، قَالَ: اذْهَبْ فَالْزَمِهَا، فَإِنَّ الْجَنَّةَ عِنْدَ رِجْلِهَا» هَذَا حَدِيثٌ صَحِيحُ الْإِسْنَادِ وَلَمْ يُخَرِّجَاهُ

"It was narrated from Mu'awiyah bin Jahimah, that Jahimah came to the Prophet ﷺ and said: 'I want to go out on military expedition so I have come to ask your advice.' He (ﷺ) said: 'Do you have a mother?' He said: 'Yes.' He (ﷺ) said: 'Go and be with her because Paradise is at her feet.'"

As Buddha preached:

Even as a mother protects with her life her child, her only child,

So with a boundless heart should one cherish all living beings

- *Karaniya Metta Sutta, Sutta Nipata 143-151*

The 2nd Petitioner, as the mother of the 1st Petitioner, a minor, had a legitimate expectation to be afforded access to her child, particularly during a period of custodial detention. It is evident from the material placed before this Court that such access was denied, causing her considerable emotional distress. The 2nd Petitioner, having endured the natural physical and emotional demands of pregnancy and childbirth, was placed in a position where she was unable to render support or comfort to her minor son during a moment of acute vulnerability.

The situation was further exacerbated by the fact that the 2nd Petitioner was compelled to leave the police premises, despite the audible and urgent pleas of the 1st Petitioner, who was calling out for his mother's intervention. This experience, by its very nature, would be deeply distressing to any parent, and particularly to a mother who was rendered helpless in the face of her child's visible anguish.

While the Court is mindful of the symbolic impartiality represented by Lady Justice, the principle of human dignity requires that such instances of emotional trauma, particularly involving a minor and his parent, are not overlooked. The psychological impact on the 2nd Petitioner, arising from the events as presented, cannot be disregarded and must be acknowledged as part of the broader context of the 2nd Petitioners' grievance.

It is trite law that Article 11 encompasses both physical and psychological elements [See ***Mrs. W.M.K. de Silva v. Chairman, Ceylon Fertilizer Corporation* (1989) 2 Sri LR 393; *Adhikary and Another v. Amarasinghe and Another* [(2003) 1 Sri LR 270; *Dilshan***

Tilekeratne (minor) and Another v. Seargent Douglas Ellepola and Others (S.C.F.R. 578/2011, S.C.M. 14.01.2016).

There can be no doubt that the 2nd Petitioner was subjected to mental torture by the forgoing circumstances.

I hold that the 1st Respondent has infringed the fundamental rights of the 2nd Petitioner guaranteed by Article 11 of the Constitution.

Article 13(1)

Article 13 (1) of the Constitution states that no person shall be arrested except according to procedure established by law. Any person arrested shall be informed of the reason for his arrest.

This provision has two parts. The first prescribes that an arrest must be done according to lawful procedure, while the second requires that the reasons for the arrest must be informed.

In the assessment of any violation under Article 13 (1), the questions that arise are 1) if there was an arrest, if so, 2) whether the arrest was made according to the procedure established by law, and 3) if the reasons for the arrest were informed to the person arrested at the time of arrest.

Admittedly, the 1st Petitioner was arrested. The question then is whether the proper procedure was followed in making the arrest.

In ***Channa Peiris [supra. at 27]*** it was held that:

“The procedure generally established by law for arresting a person without a warrant are set out in Chapter IV B (Sections 32-43) of the Code of Criminal Procedure. Where a person is arrested without a warrant otherwise than in accordance with these provisions, Article 13(1) of the Constitution will be violated.”

Section 32 of the Code of Criminal Procedure (Code) specifies several instances where any Police Officer may without an order from a Magistrate and without a warrant arrest any person. In ***Mohamed Razik Mohamed Ramzy v. B.M.A.S.K. Senaratne and Others*** [S.C.F.R. Application No. 135/2020, S.C.M. 14.11.2023 at pages 41-42], my learned brother Kodagoda, P.C., J. examined the scope of Section 32(1)(b) of the Code and held as follows:

“When separated into its constituent ingredients, section 32(1)(b) can be depicted in the following manner:

Any peace officer may

without an order from a Magistrate and without a warrant

arrest any person

(a) who has been concerned in any cognizable offence or

(b) against whom

(i) a reasonable complaint has been made

or

(ii) credible information has been received

or

(iii) a reasonable suspicion exists

of his having been so concerned.

Therefore, for a peace officer to be authorized by law to arrest a person (suspect) for having committed a cognizable offence, one of the following should have occurred –

- (i) the peace officer should have by himself formed an objective opinion that the suspect has been concerned in the commission of a cognizable offence;*
- (ii) the peace officer should have either directly received a complaint or must be aware that a complaint has been made against the suspect, and he should have formed the objective opinion that such complaint against the suspect (that he has been concerned in committing a cognizable offence) is reasonable;*
- (iii) the peace officer should have either directly received information or should be aware that information has been received against the suspect, and he should have formed the objective opinion that such information is credible and gives rise to the allegation that the suspect has been concerned in the commission of a cognizable offence (sic); or*
- (iv) the peace officer should have developed reasonable suspicion that the suspect has been concerned in the commission of a cognizable offence.”*

The 1st and 2nd Respondents have failed to file objections although they were represented. Hence the version of the Petitioners against them has to be considered in the absence of any denial by them.

During his testimony in Galagedera Magistrates Court Case No. 9068/23, the 1st Respondent admitted having arrested the 1st Petitioner. According to him, the arrest was made subsequent to a complaint made by one Ajmeer Mohomed Fathima Farzana who named the 1st Petitioner as the suspect for the theft of certain jewellery belonging to her. According to the 1st Respondent, this complaint was made at 16.30 on 08.08.2022.

The parties are at variance as to the date on which the arrest was made. According to 1st Respondent, the arrest took place on 08.08.2022 subsequent to the complaint made on that day.

However, the 1st Petitioner claims that he was arrested on 07.08.2022 and produced before the Magistrate only on 09.08.2022. The complainant in her testimony before the Magistrate stated that the incident took place on 04.08.2022 and that after complaining of this to the Police, she was asked to come on 05.08.2022 to record the complaint. In view of this evidence, I conclude that the arrest of the 1st Petitioner took place on 07.08.2022 as claimed by the Petitioner.

The complaint of Ajmeer Mohomed Fathima Farzana had been recorded by the Police only on 08.08.2022. The 1st Petitioner was arrested on 07.08.2022. Assuming that she had made a verbal complaint to the Police on 04.08.2022 as claimed by her during the Magistrate Court proceedings, that by itself does not, in the circumstances of this matter, provide a reasonable basis to have arrested the 1st Petitioner.

Moreover, according to the notes of the 1st Respondent, the 1st Petitioner was arrested because he was behaving suspiciously. However, by that time, the house of the 1st Petitioner had not been even subjected to a search. To make matters worse, the 1st Respondent had stated under cross examination before the Magistrate that the 1st Petitioner was arrested for questioning and investigations.

In ***Piyasiri & Others v. Nimal Fernando, A.S.P. & Others*** [(1988) 1 Sri LR 173 at 184] it was held that:

“No Police Officer has the right to arrest a person on a vague and general suspicion, not knowing the precise crime suspected but hoping to obtain evidence of the commission of some crime for which they have the power to arrest. Even if such evidence comes to light the arrest will be illegal because there will have been

no proper communication of the reason for the: arrest to the accused at the time of the arrest". (emphasis added)

In ***Premal De Silva v. Inspector Rodrigo and Others*** [(1991) 2 Sri LR 307 at 321] Kulatunga, J. warned that *if the police continue with the practice of taking into custody suspects on speculation or merely on the ground that they are persons of bad repute, in the hope of getting a break in the investigations by interrogating them, it would end up in the use of third-degree methods.*

In this case, this is what precisely happened. A minor was taken into custody without a reasonable suspicion and tortured with a view to extracting a confession.

I hold that the 1st Respondent infringed the fundamental rights of the 1st Petitioner guaranteed by Article 13(1) of the Constitution.

Article 13(2)

Article 13(2) directs that every person held in custody shall be brought before the Magistrate according to the procedure established by law. This is a safeguard aimed at protecting the personal liberty of such person.

In ***Channa Pieris*** [***supra.*** at 76] Amerasinghe, J. held that in general, the purpose of Article 13(2) is to enable a person arrested without a warrant by a non-judicial authority to make representations to a judge who may apply his "judicial mind" to the circumstances before him and make a neutral determination on what course of action is appropriate in relation to his detention and further custody, detention or deprivation of personal liberty.

I have concluded that the 1st Petitioner was arrested on 07.08.2022 at about 5.00 p.m. He was produced before the Magistrate only on 09.08.2022 at around 8.30 a.m.

Accordingly, I hold that the 1st Petitioner was not produced before the learned Magistrate within the time frame envisaged by Sections 36 and 37 of the Code. I hold that the 1st Respondent has infringed the fundamental rights of the 1st Petitioner guaranteed by Article 13(2) of the Constitution.

Article 12(1)

This guarantees the equal protection of the law. I have concluded that the 1st Respondent has infringed the fundamental rights of the 1st Petitioner guaranteed by Articles 11, 13(1) and 13(2) of the Constitution. *Ipsa facto*, the 1st Respondent has infringed the fundamental right of the 1st Petitioner guaranteed by Article 12(1).

What remains is to determine the compensation payable to the 1st and 2nd Petitioners.

There are aggravating circumstances in this case which must be considered by this Court. According to the birth certificate of the 1st Petitioner (P1), he was 16 years (minor) at the material time. He had revealed this in his statement made to the Police. Yet the Police detained the 1st Petitioner in a cell along with another adult who was not a relative. Section 13 of the Children and Young Persons Ordinance prevents a child or young person from associating with an adult (not being a relative) who is charged with any offence while detained in a police station. In ***Landage Ishara Anjali (Minor) and Another v. Waruni Bogahawatte and Others* [S.C.F.R. No. 677/2012, S.C.M. 12.06.2019]** Aluwihare P.C., J. in setting out guidelines pertaining to the detention of suspects held that children shall be detained separately from adult detainees.

While all forms of torture on any person must be condemned in the strongest terms, in this case the 1st Petitioner had to undergo the agony of *nai miris* extract being poured into his eyes. He was 16 years of age at that time having just completed the G.C.E. Ordinary Level Examination. The fear of loss of eyesight must definitely have tortured his mind.

Upon a consideration of all the foregoing reasons, I declare that:

- (1) The 1st Respondent has infringed the fundamental rights of the 1st Petitioner guaranteed by Articles 11, 12(1), 13(1) and 13(2) of the Constitution.
- (2) The 1st Respondent has infringed the fundamental rights of the 2nd Petitioner guaranteed by Article 11 of the Constitution.

The 1st Respondent shall pay a sum of Rs. 3,00,000/= as compensation from his personal funds to the 1st Petitioner.

The 1st Respondent shall pay a sum of Rs. 75,000/= as compensation from his personal funds to the 2nd Petitioner.

In the exercise of the just and equitable jurisdiction of this Court, I further direct the 4th Respondent, the Inspector General of Police to issue a direction to all Police Officers directing that when a minor is arrested, the mother or father (or in their absence a close relative) of the minor be granted access to the minor before he is produced before the Magistrate and in any event, within 6 hours of the arrest.

Application allowed.

JUDGE OF THE SUPREME COURT

Menaka Wijesundera, J.

I agree.

JUDGE OF THE SUPREME COURT

Sampath B. Abayakoon, J.

I agree.

JUDGE OF THE SUPREME COURT