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

In the matter of an Application under and in terms of Article 126 read with Article 17 of the Constitution.

SC FR Application Nos: 46, 47 & 48/ 2020

Application No. **SC FR 46/2020**

Mohamed Ibrahim Mohamed Ishran Ahamed
No. 658/78,
Mahawela Gardens,
Dematagoda.

Petitioner

On behalf of:

Mohamed Yusuf Mohamed Ibrahim
No. 658/78,
Mahawela Gardens,
Dematagoda.

v.

1. Senior Superintendent of Police
   Director
   Criminal Investigations Department,
   Colombo 01.

2. Assistant Superintendent of Police
   Homicide Unit,
   Criminal Investigations Department, Colombo 01.

3. Maithripala Sirisena
   President (former) of the
   Democratic Socialist Republic of
   Sri Lanka
   Mahagama Sekara Mawatha,
   Colombo 07.

4. Honourable Attorney-General
   Attorney-General's Department,
   Colombo 12.

Respondents

Application No. **SC FR 47/2020**

Mohamed Ibrahim Mohamed
Ishran Ahamed
No. 658/78,
Mahawela Place,
Dematagoda.

Petitioner

On behalf of:

Mohamed Ibrahim Mohamed
Ismail
No. 658/90,
Mahawela Place,
Dematagoda.

v.

1. M.A.A. Rohan Premaratne
   Senior Superintendent of Police
   Director
   Criminal Investigations
   Department,
   Colombo 01.

2. Meril Ranjan Lamahewa
   Assistant Superintendent of Police
   Homicide Unit,
   Criminal Investigations Department,
   Colombo 01.

3. Maithripala Sirisena
   President (former) of the Democratic Socialist Republic of Sri Lanka
   Mahagama Sekara Mawatha,
   Colombo 07.

4. Honourable Attorney-General
   Attorney-General's Department,
   Colombo 12.

Respondents

Application No. **SC FR 48/2020**

Fathima Rushda Iqbal
No. 658/109/A,
Mahawila House,
Dematagoda.

Petitioner

On behalf of:

Mohamed Ibrahim Ijaz Ahmed
No. 658/109/A,
Mahawila House,
Dematagoda.

v.

1. Kavinda Piyasekara
   Senior Superintendent of Police
   Director,
   Criminal Investigations
   Department,
   Colombo 01.

2. Ranjan Lamahewa
   Assistant Superintendent of
   Police
   Homicide Unit,
   Criminal Investigations
   Department,
   Colombo 01.

3. General (Rtd.) G.D.H. Kamal
   Gunaratne
   Secretary,
   Ministry of Defence,
   No. 15/5, Baladaksha Mawatha,
   Colombo 03.

4. Honourable Attorney-General
   Attorney-General's Department,
   Colombo 12.

Respondents

Before: **P. Padman Surasena, J.**
[As His Lordship the present Honourable Chief Justice was then.]
Yasantha Kodagoda PC, J.
A.L. Shiran Gooneratne, J.

Appearance: Anuja Premaratne, PC with Ishan Gampalage for the Petitioner in SC FR No. 46/2020.

	Priyantha Gamage for the Petitioners in SC FR Nos. 47/2020 and 48/2020. Madhawa Tennakoon, DSG for the Respondents in SC FR Nos. 46/2020, 47/2020 and 48/2020.
Argued on:	5th August 2024
Written submissions tendered on:	For the 1st, 2nd and 4th Respondents in SC/FR Nos. 46/2020, 47/2020 and 48/2020, on 15th July 2021. For the Petitioner in SC/FR No. 46/2020 on 22nd September 2021. For the Petitioners in SC/FR Nos. 47/2020 and 48/2020 on 2nd September 2024.
Judgment delivered on:	**9th February** 2026

Judgment

Yasantha Kodagoda, PC, J.

Background

1. The three Petitioners have invoked the jurisdiction vested in this Court by Article 126 read with Article 17 of the Constitution.

2. In these three connected Fundamental Rights Applications (SC FR Application Nos. 46/2020, 47/2020 and 48/2020), the Executive actions that led to the alleged infringement of fundamental rights had arisen during the aftermath of the events associated with the terrorist attacks that took place on 21st April 2019, infamously known as the "Easter Sunday Terrorist Attacks". Those tragic attacks which took place at eight locations in the country (3 churches and 4 hotels) resulted in the death of around 277 persons and seriously injured more than 400 others. The attacks were carried out by 8 suicide bombers. The Petitioners and the persons in respect of whom they have instituted these three Applications, are members of the immediate family of two of those suicide bombers, who were siblings named Mohamed Yusuf

Mohamed Inshaf and Mohamed Yusuf Mohamed Ilham. Admittedly they carried out the suicide bombings at the Cinnamon Grand and Shangri-La hotels in Colombo.

SC FR Application No. 46/2020

3. The Petitioner in SC FR No. 46/2020 filed a Petition in this Court dated 14th February 2020 on behalf of one Mohamed Yusuf Mohamed Ibrahim (hereinafter referred to as "Yusuf Ibrahim"). The Petitioner filed the Petition in his capacity as the eldest son of Yusuf Ibrahim. The said Yusuf Ibrahim is said to be the father of nine children, and a businessman by occupation. Suicide bombers Mohamed Yusuf Mohamed Inshaf and Mohamed Yusuf Mohamed Ilham were his sons.

4. On 21st April 2019, within hours of the terrorist suicide bombings, Officers of the Criminal Investigation Department had visited Yusuf Ibrahim's house in Dematagoda to search the premises and conduct investigations. During the search, there had been two loud noises erupting from the upstairs of the house. The position of the 1st Respondent - Senior Superintendent of Police and Director of the Criminal Investigation Department is that those two noise eruptions were due to two explosions which had occurred in the upper floor of the house soon after they entered the house. It later transpired that the explosions were due to two further suicide bombs by another family member of Yusuf Ibrahim. These explosions resulted in the death of three police officers (who were members of the team of police officers who entered the premises) and four family members of Yusuf Ibrahim. Thereafter, Yusuf Ibrahim's other son - Mohamed Ibrahim Ijaz Ahmed and Yusuf Ibrahim's son-in-law – Mohamed Yusuf Aflal Ahmed, were taken into custody by the 2nd Respondent - Assistant Superintendent of Police, Homicide Unit of the Criminal Investigation Department. The 2nd Respondent had also arrested Yusuf Ibrahim on suspicion that he had also been involved in the blasts that occurred. Consequently, he has been kept in detention in terms of a detention order issued under section 9(1) of the Prevention of Terrorism (Temporary Provisions) Act, No. 48 of 1979.

5. In these circumstances, Yusuf Ibrahim's eldest son (M.I.M. Ishran Ahmed) petitioned this Court concerning the alleged infringement of fundamental rights of Yusuf Ibrahim. The allegation is that Yusuf Ibrahim's fundamental rights guaranteed under Articles 12(1), 12(2), 13(1), 13(2) and 14(1)(g) of the Constitution have been infringed due to Executive action taking the manifestation of alleged unlawful arrest and unlawful detention.

SC FR Application No. 47/2020

6. The Petitioner in this Application (who is also the Petitioner in SC/FR No. 46/2020) has filed the Application on behalf of one Mohamed Ibrahim Mohamed Ismail (hereinafter referred to as "Mohamed Ismail"). The Petitioner is the eldest brother of Mohamed Ismail. Yusuf Ibrahim (the detainee in the previous Application) is their father, and the two suicide bombers Mohamed Yusuf Mohamed Inshaf and Mohamed Yusuf Mohamed Ilham are the brothers of the Petitioner and Mohamed Ismail. According to the Petitioner, Mohamed Ismail is unmarried and has engaged in the trading of spices at his father's company, and had not been involved in the earlier mentioned terrorist attacks.

7. The Petitioner's position is that Mohamed Ismail, having learnt that he was wanted by the police for questioning, had informed the Criminal Investigation Department of his whereabouts. Consequently, on 23rd April 2019, Mohamed Ismail had been arrested and taken into custody by the 1st Respondent. Since then, Mohamed Ismail had been held in detention under the authority of a detention order issued in terms of section 9 of the Prevention of Terrorism (Temporary Provisions) Act, No. 48 of 1979.

8. The Petitioner has complained that Mohamed Ismail's fundamental rights guaranteed under Articles 12(1), 12(2), 13(1), 13(2) and 14(1)(g) have been infringed due to his alleged illegal arrest and prolonged detention.

SC FR Application No. 48/2020

9. The Petitioner in SC FR No. 48/2020, Fathima Rushda Iqbal has filed the Application on behalf of Mohamed Ibrahim Ijaz Ahmed (hereinafter referred to as "Ijaz Ahmed") who is her husband. Ijaz Ahmed is said to be the father of three children, and his occupation had been the trading of coffee. Ijaz Ahmed had been another brother of the suicide bombers Mohamed Yusuf Mohamed Inshaf and Mohamed Yusuf Mohamed Ilham.

10. According to the Petitioner, following the terrorist attacks, she, Ijaz Ahmed, and their children had, from their residence in Dematagoda, headed to Ijaz Ahmed's parents' house, which is located elsewhere in Dematagoda, as they had felt that such a place would be a safer location. While they were at their parents' Dematagoda residence, the police had arrived, searched the premises, and during that search, the earlier-mentioned explosions had occurred in the upper floor of the house. Thereafter, Ijaz

Ahmed was arrested and taken into custody by the 2nd Respondent. Since then, Ijaz Ahmed has been held in detention as per a detention order obtained under the provisions of the Prevention of Terrorism (Temporary Provisions) Act, No. 48 of 1979.

11. Therefore, on behalf of Ijaz Ahmed too, his wife (the Petitioner) has alleged that Ijaz Ahmed's fundamental rights guaranteed under Articles 12(1), 12(2), 13(1), 13(2) and 14(1)(g), have been infringed due to the illegal arrest and illegal and prolonged detention.

Preliminaries

12. Following the Support of the three Fundamental Rights Applications on 22nd October 2020, a differently constituted Division of this Court had by majority decision granted *leave to proceed* against the Respondents on the premise that *prima facie* it appeared to Court that the fundamental rights of the three individuals on whose behalf the Applications had been filed guaranteed under Articles 12(1), 12(2), 13(1), 13(2) and 14(1)(g) of the Constitution had been infringed.

13. The three Fundamental Rights Applications were taken up for hearing at a consolidated hearing on 05th August 2024, before the present bench.

Preliminary Objection

14. At the commencement of the hearing, learned Deputy Solicitor General appearing for the several Respondents raised a preliminary objection. He submitted that the three Petitioners have no *locus standi* to prosecute these Applications, and therefore, the Applications should be dismissed *in limine*. His objections were based on the majority view taken by this Court in the Judgment in *Somawathie v. Weerasinghe [(1990) 2 Sri LR 121]*. In that Judgment, the majority of the Justices observed that under Article 126(2) of the Constitution, only a person himself who alleges that his fundamental rights have been infringed or is imminently likely to be infringed or an Attorney-at-Law on his behalf, can petition this Court. Learned DSG further supported his objection by citing *SC FR Application No. 94/2020*, where the Court permitted the withdrawal of an Application that was of a similar nature to the present Applications before Court in which the Petitioner lacked *locus standi*.

15. Additionally, learned DSG submitted that further investigations were being carried out with regard to the three persons on whose behalf the three Applications had been filed, and proceedings before the Magistrate's Court had been initiated against them

under action No. B 10263/08/19. He also submitted that the matters under investigation were complex and time-consuming as they involve impugned activities related to a sophisticated terror network. He therefore stated that there was sufficient material that gave rise to a reasonable suspicion against Yusuf Ibrahim, Ibrahim Mohamed Ismail and Ibrahim Ijaz Ahmed. That, he submitted, was the reason for their arrest and detention.

16. In response, learned Counsel for the Petitioners submitted that the Judgment in *Somawathie v. Weerasinghe* had been pronounced on 20th November 1990, which was prior to the Supreme Court Rules of 1990 coming into operation on 07th June 1991. Citing Rule 44(2) of the said Rules of the Supreme Court, he submitted that where a person whose fundamental rights have been infringed is "*unable to sign a proxy appointing an Attorney-at-Law to act on his behalf, any other person authorized by him (whether orally or in any other manner, and whether directly or indirectly) to retain an Attorney-at-Law to act on his behalf, may sign such proxy on his behalf*". He thereby submitted that the Judgment in *Somawathie v. Weerasinghe* had not considered the afore-stated Rules of the Supreme Court, and thus was an irrelevant judicial pronouncement in so far as the present Applications were concerned. Learned Counsel submitted that the three persons on whose behalf these Applications had been filed had given instructions to counsel to file Fundamental Rights Applications on their behalf. Due to these reasons, learned Counsel submitted that the Supreme Court is vested with the jurisdiction to hear and determine the present Applications.

17. Learned Counsel for the Petitioners also cited *Sriyani Silva v. Iddamalgoda [(2003) 2 SLR 63]* and submitted that with regard to Rule 44(4) of the Supreme Court Rules, it is the 'spirit' of the Rule that should be respected, rather than its form, thus, the present Applications before court is an opportunity to rekindle that spirit. Citing judgments where *locus standi* was interpreted expansively in cases where a person was prevented from making a complaint due to death, he submitted that the standing in the present Applications should also be given such an expansive interpretation. He submitted that that was mainly due to the circumstances the Accused was in, and there was no harm in adopting such a wider interpretation.

18. Learned Counsel for the Petitioners also submitted that the 1st Respondent had not discovered any evidence that justifies the arrest or continued incarceration of the afore-stated three persons on whose behalf the three Applications had been filed. He also submitted that they were not involved in the Easter Sunday terror attacks.

Analysis and conclusion

19. The issue to be determined in relation to the preliminary objection raised by the learned Deputy Solicitor General on behalf of the Respondents is whether, in terms of the applicable law, the three Petitioners have the legal entitlement (*locus standi*) to invoke the jurisdiction of the Supreme Court to hear and determine the matters complained of, pertaining to the alleged infringement of the fundamental rights of the three persons on whose behalf the three Applications have been filed. This matter must be determined having regard to the fact that the Petitioners themselves do not complain of an infringement of their own fundamental rights either directly due to the conduct of the Respondents, or consequentially arising as a result of the alleged infringement of the fundamental rights of Yusuf Ibrahim, Ibrahim Mohamed Ismail and Ibrahim Ijaz Ahmed.

20. Standing, also termed as *locus standi* (meaning "place of standing"), is a fundamental requisite in law to invoke the jurisdiction of a court, with the view to seeking the relief recognised by law. The Black's Law Dictionary (11th Edition, page 1128) provides that *locus standi* means "*the right to bring an action or to be heard in a given forum*". It has also defined *standing* at page 1695 as "*a party's right to make a legal claim or seek judicial enforcement of a duty or right*". Professor Wade in "*Wade & Forsyth's Administrative Law*" (12th Edition, page 565) explaining the law on *standing*, has expressed views regarding the distinction between "*a mere busybody who interferes in something in which he has no legitimate concern (no standing) and a person affected by or having a reasonable concern in the matter to which the application relates (standing is established)*". Professor Wade further explains that, "*to fall within the latter category, to be 'affected by' the matter to which an application relates, is to suffer any impact upon a 'particular' or 'personal' interest, based on some 'legal relation' to the subject matter of the claim, which is certainly enough to establish a 'sufficient interest'. A 'reasonable concern' which amounts to a sufficient interest is established if a person is 'acting in the public interest and can genuinely say that the issue directly affects the section of the public that [they] seek to represent'.*" That in my view is the position of the common law.

21. However, the law relating to *standing* in a Fundamental Rights Application is stipulated in the supreme law of the land, that being the Constitution of the Democratic Socialist Republic of Sri Lanka. The Constitution provides that every person is entitled to apply to the Supreme Court in respect of the infringement or imminent infringement of a fundamental right to which such person is entitled to under the provisions of Chapter III of the Constitution. On that basis, a person can

invoke the jurisdiction of the Supreme Court in terms of Article 126 of the Constitution. The general rule on standing (*locus standi*), to present a Fundamental Rights Application to the Supreme Court is contained in Article 126(2) of the Constitution, which reads as follows:

> "*Where any person alleges that any such fundamental right or language right* ***relating to such person*** *has been infringed or is about to be infringed by executive or administrative action,* ***he may himself or by an Attorney-at-Law on his behalf,*** *within one month thereof, in accordance with such rules of court as may be in force,* ***apply to the Supreme Court by way of petition in writing*** *addressed to such Court praying for relief or redress in respect of such infringement. Such application may be proceeded with only with leave to proceed first had and obtained from the Supreme Court, which leave may be granted or refused, as the case may be, by not less than two judges.*" [Emphasis added.]

22. Thus, it is clear that in terms of Article 126(2) of the Constitution, either the person whose fundamental right has been infringed or is about to be infringed, or an Attorney-at-Law on his behalf may file a Fundamental Rights Application. Therefore, the legal entitlement to institute action in the Supreme Court and prosecute the Application (*locus standi*) is confined by Article 126(2) to either the purported victim or to an Attorney-at-Law acting on his behalf.

23. As pointed out by learned Counsel, Rule 44(2) of the Supreme Court Rules of 1990 is also relevant. It reads as follows:

> "***The person whose fundamental right or language right has been, or is about to be infringed shall be named in the petition as the petitioner****, and* ***the petition shall be signed by him****, if he appears in person,* ***or by his instructing attorney-at-law****, if he has appointed an attorney-at-law to act on his behalf. Where for any reason he is* ***unable to sign a proxy appointing an attorney-at-law to act on his behalf, any other person authorised by him*** *(whether orally or in any other manner, and whether directly or indirectly)* ***to retain an attorney-at-law to act on his behalf, may sign such proxy on his behalf****.*" [Emphasis added.]

24. It would thus be seen that, in terms of Rule 44(2), when filing a Fundamental Rights Application, the following requirements need to be fulfilled:
    - The complaint to the Supreme Court shall take the form of a 'Petition'.
    - The victim of the alleged infringement of the fundamental right must be named the 'Petitioner'.

- Ordinarily, the Petition must be signed by the Petitioner. That would be if he appears in person.
- If the Petitioner has appointed an Attorney-at-Law to act on his behalf, the Petition should be signed by such Attorney-at-Law (referred to as the 'instructing Attorney-at-Law').
- If the Petitioner is unable to sign the 'proxy' appointing an instructing Attorney-at-Law, someone else who has been authorised by the Petitioner may retain an Attorney-at-Law to appear on behalf of the Petitioner and such person may sign the proxy appointing such instructing Attorney-at-Law.

25. It would thus be seen that Article 126(2) of the Constitution and Rule 44(2) of the Supreme Court Rules cater to two different matters. While Article 126(2) of the Constitution sets down who has *locus standi* to present a Fundamental Rights Application to the Supreme Court, Rule 44(2) provides details pertaining to the Petition to be filed in the Supreme Court to invoke the jurisdiction of the Court vested in it by Article 126 read with Article 17 of the Constitution.

26. Accordingly, a person whose fundamental right has been infringed or is about to be infringed, is permitted by law to adopt only two approaches of *standing* to apply to the Supreme Court by way of a Petition. They are as follows:

    I. In the event a person is able to apply by himself, that person may sign the Petition by himself (if he appears in person) or the Petition should be signed by his instructing Attorney-at-Law (if he has appointed an Attorney-at-Law to act on his behalf).

    II. In the event a person is unable to apply by himself, an Attorney-at-Law may present the Petition to the Supreme Court, in which instance the Petitioner shall be such Attorney-at-Law. However, the Petition shall state on whose behalf the Petition is being tendered. In this situation, naturally, the Petition shall be signed by such Attorney-at-Law or by an instructing Attorney-at-Law.

    Therefore, it would be seen that the Constitution permits only a party aggrieved by an infringement or imminent infringement of a fundamental right, to by himself or by an Attorney-at-Law acting on his behalf to present to the Supreme Court a Fundamental Rights Application.

27. Furthermore, it would be seen by this analysis that the reference to *'an attorney-at-law on his behalf'* contained in Article 126(2) is distinct from the reference to that term contained in Rule 44(2) of the Rules of the Supreme Court.

28. Nonetheless, it is necessary to observe that there are two exceptions to these Rules on *standing*, which have resulted in an expansion of the scope of *locus standi* in Fundamental Rights Applications. This has happened through judicial activism that is now considered to be trite law.

- Firstly, in cases where the alleged infringement of a fundamental right has a causal nexus with the death of the victim whose fundamental right had been infringed, based on grounds of necessity, the Supreme Court has recognised the legal entitlement (*standing*) of the spouse of the deceased, any other immediate family member or a legal heir, to present an Application to this Court complaining of the infringement of the fundamental right. This is due to the invocation of the *doctrine of necessity* based on the premise that the recognition accorded to fundamental rights would not become ineffective with the intervention of the death of a victimised person. [See ***Sriyani Silva v. Iddamalgoda, OIC, Police station, Payagala and Others*** *[(2003) 1 Sri L.R. 14]* and ***Lama Hewage Lal and Others v. OIC, Seeduwa Police Station and Others*** *[(2005) 1 Sri L.R. 40]*].

- Secondly, in cases where the alleged infringement of fundamental rights has affected a particular class of persons, *standing* is expanded to that class of persons to include a group of persons or to an organisation representing that class of persons whose rights have been affected, recognising thereby the entitlement of a third party to complain of such infringement and seek relief or redress on behalf of such class of persons. This is due to the rights of individual Petitioners being linked to the collective rights of the citizenry. This recognition of *standing* is now well-settled in our law, and has given rise to a separate category of Fundamental Rights Applications referred to as 'Public Interest Litigation'. [See ***Bulankulama and Others v. Secretary, Ministry of Industrial Development and Others*** *[(2000) 3 Sri L.R. 243]* and the very recent Judgment of a Divisional Bench of the Supreme Court in ***SC/FR Application Nos. 168, 176, 184 & 277/2021*** referred to as the ***'MV X-Press Pearl Marine Environmental Pollution Case'***, *SC Minutes of 24th July 2025*].

29. Nevertheless, the instant Applications do not fall under the realms of the aforementioned two exceptions, due to (a) the persons whose fundamental rights are alleged to have been infringed not being deceased at the time of filing the Applications, and (b) the rights of the aggrieved persons not being linked to the fundamental rights of a wider class of persons and the Applications not having been filed in public interest on behalf of such a class of persons. To the contrary, these three Applications have been filed by two individuals on behalf of three of their family members, and the complaint relates to individual instances of alleged infringements of the fundamental rights of those three individuals.

30. Furthermore, in these three Applications, the role of the Attorneys-at-Law who filed the Applications had been that of an 'instructing Attorney-at-Law', and they do not fall within the category of an Attorney-at-Law referred to in Article 126(2) of the Constitution. In other words, the Attorneys-at-Law who filed these Applications are not the corresponding 'Petitioners'.

31. In ***Somawathie v. Weerasinghe*** *[(1990) 2 Sri LR 121]*, it was the wife of the aggrieved party who petitioned the Supreme Court (quite similar to these three Applications). Under such circumstances, Justice Dr. A.R.B. Amerasinghe observed that, "*Article 126(2) confers a recognized position only upon the person whose fundamental rights are alleged to have been violated and upon an attorney-at-law acting on behalf of such a person. No other person has a right to apply to the Supreme Court for relief or redress in respect of the alleged infringement of fundamental rights*". This view aligns with the plain and literal interpretation I have earlier adopted to interpret Article 126(2) of the Constitution and Rule 44(2) of the Supreme Court Rules. Moving further, Justice Dr. Amerasinghe in this Judgment has also considered the aspect of adopting an expansive interpretative approach to Article 126(2) beyond its literal sense and has stated that "*… in the Article before us, the words are in themselves precise and unambiguous and there is no absurdity, repugnance or inconsistency with the rest of the Constitution, the words themselves do best declare that intention. No more can be necessary than to expound those words in their plain, natural, ordinary, grammatical and literal sense*". I find myself in agreement with this view, as a written law (and certainly an Article in the Constitution) should be given an expansive interpretation only in instances where the law stands ambiguous, absurd, repugnant, or inconsistent with the provisions of the Constitution. In my view, the written law contained in Article 126(2) when read in its plain literal sense, provides a clear and coherent rule on permitted *standing*, to make a Fundamental

Rights Application to the Supreme Court. That is the availability of *standing* only to the aggrieved person himself or an Attorney-at-Law acting on his behalf.

32. Accordingly, I am of the view that, save the two exceptional situations described above, only an aggrieved party himself or an Attorney-at-Law on his behalf has *standing* to apply to the Supreme Court alleging the infringement or imminent infringement of fundamental rights.

33. Be that as it may, another aspect to be considered is how a person in detention can make a Fundamental Rights Application to Court when such a person has either no or extremely limited access to a member of his family or to an Attorney-at-Law. In instances where the aggrieved detainee is given access to an Attorney-at-Law and such Attorney-at-Law receives instructions to file a Fundamental Rights Application alleging the infringement of fundamental rights, it is the duty of such Attorney-at-Law to, acting in terms of Article 126(2) of the Constitution, function as the Petitioner and also sign the Petition in his capacity as the Petitioner. Besides such a situation, in an instance where the aggrieved detainee cannot either directly or through a family member retain an Attorney-at-Law due to no or very limited access, an authorised person with access to the detainee (such as a family member) having received instructions from the detainee, may appoint an Attorney-at-Law to function as the Petitioner and sign the Petition in such capacity and thereby act on behalf of the detainee. In this regard, an ideal example would be the situation which led to the Judgment of the Supreme Court in ***Mohamed Razik Mohamed Ramzy v. B.M.A.S.K. Senaratne, OIC, Criminal Investigation Department and Others*** *(SC/FR Application No. 135/2020, SC Minutes of 14th November, 2023),* where an Attorney-at-Law had petitioned this Court on behalf of the aggrieved Mohamed Razik Mohamed Ramzy who was at that time in detention. The Attorney-at-Law, Mr. Musthafa Kamal Bacha Ramzeen had, in that matter, acted in his capacity as the Petitioner, and the detainee (Mohamed Razik Mohamed Ramzy) had become the Virtual Petitioner. Therefore, even in instances where an aggrieved person in detention is barred from making an Application to this Court due to limited access, his grievance may be presented to this Court by an Attorney-at-Law serving as the Petitioner and signing the Petition.

34. However, I wish to observe that the situation would be different if the person whose fundamental rights are alleged to have been or is being infringed, is being held *in-communicado* with no access to a member of his family or a person of significant importance to him or to an Attorney-at-Law, then, this Court must recognise another

expansive interpretation to Article 126(2) of the Constitution, and recognise such other person as having *standing* to act on behalf of such person in detention and file a Fundamental Rights Application. That is once again on the application of the *doctrine of necessity,* without which the jurisdiction conferred on the Supreme Court to entertain Fundamental Rights Applications would be rendered nugatory. The Constitutional duty conferred on this Court to protect fundamental rights would necessitate the Supreme Court to adopt such an approach.

35. However, the situation pertaining to the three persons on whose behalf these three Fundamental Rights Applications have been filed, does not fall into that category. In SC FR No. 46/2020, the Petitioner (Mohamed Ibrahim Mohamed Ishran Ahamed) in his Affidavit dated 30th September 2020 has stated that he received instructions from his father Yusuf Ibrahim, who was in detention, to file a Fundamental Rights Application on his behalf. This is presumably through the availability of access to the detainee. Thus, the element of access has not been contested in this Application. However, in SC FR Nos. 47/2020 and 48/2020, the learned counsel for the Petitioners in post-hearing written submissions dated 2nd September 2024, submitted that the detainees did not have access to family members or to lawyers, and that resulted in the two Petitioners (Mohamed Ibrahim Mohamed Ishran Ahamed and Fathima Rushda Iqbal) retaining an Attorney-at-Law to petition the Supreme Court. It is noteworthy that this contention has not been raised in the initial pleadings, but has been raised at a stage as late as the post-hearing stage. The Affidavits tendered on behalf of the two detainees do not allege that the detainees were not given access. Thus, that position advanced by learned Counsel for the Petitioners cannot be accepted.

36. Furthermore, it is necessary to observe that with regard to Fundamental Rights Applications, *standing* is not governed by common law principles because Article 126(2) has specifically laid down the law pertaining to *standing*. Therefore, it would not be possible to recognise common law principles relating to *standing* as in the case of the law governing *standing* pertaining to Writs. If in fact *standing* in Fundamental Rights Applications was governed by common law, I would not have hesitated to recognise that a family member or a significant other of the person in detention has the entitlement in law to petition this Court and invoke the fundamental rights jurisdiction on behalf of the detainee.

Conclusions

37. In view of the foregoing, I hold that, in the circumstances of these matters, the only persons who had *standing* to apply to the Supreme Court in Fundamental Rights Application Nos. 46/2020, 47/2020 and 48/2020, were either (i) the detainees themselves, or (ii) their Attorneys-at-Law functioning as the Petitioners and signing the Petitions in such capacity.

38. In the circumstances, I hold that the Petitioners of the three Fundamental Rights Applications in SC FR No. 46/2020, SC FR No. 47/2020 and SC FR No. 48/2020 lack *locus standi* to maintain these Applications and prosecute them.

Outcome

39. Therefore, I uphold the preliminary objection raised on behalf of the Respondents, and accordingly dismiss the three Applications *in limine*, without moving further to consider the three Applications on their merits.

Judge of the Supreme Court

P. Padman Surasena, C.J.

I agree.

Chief Justice

A.L. Shiran Gooneratne, J.

I agree.

Judge of the Supreme Court