

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.

Manjula Balasooriya
Attorney-at-Law,

On behalf of
Mudalige Wasantha Kumara
“Ulpatha Niwasa”, Dabana,
Mahiyanganaya

SC/FRA/283/2022

PETITIONER

Vs.

1. C.D. Wickramaratne
- 1A. Priyantha Weerasooriya
Inspector General of Police,
Police Headquarters,
Colombo
2. SSP Kavinda Piyasekara
- 2A. SSP Shani Abeysekara
Director - Criminal Investigations
Department,
Colombo 01
3. SSP Prasanna Alwis
- 3A. SSP Kamal Perera
Director - Terrorist Investigations
Department,
Colombo 01.

4. CI Kaluwitharana
- 4A. H.I. Kaluwitharana
Officer in Charge,
Peliyagoda Police Station.
5. General (Retired) Kamal Guneratne
- 5A. Air Vice Marshal Sampath
Thuyacontha
Secretary,
Ministry of Defence,
Defence Headquarters complex,
Sri Jayawardenepura Kotte.
6. Hon. The Attorney General
Attorney General's Department,
Colombo 12.
7. T.M.W.D. Thennakoon
Deputy Inspector General - Western
Province,
Police Headquarters,
Colombo 01.
8. Chief Inspector W.G.A.K. Gamage
Officer-in-Charge- DCDB,
Peliyagoda Police Station,
Peliyagoda.

RESPONDENTS

Before: Arjuna Obeyesekere, J
K. Priyantha Fernando, J
Dr. Sobhitha Rajakaruna, J

Counsel: Thanuka Nandasiri for the Petitioner

Madhawa Tennakoon, DSG with Sajith Bandara, SC for all the Respondents

Argued on: 23 October 2025

Written Submissions: Petitioner : 17.02.2025 & 15.10.2025

Respondents : 09.07.2024

Decided on: 19 March 2026

Dr. Sobhitha Rajakaruna J.

The Petitioner, Attorney-at-Law, has filed the instant Application on behalf of Mudalige Wasantha Kumara ('Detainee'), who was in detention at the time the Application was filed. The Detainee was arrested on 18 August 2022. The Petitioner claims that the Detainee's initial arrest violated the procedure prescribed by law, including the mandatory requirements of general criminal procedure and/or the provisions of the Prevention of Terrorism Act No. 48 of 1979 (PTA). The Petitioner further submits that applying the PTA to the Detainee is legally unjustified and fails to satisfy any standard of reasonableness, proportionality, or legitimate basis. Further, the Petitioner contends that the Detention Order issued by the Minister of Defence was based on irrelevant factors while disregarding material considerations, rendering the Order unlawful and inconsistent with fundamental legal principles.

On 10 November 2022, this Court, after reviewing the submissions and materials presented by all parties, permitted the addition of the then Senior DIG (Deputy Inspector General of Police) of the Western Province -Deshabandhu Tennakoon, as the 7th Respondent and Chief Inspector of Police- W.G.A.K. Gamage as the 8th Respondent. The Court granted leave to proceed with the Petition, on the alleged violations of the Petitioner's fundamental rights under Articles 12(1), 13(1), and 13(2) of the Constitution. Simultaneously, the Court allowed the interim relief sought by the Petitioner in paragraphs b) i, b) ii, and b) iii of the prayer in the Petition dated 26 August 2022. In line with these interim orders, the Court authorised reasonable access to the Detainee by his legal

representatives and family members. It also directed that the Detainee be produced before the relevant Magistrate and a Judicial Medical Officer for medical examination. Subsequently, on 6 February 2023, this Court was informed by the Petitioner that the Detainee had been discharged from the proceedings in the relevant Magistrate's Court.

The Petitioner contends that, while serving as the convenor of the Inter-University Students' Federation (IUSF), the Detainee played a key leadership role in various political movements addressing numerous socio-political concerns. These included: the campaign opposing repression against students at Ruhuna University; the student movement protesting grievances related to the 2019 Z-Score examination results; the opposition to the Kotelawala Defence University Bill; and the widespread mass political resistance that commenced in April 2022, ultimately leading to the resignation of former President Gotabaya Rajapaksa. The Petitioner further states that the Detainee, together with other IUSF members, maintained a consistent presence at Galle Face Green starting from 9 April 2022. They actively participated in all protests and demonstrations that constituted the 'Gota Go Home' movement.

Meanwhile, on 18 August 2022, the said IUSF organised a protest march to demonstrate against the severe economic hardships allegedly faced by the general public and the continuing repressive actions of the then government. The march was scheduled to begin around 2:00 p.m. from Lipton Square, Colombo. According to the Petitioner, as the procession reached Union Place in Colombo, the Police issued an announcement directing the protesters to disperse immediately, with a warning that force would be used if they failed to comply. The Petitioner asserts that almost immediately after this announcement, the Police commenced firing tear gas and deploying water cannons against the demonstrators.

The Petitioner submits that, at that point, the Detainee, along with many other students, had withdrawn from the protest site and were heading back to their respective homes. The Petitioner further states that the Detainee was formally taken into custody by the Divisional Crime Detective Bureau (DCDB), Kelaniya, on the same day (18 August 2022). According to the Petitioner, the Detainee was arrested while on his way home by a group of officers from the Peliyagoda Police Station and subsequently was detained under the provisions of the PTA. An initial 'B' Report ('3R1'), dated 22 August 2022, was filed in

the Magistrate's Court of Tangalle, referring to a detention order (dated 21 August 2022, marked as '4R7') issued under the PTA.

The Petitioner asserts that, although the initial 72-hour period of the Detainee's detention expired at 4:00 p.m. on 21 August 2022, the Respondents did not produce any valid Detention Order authorising his continued detention beyond that time without presenting him before a Magistrate. The Petitioner further states that, once the 72-hour period had lapsed, the Detainee's lawyers approached the officers at the Police Station, Peliyagoda, to inquire on what legal basis the Detainee was still being held and whether any Detention Order existed. According to the Petitioner, the officers were unable to provide any explanation or legal justification for the continued detention, other than stating that they were acting on instructions received from their superior officers.

The Petitioner states that, following a letter dated 28 August 2022 from Mr Nuwan Bopage, Attorney-at-Law, the 3rd Respondent replied in writing. In that response, the 3rd Respondent confirmed that copies of the Detention Order (dated 21 August 2022) had been personally served on the Detainee. The letter further indicated that relatives would be permitted to visit the Detainee at the Tangalle detention centre, subject to specified conditions. The Petitioner additionally submits that the Detainee was neither produced before a Magistrate nor visited by a Magistrate within the time frame mandated by law. Consequently, the Petitioner contends that the arrest and/or continued detention of the Detainee by one or more of the Respondents is fundamentally unlawful. It is therefore void ab initio, carries no legal force, and has no effect in law.

The Petitioner submits that the Respondents have failed to provide any valid justification for: the arrest of the Detainee; the institution of proceedings against him, or the procedure adopted to obtain the Detention Order issued against him. In the circumstances, the Petitioner contends that the entire process followed by the Respondents is unlawful, arbitrary, and procedurally unfair, and thereby infringes the fundamental right to equality before the law and equal protection of the law guaranteed to the Detainee under Article 12(1) of the Constitution. Furthermore, the Petitioner asserts that the 1st to 6th Respondents have violated the Detainee's fundamental rights protected under Articles 13(1) and 13(2) of the Constitution.

Before proceeding to examine the legal questions involved, it is necessary to address the Petitioner's specific contention that the Detainee's outspoken criticism and his strong ability to mobilise people around the purported socio-political causes significantly unsettled the country's political establishment. As a direct consequence, the Petitioner argues, the Detainee has faced police prosecution targeted at his political activism. In the interest of complete transparency, the Petitioner has outlined in the Petition the prior legal proceedings initiated by the Police against the Detainee, as follows:

- (i) He was arrested and remanded for 16 days in connection with a demonstration held near the University Grants Commission, protesting repressive measures against students at the University of Ruhuna.
- (ii) The Kollupitiya Police filed a case against the Detainee and others for conducting a *Satyagraha* protest in front of 'Temple Trees' regarding irregularities in the 2019 Advanced Level examination Z-Score results.
- (iii) The Kaduwela Magistrate's Court remanded the Detainee and several others for approximately 103 days over a protest organised near the Parliament roundabout in opposition to the proposed Kotelawala Defence University (KDU) Bill.
- (iv) The Thalangama Police registered a case naming the Detainee as a suspect in relation to a demonstration conducted near the Ministry of Education premises on 10 June 2022, with charges filed under the Public Property Act.
- (v) The Fort Police instituted a case against the Detainee, naming him as a suspect, concerning a demonstration held near Police Headquarters on 09 June 2022.

As mentioned above, the Detainee has served as the convenor of the IUSF. During his tenure in that role, he led and organised numerous public demonstrations and large-scale gatherings focused on purported issues of significant social and political sensitivity. The Petitioner maintains that, at all times, the Detainee exercised his political activism in full accordance with the constitutional rights and freedoms guaranteed to him under the fundamental rights Chapter of the Constitution.

The above excerpts from the Petition of the Petitioner, along with the photos and video annexed thereto underscores a crucial balance in democratic societies. In terms of Article 14 of the Constitution, every Citizen is entitled, inter alia, to the freedom of speech, expression, including publication, peaceful assembly and association. The Detainee earlier

described himself as a student activist who actively engaged in addressing sensitive socio-political issues.

I must emphasise that individuals, even when engaging in lawful protests on sensitive socio-political issues, must exercise these freedoms responsibly and in accordance with good conscience. Outspoken activism or leadership in public demonstrations does not exempt anyone from ethical standards or personal integrity. If a protester acts with ulterior motives, behaves unethically, or displays undisciplined conduct that disrupts the normal life and livelihood of the general public, such actions cannot be shielded solely by invoking fundamental rights stipulated in Chapter III of the Constitution. This observation highlights the reciprocal nature of rights and duties in society. Fundamental rights exist to protect individual liberty and enable collective expression, but they carry an inherent duty to respect the rights and well-being of others. Demonstrators and activists, no less than any other citizens, owe a responsibility to society to maintain discipline, avoid unnecessary harm or chaos, and act in ways that uphold public order and mutual respect rather than prioritising unchecked self-expression at the expense of communal harmony.

Also, in an application of this nature, it is not enough to cite a string of judicial precedents in which the Supreme Court has found public authorities to have violated the rights of the petitioners in those cases. The principles and observations (dicta) from those judgments must be directly relevant to, and properly connected with, the specific facts and circumstances of the present case.

Notwithstanding the foregoing, I must now proceed to examine whether any fundamental rights of the Detainee were infringed as a result of the conduct of one or more of the Respondents, in connection with his arrest on 18 August 2022. The learned Deputy Solicitor General ('DSG') referring to the affidavit affirmed by the then Director of Counter Terrorism and Investigation Division ("CTID") submits that investigations were being conducted by the CTID regarding the Petitioner's alleged involvement, inter alia, in the following incidents which took place between 8 April 2022 and 18 August 2022:

- a. Criminal Intimidation and Attack on Fort OIC, Mr. Sagara Liyanage and others
- b. Forcible entry to the Education Ministry Premises at Isurupaya
- c. Forcible entry into the Presidential Secretariat,
- d. Forcible entry into the President's House,
- e. Assassination of Hon. Amara Keerthi Athukorala, Member of Parliament,

- f. Arson committed at the personal residence of Hon. Ranil Wickramasinghe, His Excellency the President,
- g. Arson was committed at the personal residences of Members of Parliament.
- h. Criminal Intimidation of a Police Officer during the protest held near the Police Headquarters

The Respondents contend that the above-stated conduct of the respective Respondents is in no manner violative of the fundamental rights of the Detainee guaranteed under the Constitution for the reasons set out hereinafter.

On 22 August 2022, the Officer-in-Charge of the Terrorist Investigation Division (TID) submitted a B-Report (marked as '3R1') to the Magistrate's Court of Tangalle. This B-Report, which refers to the Detention Order dated 21 August 2022 ('4R7'), stated that the Detainee had been arrested together with another suspect on 18 August 2022 for allegedly being involved in, aiding, and abetting acts directed against the State, terrorist activities, and acts of violence, in pursuance of the provisions of PTA. Subsequently, the TID filed a further B-Report dated 17 November 2022 in the Chief Magistrate's Court of Colombo. This report disclosed the existence of arrest warrants issued against the Detainee by the Chief Magistrate's Court of Colombo in case B/30475/1/20, and the Fort Magistrate's Court in case MC 18448/21. Upon careful examination of the first paragraph of the 'B' Report, it appears that the arrest on 18 August 2022 was justified on two primary grounds:

- i) The Detainee's alleged use of mob power to attempt to overthrow the lawfully established government in a manner contrary to the Constitution, thereby committing terrorist acts that endangered public order in Sri Lanka; and
- ii) The said outstanding arrest warrants issued in the aforementioned cases.

The first warrant ('8R5') was issued on 29 March 2022, and the second ('8R4') on 21 July 2022. However, no sufficient material has been placed before this Court, nor has any satisfactory explanation been provided, as to why these two arrest warrants were not executed earlier and remained pending until 18 August 2022. In the cage titled "The particulars of alleged offence or reasons for issue of arrest warrant":

- Warrant '8R4' records the reason as "Non-appearance in Court"; whereas
- Warrant '8R5' states, inter alia, "Being a member of an unlawful assembly".

In a long line of Supreme Court decisions, it is well established that the Court must ascertain whether, at the time of arrest, there existed material sufficient to give rise to reasonable suspicion that the detainee was concerned in or connected with any unlawful activity. In the instant case, I take the view that the burden rests on the Respondents to explain why the detainee was arrested, allegedly under the provisions of the PTA, when several other "B" Reports and arrest warrants were already pending.

The document marked '7R7' is a communication dated 19 August 2022 from the Officer in Charge of the Criminal Investigation Bureau, Peliyagoda Division, addressed to the Assistant Superintendent of Police, Kelaniya District. It states that investigations had revealed the Detainee's involvement in the specified acts from 9 May 2022 until the date of the communication. These acts bear some similarity to the activities referred to by the learned Deputy Solicitor General. Furthermore, by letter dated 20 August 2022 ('7R8'), the then Inspector General of Police ('IGP') directed that an investigation be conducted to determine whether the Detainee and another suspect had conspired to overthrow the Government. This gives rise to two pertinent questions: What steps, if any, did the police take to investigate these alleged offences since May 2022? And why was the PTA invoked so abruptly in August 2022 to effect the arrest, when the IGP's own letter ('7R8') appears to imply that no investigation under the PTA had taken place between May and August 2022 to justify such detention?

At this stage, I must turn my attention to the Affidavit submitted by W.G.A.K. Gamage (8th Respondent), Chief Inspector of Police attached to Yakkala Police Station. He has admitted that, together with a team of officers from the Kelaniya Divisional Crimes Detective Bureau (DCDB), he personally arrested the Detainee on 18 August 2022. In paragraphs 10 and 11 of his Affidavit, he has affirmed the following:

10. Without prejudice to the above, I state that I arrested Mudalige Wasantha Kumara ("Detainee") on 18.08.2022 having provided him with the reasons for his arrest on reasonable suspicion for the commission of offences under the Prevention of Terrorism (Temporary Provisions) Act, No. 48 of 1979 (As Amended) ("PTA") and for two warrants issued against

him by the Magistrate Court of Colombo in case number B 30475/1/20 and Magistrates Court of Fort in case number 18448/22.

11. I further state that the said Detainee was detained at the Kelaniya DCDB for 72 hours as provided for by the PTA and since I was of the opinion that the detainee should be kept further in detention for the purposes of the investigation, I made an application to my superior officer requesting for the arrangements to be made to obtain an order from the Minister of Defence under Section 9(1) of the PTA.

The 8th Respondent has expressly stated in his Affidavit that he informed the Detainee, at the time of arrest, of the reasons for the arrest—namely, reasonable suspicion of having committed offences under the Prevention of Terrorism Act (PTA). Nevertheless, even after the passage of several months and despite the occurrence of various subsequent events since the date of arrest, the 8th Respondent has failed to disclose to this Court any details whatsoever regarding the basis of that reasonable suspicion, either on his part or on the part of any other Respondents. The aforesaid “B” Report No. 80303/08/2022 dated 17 November 2022, filed in the Chief Magistrate’s Court, Colombo, purports to rely on reasonable suspicion of offences under the PTA together with two warrants previously issued against him by the Magistrate’s Court of Colombo; however, no adequate material has been placed before this Court to substantiate that reasonable suspicion in accordance with/under the provisions of the PTA.

In the absence of such disclosure, I am unable to conclude that the Respondents have discharged their burden of demonstrating that the Detainee’s conduct on 18 August 2022 constituted an offence under the PTA. Furthermore, it remains inexplicable to me why the Detainee was arrested on 18 August 2022 and a detention order was thereafter sought under the PTA, when multiple B-Reports were already pending and outstanding arrest warrants were in existence. I am not satisfied that the Respondents have placed before this Court sufficient material to clarify or resolve the foregoing inconsistencies and unanswered questions.

In *Joseph Perera v AG* [1992] 1 Sri L.R. 199, at page 218, Sharvananda, C.J. (as His Lordship was then) stated that,

“The question then arises as to on whom the burden of proof lies to establish the legality of the arrest and detention. One of the essential attributes of the Rule of Law is that executive action to the prejudice of or detrimental to the right of an individual must have the sanction of law. The State has got no power to deprive a person of his life or liberty without the authority of law. This is the essential postulate and basic assumption of the Rule of Law. Lord Atkin said “In accordance with British jurisprudence no member of the executive can interfere with the liberty or property of a British subject except on the condition that he can support the legality of his action before a Court of Justice.” Eshugbayi Eleko v. Govt, of Nigeria. Thus the burden rests on the respondents to justify the arrest and detention of the petitioners. The respondents must show that the regulation which gives them the power to arrest / detain is covered by one of the permissible grounds of restriction e.g. interest of national security or public order stipulated by Article 15(7).”

Having carefully considered the entirety of the evidence, submissions, and affidavits placed before this Court, I hold that the arrest of the Detainee on 18 August 2022, following the protest march organised by the IUSF from Lipton Circus, and the subsequent invocation of the provisions of the PTA to detain him, were not supported by material sufficient to establish reasonable suspicion as required by law. The Respondents have failed to discharge the burden upon them to demonstrate, through cogent and specific evidence, that the Detainee’s conduct on that day gave rise to a reasonable suspicion of his involvement in any offence cognizable under the PTA. The reliance placed on outstanding arrest warrants and vague allegations of terrorist acts or threats to public order remains unsubstantiated, unexplained, and inadequate to justify the drastic measure of arrest and detention under a special legislation, namely, the PTA.

In the circumstances, I declare that the fundamental rights of the Detainee guaranteed under Articles 12(1) and 13(1) of the Constitution have been infringed by the 8th Respondent through the unlawful arrest and detention effected on 18 August 2022. Nevertheless, I am not satisfied that the Petitioner has adduced sufficient evidence before this Court to establish an infringement of his rights under Article 13(2). This declaration

shall not prejudice or affect the continuation of any pending criminal proceeding against the Detainee, in accordance with the law. This is because this Court was not invited by parties to exercise the legality of any of those proceedings.

The application is accordingly allowed to the extent declared above.

Judge of the Supreme Court

Arjuna Obeyesekere J.

I agree.

Judge of the Supreme Court

K. Priyantha Fernando J.

I agree.

Judge of the Supreme Court