

**IN THE COURT OF APPEAL OF THE DEMOCRATIC SOCIALIST REPUBLIC OF
SRI LANKA**

In the matter of an Application for mandates in the nature of Writ of Certiorari, made under and in terms of Article 140 of the Constitution of the Democratic Socialist Republic of Sri Lanka.

**CA (Writ) Application No:
619/2024**

Nandika Prasad,
Walawawatta, Hittetiya-East,
Matara.

Currently,
Remand Prisoner No. 592,
Matara Prison.

PETITIONER

Vs.

1. CI Suranga Jayathunge,
Officer in Charge.
Police Station.
Pitabedda.
2. Inspector General of Police,
Police Headquarters,
Church Street,
Colombo.
3. The Registrar,
Magistrate Court of Morawaka,
Morawaka.
4. The Attorney General,
Attorney General's Department,
Colombo 12.

RESPONDENTS

Before: Dhammadika Ganepola, J.

Damith Thotawatte, J.

Counsel:	Mr. Hejaaz Hizbullah with Chalana Perera instructed by Thilini Atappattu for the Petitioner.
	Wasantha Perera, DSG for the State.
Supported On:	31-01-2025
Written Submissions	
Tendered on:	10-02-2025 for the 4 th Respondent.
Delivered on	11-03-2025

Damith Thotawatte, J.

As per B Report dated 09-03-2024 (Annexed to the Petition marked as **P2**) filed by the 1st Respondent in the Magistrate Court of Morawaka under case number 25822, a team of police officers headed by the 1st Respondent, acting on information received by them on 08-03-2024 had taken one Hewapathiranage Danushka Prabath into custody whilst he was transporting 20 grams of heroin.

Based on the information provided by Danushka Prabath regarding the Petitioner's alleged involvement in heroin trafficking, the police used Danushka Prabath's mobile phone to call the Petitioner, luring him to their location. As a result of this call, the Petitioner arrived at Hulandawa Junction, where he was arrested at 1:30 PM on 08-03-2024 for being in possession of 20 grams of heroin.

The Petitioner had been produced before the learned Magistrate on 09-03-2024. As per the court proceedings (copy Annexed to the Petition marked as **P3**), the learned Magistrate after considering the B Report, ordered the remand of the accused enabling further investigations.

It is the position of the Petitioner that he was arrested between 7.00 am and 8.00 am on the 08-03-2024 at Matara whilst riding a motorcycle and he did not have any narcotics or prohibited substance in his possession at the time of arrest. The Petitioner further claims that he was subsequently brought to the Pitabeddera Police Station at about 10.00 am. The Petitioner further states that the 1st Respondent has concocted and fabricated a case against him and as such, his arrest is illegal and ultra vires the powers of the 1st Respondent.

The Petitioner has filed this present Application seeking, *inter alia*, the following reliefs:

- (a) Grant and issue a writ of certiorari quashing the decision to and the arrest of the Petitioner.
- (b) Grant and issue a writ of certiorari quashing the order to remand the Petitioner made by the Magistrate of Morawaka on 09-03-2024 in case no: B/25822.
- (c) Grant interim relief releasing the Petitioner on bail and/or make order releasing the Petitioner from remand custody under conditions as may be deemed fit by Court.

The Prayer (b) above refers to a judicial act. However, it is the contention of the Petitioner that all consequential acts to his arrest are also illegal on the illegality of the original arrest.

In order to substantiate the above position, the Petitioner has submitted that,

- (a) He (the Petitioner) left his home on 08-03-2024 in response to calls he received from mobile phone No. 0774303603 from one Danushka Prabath.
- (b) Danushka Prabath made three calls from his wife's phone to the Petitioner's phone No. 0768206002.
Call Details from 08-03-2024 6.00 am to 09-03-2024 6.00 am of Petitioner's phone No. 0768206002 (call record annexed marked as **P9**) reflects only 03 calls. All three calls are from phone No. 0774303603. The call details or subscriber details of phone No. 0774303603 are not available to determine the Petitioner's contention that the calls were given by Danushka Prabath using his wife's phone.
- (c) The Petitioner claims that he called "Darshana" (Erabaddagoda Nekathige Darshana), his brother-in-law, on mobile phone No. 0715728412 (call record annexed marked as **P4**) using the 1st Respondent's official mobile phone No. 0718591451 to make arrangements for the motorcycle which he was riding at the time of arrest.

According to the service provider, phone No. 0715728412 is registered to Ms. E.N. Darshana. The call record marked **P4** indicates an incoming call to phone no 0715728412 from phone No. 0718591451 and at about 7.24 am and another outgoing call to the same number at approximately 7.30 am.

The Petitioner has attached two affidavits from Erabaddagoda Nekathige Darashana and Sudda Namage Chathura Tharanga, both of whom claim to be brothers-in-law of the Petitioner.

Without considering the narration provided by the Petitioner with the support of the two affidavits, the phone records taken in isolation do not support the Petitioner's version of events. The facts submitted by the affidavits are essential to support the Petitioner's position. However, these facts not accepted by the Respondents and as such, are disputed facts. When there is a serious dispute on material facts, untested evidence, even if submitted through affidavits, cannot be considered as uncontested facts.

In F. Haffmann-La Roche Ltd. & Another vs. National Medicines Regulatory Authority & Others, CA Writ 98/2016, CA Minutes of 22nd June 2016, the Court of Appeal highlighted the limitations of resolving major factual disputes solely based on affidavits.

Considering the Police Bail Report annexed to the Petition marked as **P8B**, it appears that the position of the police is contrary to that of the Petitioner and that the police are conducting further investigations under the supervision of the relevant Magistrate.

In Hettiarachchige Jayasooriya Vs. N. M. Gunawathie and others, CA Writ 63/2015, CA Minutes at 26.09.2019, his Lordship, Justice Janak De Silva held,

“The rationale is that where the major facts are in dispute and the legal result of the facts is subject to controversy it is necessary that the questions should be canvassed in a suit where parties would have ample opportunity of examining the witnesses so that the Court would be better able to judge which version is correct.”

In Public Interest Law Foundation v. Central Environmental Authority CA Writ 527/2015 decided on 24.02.2020 his Lordship, Justice Mahinda Samayawardhena has also held that, in exercise of writ jurisdiction the court cannot decide on administrative decisions where the facts involved are in dispute.

In Thajudeen v Sri Lanka Tea Board and Another (1981) 2 SLLR 471 it was held:

“Where the major facts are in dispute and the legal result of the facts is subject to controversy and it is necessary that the questions should be canvassed in a suit where parties would have ample opportunity of examining the witnesses so that the Court would be better able to judge which version is correct, a writ will not issue”.

On the above grounds, I conclude that this Court is unable to grant the relief sought by the Petitioner as the Application for relief is based on facts in dispute.

When this matter was supported on 31-01-2024, the learned State Counsel appearing for the 4th Respondent took up a preliminary objection on the ground that there was an unexplained and inordinate delay in seeking relief and as such, the Petitioner is not entitled to maintain this Application.

In Jayaweera Vs. Asst. Commissioner of Agrarian Services Ratnapura and another (1996) 2 SLLR 70 his Lordship, Justice Jayasuriya held that,

"A Petitioner who is seeking relief in an application for the issue of a Writ of Certiorari is not entitled to relief as a matter of course, as a matter of right or as a matter of routine. Even if he is entitled to relief, still the Court has a discretion to deny him relief having regard to his conduct, delay, laches, waiver, submission to jurisdiction - are all valid impediments which stand against the grant of relief."

Above position has been reiterated in **Seneviratne Vs. Tissa Bandaranayake and another** (1999) 2 SLLR 341. In **Dissanayake Vs. I. O. K. G. Fernando and another** (1968) 71 NLR 356 it was held that, where there has been a delay in seeking relief by way of Certiorari, it is essential that the reasons for the delay should be set out in the papers filed in the Supreme Court.

In the case of **Hopman and others Vs. Minister of Lands and Land Development and others**, (1994) 2 SLLR 240 it was held that, "The appellants have failed to give a satisfactory explanation for their conduct and the delay in making their application to the Court of Appeal and hence that Court cannot be faulted for exercising its discretion against the issue of the writ."

The Petitioner was taken into custody on 08-03-2024. And he has been placed in judicial custody from 09-03-2024. Up till 30-09-2024, there is no indication that the Petitioner has brought the matter of illegal arrest to the attention of the Court. The Petitioner has not explained the reason for the delay in his Petition (amended Petition tendered on 16-10-2024) and has not submitted any acceptable reason for the delay in seeking relief regarding the purported illegal arrest.

In the circumstances, I take the view that the Petitioner has not made out a *prima facie* or an arguable case and this Court is unable to grant any relief as prayed for in the prayer of the Petition. Accordingly, I decide to refuse issuance of formal notice on the Respondents of this Application.

Application dismissed.

JUDGE OF THE COURT OF APPEAL

Dhammadika Ganepola, J.

I agree.

JUDGE OF THE COURT OF APPEAL