

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

In the matter of an application for Writs of Certiorari and Prohibition under and in terms of Article 140 of the constitution of the Democratic Socialist Republic of Sri Lanka.

**CA. (Writ) Application No. 0479/2023**

Nadun Chinthaka Wickramaratne (alias Harak Kataa), 'Erandi',  
No. 158, Pitiduwa Road,  
Midigama, Weligama.  
(Presently Detained at the Criminal Investigations Department)

**Petitioner**

**Vs.**

1. S.H.S. Thusitha Kahagalle,  
Inspector of Police,  
Officer-in-Charge,  
Public Complaints Unit,  
Criminal Investigations Department.
2. S.K. Senaratne,  
Chief Inspector of Police,  
Office-in-Charge,  
Criminal Investigations Department.
3. Kavinda Piyasekere,  
Senior Superintendent of Police,  
Director,  
Criminal Investigations Department.
4. Prasad Ranasinghe,  
Deputy Inspector-General  
of Police,  
Criminal Investigations Department.

All at:  
Criminal Investigations Department,  
Colombo 01.

5. Gamage Nilantha,  
Chief Inspector of Police,  
Officer-in-Charge,  
Divisional Crimes Detection Bureau,  
Mount Lavinia.
6. Chandana D. Wickremaratne,  
Inspector-General of Police,  
Police Headquarters,  
Colombo 01.
7. Hon. Attorney General,  
(Under and in terms of the Proviso  
to Article 35 (3) of the Constitution,  
as representing and binding the  
Minister of Defense)  
Attorney General's Department,  
Hulftsdorp,  
Colombo 12.
8. General G.H.D.K. Gunaratne (Retd.),  
Secretary,  
Ministry of Defense,  
Defense Headquarters Complex,  
Sri Jayawardenapura Kotte.
9. Hon. Magistrate,  
Magistrate's Court,  
Fort.
10. Hon. Attorney General,  
Attorney General's Department,  
Hulftsdorp,  
Colombo 12.

## **Respondents**

**Before:** **N. Bandula Karunarathna J. P/CA**

**&**

**M.C.B.S. Morais J.**

**Counsel:** Senany Dayaratne with Nishadhi Wickramasinghe, Sanjaya Ariyadasa and T. Amirthalingam for the Petitioner.

Janaka Bandara, DSG with Jehan Gunasekara, SC for the State.

**Written Submissions:** By the Petitioner – 13.09.2023 and 20.11.2023.

By the Respondents –13.09.2023 and 01.12.2023.

**Supported on:** 08.09.2023.

**Decided On:** **06.12.2023.**

**M.C.B.S. Morais J**

The Petitioner by his petition dated 17<sup>th</sup> August 2023 seeks the following reliefs among others,

*“b. call for the entire record pertaining to the petitioner which is maintained by the 1<sup>st</sup> and/or the 2<sup>nd</sup> and/or the 3<sup>rd</sup> and/or the 4<sup>th</sup> and/ or the 5<sup>th</sup> and/or 6<sup>th</sup> Respondents above named and/or their servants and/or agents and/or successors and/or by the 7<sup>th</sup> and /or 8<sup>th</sup> Respondents, or such portion of the said record, as deemed necessary by the Court;*

*c. in particular, call for the file/ record maintained by the 1<sup>st</sup> and/or the 2<sup>nd</sup> and/ or the 3<sup>rd</sup> and/or the 4<sup>th</sup> and/ or the 5<sup>th</sup> and/or 6<sup>th</sup> Respondents above named and/or their servants and/or agents and/or successors, and/or by the 7<sup>th</sup> and /or 8<sup>th</sup> and /or the 10<sup>th</sup> Respondents, in respect of the issuance of the aforesaid detention orders, dated 15/03/2023 and 13/06/2023, marked P1 and P14 and /or matters incidental and/or attendant thereto, or such portion of the said file/ record, as deemed necessary by the Court;*

d. call for the quash, by way of a mandate in the nature of a WRIT OF CERTIORARI, the decision of the Minister of Defense (constitutionally represented in these proceedings by the 7<sup>th</sup> Respondents), and /or any other Respondent, to issue the said Detention order dated 15/03/2023 [References No. එම්ඒඩී/එල්ඊපී/පීටීඒ / 09/2023] marked P1;

e. issue a mandate in the nature of WRIT OF CERTIORARI quashing the said Detention Order dated 15/03/2023 [Reference No. එම්ඒඩී/එල්ඊපී/පීටීඒ / 09/2023] marked P1;

f. call for and quash, by way of a mandate in the nature of a WRIT OF CERTIORARI, the decision of the Minister of Defense (constitutionally represented in these proceedings by the 7<sup>th</sup> Respondent), and/or any other Respondents, to issue the said Detention order dated 13/06/2023 [References No. එම්ඒඩී/එල්ඊපී/පීටීඒ / 09/2023] marked P14;

g. issues a mandate in the nature of a WRIT OF CERTIORARI quashing the said Detention Order dated 13/06/2023 [References No. එම්ඒඩී/එල්ඊපී/පීටීඒ / 09/2023] marked P14;

h. issue a mandate in the nature of a WRIT OF PROHIBITION prohibiting the 7<sup>th</sup> Respondent (as representing and binding the Minister of Defense, under and in terms of the proviso to Article 35 (3) of the Constitution), and /or the Minister of Defense himself (if deemed necessary by Court), and/or any one or more of the other Respondents, and/or their servants and/or agents, and/or successors, from further extending the aforesaid Detention Orders dated 15/03/2023 and 13/06/2023 [ both bearing Reference No. එම්ඒඩී/එල්ඊපී/පීටීඒ / 09/2023] marked P1 and P14 ;

i. issue a mandate in the nature of WRIT OF PROHIBITION Prohibiting the 7<sup>th</sup> Respondent (as representing and binding the Minister of Defense, under and in terms of the proviso to Article 35 (3) of the Constitution), and /or the Minister of Defense himself (if deemed necessary by Court), and/or any one or more of the other Respondents, and/or their servants and/or agents, and/or successors, from issuing a fresh a Detention Order under and in terms of the provisions of the Prevention of

*Terrorism (Temporary Provisions) Act, No. 48 of 1979 (as amended) against the Petitioner ;*

*j. WITHOUT PREJUDICE TO PRAYERS 'd' to 'l' issue a mandate in the nature of a WRIT OF PROHIBITION prohibiting the 7<sup>th</sup> Respondent ( as representing and binding the Minister of Defense, under and in terms of the proviso to Article 35 (3) of the Constitution), and /or the Minister of Defense himself (if deemed necessary by Court), and/or any one or more of the other Respondents, and/or their servants and/or agents, and/or successors, from moving and/or changing the current place of detention of the Petitioner, without first notifying the 9<sup>th</sup> Respondent AND Court; ”*

As far as the circumstances of this case are concerned the Detention Order dated 15/03/2023 is said to have been extended on 13<sup>th</sup> June 2023 and as it stands now said Detention Order has finally been extended on the 10<sup>th</sup> September 2023 which would be in effect till the 9<sup>th</sup> December 2023. Therefore, the final Detention Order issued on the 10<sup>th</sup> of September would also expire on the 09<sup>th</sup> of December just three days from delivering this judgment. Though the initial Detention Order has been extended, each extension had to be considered as a fresh Detention Order which would be effective for a maximum period of three months. Accordingly, the Detention Orders dated 15<sup>th</sup> March 2023, and 13<sup>th</sup> June 2023, have already expired, and the order presently in force will expire in three days. Hence, questioning the legality of such would merely be of academic interest. I have no intention of engaging in such an academic excursion at this juncture. Further, it should be borne in mind that this is an application for writ and our duty is to look into the validity of the impugned Detention Orders. Therefore, we will be limiting our consideration only to the issuance of a new detention order/extension of the previous Detention Order, on or before 09/12/2023.

It is strongly contended by the petitioner that he has no involvement in terrorist activities hence, he could not be held on Detention orders issued under Section 9(1) of the Prevention of Terrorism (Temporary Provisions) Act (No. 48 of 1979) (hereinafter mentioned as the 'PTA'). The basis of such being the provisions of the PTA (Section 09) would only be applicable to the offences coming under the said PTA. While appreciating and accepting this argument I will be analyzing it in due course.

In understanding this, it is paramount to explore the provisions of the PTA to understand the offences coming under the said Act. As per section 02 of the PTA;

*“2. (1) Any person who-*

*(a) causes the death of any specified person, or kidnaps or abducts a specified person, or commits any other attack upon any such person, which act would, under the provisions of the Penal Code, be punishable with death or a term of imprisonment of not less than seven years; or*

*(b) causes the death of any person who is a witness to any offence under this Act, or kidnaps or abducts or commits any other attack upon any such person, which act would, under the provisions of the Penal Code, be punishable with death or a term of imprisonment of not less than seven years; or*

*(c) commits criminal intimidation of any specified person or a witness referred to in paragraph (b); or*

*(d) commits the offence of robbery of the property of the Government, any department, statutory board, public corporation, bank, co-operative union or co-operative society; or*

*(e) commits the offence of mischief to the property of the Government, any department, statutory board, public corporation, bank, co-operative union or co-operative society or to any other public property; or*

*(f) without lawful authority imports, manufactures or collects any firearms, offensive weapons, ammunition or explosives or any article or thing used, or intended to be used, in the manufacture of explosives; or*

*(g) possesses without lawful authority, within any security area, any firearms or any offensive weapon, ammunition or explosives or any article or thing used, or intended to be used, in the manufacture of explosives; or*

*(h) by words either spoken or intended to be read or by signs or by visible representations or otherwise causes or intends to cause commission of acts of*

*violence or religious, racial or communal disharmony or feelings of ill-will or hostility between different communities or racial or religious groups; or*

*(i) without lawful authority erases, mutilates, defaces or otherwise interferes with any words, inscriptions, or lettering appearing on any board or other fixture on, upon or adjacent to, any highway, street, road or any other public place; or*

*(j) harbours, conceals or in any other manner prevents, hinders or interferes with the apprehension of, a proclaimed person or any other person, knowing or having reason to believe that such person has committed an offence under this Act,”*

In this case, one of the main contentions of the Petitioner is that the respondents have failed/neglected to place sufficient material before the Minister of Defense for the issuance/extension of the impugned Detention Orders. It is noted that the Petitioner with his petition has submitted the proceedings of the Magistrates Courts which contains the copies of the B reports filed therein. It contains ‘P1’ the first Detention Order issued, which I reproduce below.

“එම්බඩ/ එල්ජීපී/ පීටිපී/ 09/2023

1979 අංක 48 දරන ත්‍රස්තවාදය වැළැක්වීමේ (තාවකාලික විධිවිධාන) පනත

9 (1) වන වගන්තිය යටතේ රඳවා තබා ගැනීමේ නියමය

ශ්‍රී ලංකා ආණ්ඩුක්‍රම ව්‍යවස්ථාවේ 44 (3) ව්‍යවස්ථාව සමඟ කියැවෙන සංශෝධනය කරන ලද 1979 අංක 48 දරන ත්‍රස්තවාදය වැළැක්වීමේ (තාවකාලික විධිවිධාන) පනතේ 9 (1) වන වගන්තියෙන් මා වෙත පවරා ඇති බලතල ප්‍රකාරව, ආරක්ෂක අමාත්‍ය රනිල් වික්‍රමසිංහ වන මම, වැලිගම, මිදිගම, පිටියව පාර, එරන්දි, අංක 158 දරණ ස්ථානයේ පදිංචි තදුන් චිත්තක වික්‍රමරත්න නොහොත් හරක්කටා යන අය,

ජාත්‍යන්තර ත්‍රස්තවාදී සංවිධාන හා මත්ද්‍රව්‍ය ජාවාරම්කරුවන් සමඟ සම්බන්ධතා පවත්වමින් තිබී විරෝධී ලෙස ගිනි අවි රැස් කරමින් එම ගිනි අවි විවිධ පුද්ගලයන් වෙත ලබා දී ඔවුන්ව වෙඩිකරුවන් වශයෙන් යොදවා ගල්කිස්ස මහේස්ත්‍රාත් අධිකරණයේදී විත්තිකරුවෙකුට ගිනි අවියකින් වෙඩි තබා ඝාතනය කිරීමට තැත් කිරීම මගින් මහේස්ත්‍රාත්තුමාට සාපරාධී බිය ගැන්වීමක් සිදු කිරීම, අධිකරණයේ ආරක්ෂාව සඳහා සිටි පොලිස් නිලධාරීන්ට සහ අධිකරණයේ රැදී සිටි සිවිල් ජනයාට වෙඩි තබා මනුෂ්‍ය ඝාතනයට තැත් කිරීම ඇතුළුව දිවයින තුළ මනුෂ්‍ය ඝාතන ඇතුළු සංවිධානාත්මක අපරාධ ක්‍රියාවන්හි නිරතව සිටිමින් ජාතික ආරක්ෂාවට හා මහජන සාමය පවත්වාගෙන යාමට අවහිර වන පරිදි ක්‍රියා කිරීම,

පිළිබඳව සම්බන්ධ බව හෝ ප්‍රවේදිතාවක් දක්වන බවට සැක කිරීමට හේතු ඇති නිසා ඉහත නම සඳහන් තදුන් විත්තික වික්‍රමරහිත නොහොත් හරක්කටා යන අය,

මේ නියමයෙහි දින සිට දින 90ක කාලයක්,

අපරාධ පරීක්ෂණ දෙපාර්තමේන්තුවේ රඳවා තැබීමට මෙයින් නියම කරමි.

ආරක්ෂක අමාත්‍ය.

2023 මාර්තු මස 15 වන දින,

කොළඹ දි ය.”

On perusal of ‘P14’ dated 13<sup>th</sup> of June 2023 and ‘P17’ dated 10<sup>th</sup> September, the extensions of ‘P1’ it is clear that no additional material/charges/allegations were leveled against the Petitioner by them. Furthermore, the Respondents do not submit any material, which the Petitioner has failed to submit in substantiating their claim.

When this matter was supported on 15<sup>th</sup> September 2023 the Court issued notice on the Respondents and an interim Order as per prayer ‘q’ of the Petition. Thereafter at the Argument parties made submissions and counter submissions. We have duly considered the said submissions. The Respondents raised several preliminary objections, one being that the institution of the two fundamental rights applications by the Petitioner in the Supreme Court bearing No. SCFR/165/2023, and SCFR/107/2023. In those two applications though prayed for the same relief, they were based on different grounds hence, the writ jurisdiction of this Court is not affected and the adjudication of this matter would have no bearing upon the outcome of those two matters pending before the Supreme Court.

Now I will analyze the relevant law applicable to the issue.

Section 09 of the Prevention of Terrorism (Temporary Provisions) Act (No. 48 of 1979) sets out that;

*“9. (1) Where the Minister has reason to believe or suspect that any person is connected with or concerned in any unlawful activity, the Minister may order that such person be detained for a period not exceeding three months in the first instance,*



*in such place and subject to such conditions as may be determined by the Minister and any such order may be extended from time to time for a period not exceeding three months at a time.”*

As correctly submitted by the Petitioner our Courts have subjected these sections to intense judicial certainty. In Weerawansa vs. The Attorney General and others(2000) 1 SLR 387 his Lordship Justice Fernando has held, Amarasinghe J. and Dheeraratne J. conquering that( at page 401);

*“ an arrested person must be produced before a Magistrate, before the period of seventy-two hours allowed by section 7(1) comes to an end unless a detention order has been made ‘under’ section 9(1), such an order can only be made if ‘the minister has reason to believe or suspect that [such] person is connected with or concerned in any unlawful activity’. Not only must the Minister of Defence, subjectively, have the required belief or suspicion, but there must also be, objectively, ‘reason’ for such belief. While Article 13(2) permits detention only upon a judicial order, section 9(1) allows a Ministerial order. However, being an order, which results in a deprivation of liberty, it must be made with no less care and consideration.*

*The Minister’s order does not depend on the validity of the preceding arrest and detention. Even if such arrest and detention were invalid, nevertheless at the time the detention order was made the Minister did have reason to believe or suspect that the detainee was ‘ connected with or concerned in any unlawful activity’ the detention order and subsequently detention would be lawful.”*

The question before us is whether any of the offences disclosed/alleged by ‘P1’ reproduced above come within the definition of Section 02 of the PTA which is also reproduced above. In my opinion ‘P1’ does not contain any such allegation/offence as the respondents do not contend that the Magistrate of Mount-Lavinia is a specified person or that the Magistrates Court of Mount-Lavinia is a security area, specified by a gazette issued under the provisions of the PTA. In any event such material was not submitted before us.

As stated before since I do not intend to venture into the validity of previous Detention Orders namely dated 15<sup>th</sup> March 2023, 13<sup>th</sup> June 2023 and 10<sup>th</sup> September 2023, and the following directions are made.

If the Respondents 1-6 and 8 intend to obtain a fresh Detention Order or an extension of the existing Detention Orders in respect of this Petitioner, they should submit appropriate and sufficient material before the Minister of Defense.

In absence of such appropriate and sufficient material being produced before the Minister of Defense, the 1<sup>st</sup>-6<sup>th</sup> and 8<sup>th</sup> Respondents should produce the Petitioner before a Magistrate who has jurisdiction, forthwith.

However, it should be borne in mind that this will not preclude the Minister of Defense from issuing a fresh Detention Order on being satisfied of the material presented before him. Subject to the said directions this writ application is dismissed without cost.

**Judge of the Court of Appeal**

**N. Bandula Karunarathna J. (P/CA)**

**I agree**

**President of the Court of Appeal.**