

**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.

S.C. (FR) No. 313/2020

Sriramachandran Thanikumar
Attorney-at-Law,
No.14, Dr. E A Cooray Mawatha,
Wellawatta Colombo 6.

On behalf of,

Kumarasamy Manoharan
Munich, Germany.

Presently at,

Old Prison Detention Centre
Tangalle.

No.45, Rasapuram,

Sinna Adamban Nadunkeni, Vavuniya

(Presently in Anuradapura Remand Prison)

Petitioner

Vs.

1. The Director,
Terrorist Investigation Division,
Police headquarters, Colombo 01.
2. The Officer In Charge,
Police Station,
Batticaloa.

3. Vickneshwaran,
Police Constable,
Police Station, Batticaloa.
4. Madushanke,
Police Constable,
Police Station, Batticaloa.
5. Officer In charge,
Foreshore Police Station, Colombo 13.
6. Acting Inspector General of Police
Police Head Quarters, Colombo 01.
7. The Honorable Attorney General,
Department of the Attorney General,
Colombo 12.

Respondents

Before : Arjuna Obeyesekere, J.
Menaka Wijesundera, J.
Sampath K. B. Wijeratne, J.

Counsel : K. S. Ratnavale for the Petitioner
Sajith Bandara, SC for the Respondents.

Written
Submissions : Written submissions on behalf of the Petitioner on
12th of October, 2020.
Written submissions on behalf of the Respondents on
12th of October, 2020.
Further written submissions on behalf of the
Respondents on 25th October, 2022.

Argued on : 04.08.2025

Decided on : 18.09.2016

MENAKA WIJESUNDERA J.

This matter pertains to a petition filed by one Sriramachandran Thanikumar, Attorney-at-Law, on behalf of his client, Kumarasamy Manoharan, hereinafter referred to as ‘the detainee’, a German national of Sri Lankan origin, who had been detained at the Tangalle Old Prison in the custody of the Terrorist Investigation Division (TID).

The petitioner had prayed for a declaration of a violation of the abovementioned detainee’s fundamental rights under Articles 11, 12(1), 13(1) and (2) under the Constitution along with compensation of Rs. 50 million.

When this matter had been supported before this Court for leave, Court has granted leave under Articles 12(1), 13(1) and 13(2) under the Constitution on 01.02.2022.

The petitioner had stated that the detainee is a German national, having migrated in 1982, had been working as a care giver in a German elder’s home.

He had frequently visited Sri Lanka to see his family and support poor marginalized individuals through personal, financial donations from friends.

The respondents have alleged that that financial support was for the funding of terrorist activities in the north and the east of Sri Lanka, which the petitioner vehemently denies.

The petitioner alleges that the detainee was unlawfully arrested on or about 04.03.2020, while he had been at his brother’s residence in Batticaloa and that a reason had not been provided for his arrest.

Following the detainee’s arrest, he was transferred to the TID headquarters and eventually to the Tangalle prison, without proper legal procedure being followed and crucially without the proper issuance of a detention order.

The petitioner had further claimed that despite repeated attempts by him to gain access to his client, the detainee, while in custody, such access had been repeatedly denied or severely restricted.

He further claims that the detainee had been physically assaulted, deprived of basic needs, forced to confess and placed in solitary confinement under

degrading conditions, all amounting to a violation of Article 11 of the Constitution, as he was subjected to cruel inhuman treatment and punishment. However, leave has not been granted by this court under Article 11.

He further claims that although the detainee had been a diabetic patient with kidney disease, proper medical care had been denied, while fabricating false allegations against his client.

The respondents on the other hand have stated that on 02.03.2020, the TID had arrested several suspects involved in efforts to reorganize a proscribed organization and based on further investigations the above-named detainee also had been arrested on 04.03.2020 under the provisions of the Prevention of Terrorism Act (PTA) for allegedly providing financial support for the said organization.

Article 12(1), 13(1) and 13(2) briefs as follows;

Article 12(1),

“All persons are equal before the law and are entitled for equal protection of the law “

Article 13(1),

“No persons shall be arrested except according to procedure established by law. Any persons arrested shall be informed of the reason for his arrest.”

Article 13(2),

“Every person held in custody, detained or otherwise deprived of personal liberty shall be brought before the judge of the nearest competent court according to procedure established by law and shall not be further held in custody, detained or deprived of personal liberty except upon and in terms of the order of such judge made in accordance with procedure established by law”

The respondents have claimed that there was no discrimination or arbitrary action on the part of them and the detainee had been duly informed of his reason for arrest, and he had been provided with the arrest notes and had been produced before the magistrate on time.

In the B report filed before the magistrate, the investigations revealed that the detainee had engaged in efforts to reorganize the proscribed LTTE organization through the collection of explosives and bombs.

Pursuant to the information received it was revealed that the detainee, a German national had arrived in Sri Lanka and was residing at a residence allocated in Batticaloa. Thereafter, he had been arrested on 04.03.2020 at the aforementioned location.

Following the said arrest, detention orders had been made under Section 9 (1) of the Prevention of Terrorism (Temporary Provisions) Act No. 48 of 1979 (PTA).

Although the petitioner has averred that the detainee funded certain educational and charitable organizations, the respondents have claimed that there was no material to show that those funds were received and channeled towards the said organizations.

The petitioner has challenged the legality of the detention orders and that the respondents have failed to under section 6 (1) of the PTA.

The respondents have annexed the detention order dated 07.03.2020 and it appears to be that it had been obtained under the provisions of section 9(1) of the PTA and there is no credible material to this court to conclude that detention order is fabricated, fraudulent or ultra vires.

Therefore, this court is compelled to dismiss the said allegation of the petitioner for the reason that it is a mere statement in his oral and written submissions, which he has not factually and legally supported.

On the notes available it appears to be that the detainee had been arrested in accordance with Section 6 (1) of the PTA because the respondents claimed that the arrest of the detainee was carried out after full investigations with regard to the monetary transactions of him with the Sri Lankan nationals in the north and the east. These investigations have been reinforced by intelligence reports that connected the detainee with financial transactions aimed at reorganizing the LTTE. Therefore, it can only be concluded that in view of the material stated above, upon considering the financial transactions the detainee has had with certain Sri Lankan nationals were not for the purposes he claimed, because he was unable to produce any forthcoming material to support the claim.

Hence, the question of whether the arrest was illegal or not must be viewed through the lens of proportionality and the reasonable suspicion standard. While the mere association or travel history may not be sufficient to warrant arrest, the existence of credible intelligence-based suspicion may suffice under the PTA, which allows broader powers of arrest. That said, a balance must be struck between national security interest and constitutional safeguards against the arbitrary arrest and detention.

On 18.05.2021 the above-named detainee had been produced before the Magistrate in Colombo and had been placed in remand custody.

Certified copies of the arrest note (R1) and (R2), detention orders R3 (a) to (g) and the Reports had been attached to the petition. The respondents have further stated that the family and legal access had been granted to the above-named detainee.

The respondents have further stated that they have followed the procedure under the provisions of the PTA and the detainee had been indicted for the alleged terrorist activities without delay.

Upon consideration of the above facts, it is my opinion that the fundamental rights of the detainee under Article 12(1), 13(1) and 13(2) had not been violated.

Hence, this application is hereby dismissed.

JUDGE OF THE SUPREME COURT

Arjuna Obeyesekere, J.

I agree.

JUDGE OF THE SUPREME COURT

Sampath K. B. Wijeratne, J.

I agree.

JUDGE OF THE SUPREME COURT