

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

In the matter of an application under Article
126 read with Article 17 of the Constitution
of the Democratic Socialist Republic of
Sri Lanka.

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| 1. SC/FRA/326/2021 | 1. Kanagalingam Wijayadojini,
No. 442, Durkai Amman Kovil Street,
Ambalkulam,
Kilinochchi. |
| 2. SC/FRA/327/2021 | 2. Joseph Peter Queens Rosary,
Unionkulam, Kudyirruppu, Konavil,
Kilinochchi. |

Petitioners

Vs.

- | | |
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| 1. Officer in Charge,
Police Station,
Kilinochchi. | 1. Officer in Charge,
Police Station,
Kilinochchi. |
| 2. I.P. Bandara,
Terrorist Investigation Unit,
Terrorist Investigation Division,
Colombo 01. | 2. I.P. Bandara,
Terrorist Investigation Unit,
Terrorist Investigation Division,
Colombo 01. |

3. Director,
Terrorist Investigation Division,
Colombo 01.

4. Inspector General of Police,
Police Headquarters
Colombo 12.

5. The Hon. Attorney General,
Attorney General's Department
Colombo 12.

Respondents

Before : Mahinda Samayawardhena, J.
Menaka Wijesundera, J.
M. Sampath K. B. Wijeratne, J.

Counsel : Ermiza Tegal for the Petitioners.
Chrisanga Fernando, SC for the Respondents in
SC.FR. No. 326/2021.
Sajith Bandara, SC for the Respondents in SC.FR. No.
327/2021.

Written
Submissions : Written submissions on behalf of the Petitioners
on 12th October, 2023.
Latest written submissions on behalf of the Petitioners

On 15th October, 2025.

Argued on : 11.09.2025

Decided on : 03.12.2025

MENAKA WIJESUNDERA J.

Case No. SC/FR/326/2021 refers to the petition of Kanagalingam Wijayadojini, and the Case No. SC/FR/327/2021 refers to the petition of Joseph Peter Queens Rosary. When these two matters were taken up by the Court, leave was granted under Article 12(1) of the Constitution based on the ground that after reporting to the Magistrate that the investigations were over, that there was a delay in consenting to bail or discharging the relevant petitioners. Leave to proceed was granted on 17.05.2023.

The 1st Respondent is the Officer-in-charge of the Kilinochchi Police Station, the 2nd Respondent is I.P. Bandara (Officer) from the Terrorist Investigation Unit, the 3rd Respondent is the Director of Terrorist Investigation Division, the 4th Respondent is the Inspector General of Police, and the 5th Respondent is the Hon. Attorney General.

When these two matters were taken up for argument together, Counsels appearing in both matters submitted that one consolidated judgment would be sufficient for both matters.

One of the petitioners, namely Kanagalingam Wijayadojini, being the mother of an infant child aged one year, was arrested together with the said child, while the other petitioner, Joseph Peter Queens Rosary, who is her sister-in-law, was also arrested at the same time.

The two petitioners had been arrested on 12.10.2019, around 4.40 p.m. In the Police B-report marked as P4, it has been recorded that certain military equipment was discovered from the house of the petitioner during investigations; in this regard, the two petitioners were arrested. It has further been revealed that, funds had been transferred from foreign countries and from various bank branches within Sri Lanka into bank accounts maintained in the names of the petitioners.

They both alleged that they were detained in the Kilinochchi Police station and that, on 13.10.2019, they had been transferred to the Terrorist Investigation Division in Colombo.

Both petitioners alleged that they were produced to the Magistrate for allegedly possessing bombs, aiding and abetting a terrorist organization. However, they denied these allegations.

The petitioners have stated further that they had been arrested without informing them the reason for their arrest. They have both lodged complaints at the Human Rights Commission.

The relevant provisions of the procedure established by law, which is the **Prevention of Terrorism Act No. 48 of 1979 (PTA)** as applicable to the Petitioners and all material governing arrest and detention, are as follows:

Section 6(1): *Any police officer not below the rank of Superintendent or any other police officer not below the rank of Sub-Inspector authorized in writing by him in that behalf may, without a warrant and with or without assistance and notwithstanding anything in any other law to the contrary-*

(a) arrest any person;

(b) enter and search any premises;

(c) stop and search any individual or any vehicle, vessel, train or aircraft;

(d) seize any document or thing,

connected with or concerned in or reasonably suspected of being connected with or concerned in any unlawful activity.

Section 7(1): *Any person arrested under subsection (1) of section 6 may be kept in custody for a period not exceeding seventy-two hours and shall, unless a detention order under section 9 has been made in respect of such person, be produced before a Magistrate before the expiry of such period and the Magistrate shall, on an application made in writing in that behalf by a police officer not below the rank of Superintendent, make order that such person be remanded until the conclusion of the trial of such person :*

Section 7(2): *Where any person connected with or concerned in or reasonably suspected to be connected with or concerned in the commission of any offence under this Act appears or is produced before any court other than in the manner referred to in subsection (1), such court shall order the remand of such person until the conclusion of the trial:*

Provided that, if an application is made under the hand of a police officer not below the rank of Superintendent to keep such person in police custody for a period not exceeding seventy-two hours, the Magistrate shall authorise such custody and thereupon the order of remand made by the Magistrate shall remain suspended for the period during which such person is in police custody.

Section 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: Provided, however, that the aggregate period of such detention shall not exceed a period of eighteen months.*

While the PTA grants powers of arrest and detention, it operates subject to the supremacy of the Constitution. Section 6 authorizes arrest based on reasonable suspicion; Section 9(1) permits limited detention only for investigative purposes.

In the case of **Weerawansa V. The Attorney General and Others [2000] 1 SLR 387** it was held that there has to be a reasonable suspicion of an unlawful activity, supported by an objective reason for such belief and the arrest should be in accordance with section 6(1) of the PTA.

The structure of the Act ensures that detention remains preventive rather than punitive. Once investigations are concluded, any further detention must be supported by new and valid grounds; in the absence of such justification, the authority to detain automatically ceases.

The respondents in their objections have taken up the position that there had been four suspects who had been taken into custody under the No. B/20228/08/19, which had included by the two petitioners in these petitions. According to the petitioners, the four suspects are related to each other. The respondents have further alleged that they were taken into custody on the reasonable suspicion that they were collecting weapons to revamp the LTTE.

A collection of weapons has been collected prior to the arrest of the petitioners from their residence. IB extracts have been submitted to the Attorney General on 13.09.2021. Upon the advice of the Attorney General, the petitioner in SC/FR/327/2021 has been discharged on 10.02.2022 and on the advice of the Attorney General the petitioner in SC/FR/326/2021 has been enlarged on bail.

In the present matter, the petitioners contend that the delay in either consenting to bail or discharging them, despite the completion of investigations, amounts to unequal treatment in violation of Article 12(1) of the Constitution.

Article 12(1) of the Constitution reads as follows:

“All persons are equal before the law and are entitled to the equal protection of the law.”

Article 12(1) of the Constitution stipulates an equal protection under the law, and in page 81 of the book titled "**Fundamental rights in Sri Lanka**" by Justice **S. Sharvananda**, where he states that, "Equality before the law means that among equals the law should be equal and should be equally administered and that the like should be treated alike". He further asserts, "The rule is that the like should be treated alike and not, that unlike should be treated alike."

In the case of **Ariyawansa and others v The People's Bank and others [2006] 2 Sri LR 145** at 152, Bandaranayake J, stated that,

“The concepts of negation of arbitrariness and unreasonableness are embodied in the right to equality as it has been decided that any action or law which is arbitrary or unreasonable violates equality.”

The Counsel appearing for the respondent stated that although the petitioners have alleged that they were treated differently and that the respondents have violated their fundamental rights under Article 12(1), they brought to the notice of Court that they had been arrested on 29.10.2019 but once the IB extracts have been forwarded to the Attorney General, one petitioner had been discharged in 2022 and the other had been enlarged on bail. Therefore, they stated that as this was an ongoing investigation involving four suspects with government analyst reports pending, they had taken adequate steps without delay.

But the instant application has been filed on 21.10.2021 which is in fact just one year prior to the decisions of the Attorney General. Therefore, they submitted that there was no undue delay, no unequal treatment to the petitioner by the respondents.

In the instant matters, this Court has to be mindful of the fact that although leave was granted under Article 12(1) of the Constitution it was granted for a limited purpose, which was to see whether there was a delay in taking a decision by the Attorney General with regard to these two suspects.

But this court cannot disregard the fact that the petitioners have been arrested on 11.10.2019 and they had been produced before a Magistrate and when the

Attorney General has been furnished with the IB extracts, one petitioner had been enlarged on bail and the other had been discharged. Therefore, this Court cannot fault the respondents for arresting the two petitioners because they were arrested obviously on suspicion.

Thereafter, investigations have continued and then only the authorities have been able to take a decision with regard to the petition.

Therefore, I see no reason to conclude that the rights of the petitioners under Article 12(1) have been violated, as such, this Court is compelled to conclude that these two petitions should be dismissed.

JUDGE OF THE SUPREME COURT

Mahinda Samayawardhena, J.

I agree.

JUDGE OF THE SUPREME COURT

M. Sampath K. B. Wijeratne, J.

I agree.

JUDGE OF THE SUPREME COURT