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

*In the matter of an application under and in
terms of the Article 126 read with the Article
17 of the Constitution*

SC(FR) Application No. /2021

Ratnayake Herath Mudiyanalage
Ananda Keerthi Bandara Rathnayake,
Sirinetha, Paranagama,
Dewanagala, Mawanella.
(Presently detained at the Criminal
Investigation Department, York
Street, Colombo 01.)

Petitioner

Vs.

1. Munhena,
Inspector of Police,
Headquarters Police Station,
Kollupitiya.
2. Officer In Charge,
Headquarters Police Station,
Kollupitiya.
3. Officer in Charge,
Colombo Crimes Division,
No. 185, Kolonnawa Road,
Colombo 9.
4. Nevil Silva
Assistant Superintendent of
Police,
Colombo Crimes Division,
No. 185, Kolonnawa Road,
Colombo 9.
5. Nandana Kumara,
Senior Superintendent of Police,
Director,
Colombo Crimes Division,

No. 185, Kolonnawa Road,
Colombo 9.

6. Deputy Inspector General of
Police ,
Colombo Crimes Division,
No. 185, Kolonnawa Road,
Colombo 9.
7. Deputy Inspector General of
Police,
Colombo Range
Colombo Crimes Division,
No. 185, Kolonnawa Road,
Colombo 9.
8. Senior Deputy Inspector General
of Police,
Colombo Crimes Division,
No. 185, Kolonnawa Road,
Colombo 9.
9. Mihidusiri Abeysinghe ,
Chief Inspector of Police,
Officer in Charge,
Criminal Investigation,
Department,
York Street, Colombo 1.
10. Sugath Kumara,
Officer in Charge,
Gang, Robbery and Homicide
Bureau,
Criminal Investigation,
Department,
York Street, Colombo 1.
11. Assistant Superintendent of
Police,
Gang, Robbery and Homicide
Bureau,
Criminal Investigation,
Department,
York Street, Colombo 1.
12. Randeniya,

Superintendent of Police,
Director,
Gang, Robbery and Homicide
Bureau
Criminal Investigation,
Department,
York Street, Colombo 1.

13. M.A.A Rohan Premarathne,
Senior Superintendent of Police,
Director,
Criminal Investigation,
Department,
York Street, Colombo 1.

14. W.Thilakaratne,
Deputy Inspector General of
Police,
Criminal Investigation,
Department,
York Street, Colombo1.

15. T.M.W.D Tennakoon,
Senior Deputy Inspector General
of Police, Western Province,
Sri Lanka Police
Headquarters, Colombo 12.

16. Inspector General of Police,
Sri Lanka Police Headquarters,
Colombo 12.

17. Kamal Gunarathne
Secretary to the Ministry of
Defence,
Ministry of Defence,
No.15/5, Baudhaloka Mawatha,
Colombo 03.

18. Jagath P. Wijeweera,
Secretary to the Ministry of Law
and Order,
Suhurupaya, Battaramulla.

19. Hon. Sarath Weerasekara M.P,
Minister of Public Security,

Ministry of Public Security,
Independence Square,
Colombo 07.

20. Hon Attorney General,
Department of the Attorney
General,
Colombo 12.

Respondents

On this day of November 2021.

TO YOUR LORDSHIP THE HONOURABLE CHIEF JUSTICE AND THE OTHER HONOURABLE JUDGES OF THE SUPREME COURT OF THE DEMOCRATIC SOCIALIST REPUBLIC OF SRI LANKA

The Petition of the Petitioner above named appearing by Mr. Manjula Balasooriya, his Registered Attorney-at-Law, states as follows:

PETITIONER

1. The Petitioner states that the Petitioner is a citizen of Sri Lanka and is presently detained at the Gang, Robbery, and Homicide Investigation Bureau at the Criminal Investigations Department, Colombo (herein after sometimes referred to as CID) .
2. The Petitioner states that the Petitioner is 45 years of age and is married and is a father of two children who are 14 and 17 years of ages respectively.
3. The Petitioner states that he is a concerned Citizen who has a passion for serving the people of the country and is a freelance journalist specialized in the areas of Defence and Politics at lankaenews.org.

RESPONDENTS

4. The Petitioner states that:
 - a. The **1st Respondent** is an Inspector of Police of the Headquarters Police Station, Kollupitiya,
 - b. The **2nd Respondent** is the Officer in Charge of the Headquarters Police Station, Kollupitiya,

- c. The **3rd Respondent** is the Officer in Charge of the Colombo Crimes Division,
- d. The **4th Respondent** is the Assistant Superintendent of Police of Colombo Crimes Division,
- e. The **5th Respondent** is the Senior Superintendent of Police of the Colombo Crimes Division,
- f. The **6th Respondent** is the Deputy Inspector of Police of the Colombo Crimes Division,
- g. The **7th Respondent** is the Deputy Inspector General of Police of Colombo Range of the Colombo Crimes Division,
- h. The **8th Respondent** is the Senior Deputy Inspector General of Police of the Colombo Crimes Division,
- i. The **9th Respondent** is the Officer in Charge of the Criminal Investigation Department,
- j. The **10th Respondent** is the Officer in Charge of the Gang, Robbery and Homicide Bureau of the Criminal Investigation Department,
- k. The **11th Respondent** is the Assistant Superintendent of Police of the Gang, Robbery and Homicide Bureau of the Criminal Investigation Department,
- l. The **12th Respondent** is the Director of the Gang, Robbery and Homicide Bureau of the Criminal Investigation Department,
- m. The **13th Respondent** is the Director of the Criminal Investigation Department,
- n. The **14th Respondent** is the Deputy Inspector General of Police of the Criminal Investigation Department,
- o. The **15th Respondent** is the Senior Deputy Inspector General of Police, Western Province of the Sri Lanka Police,
- p. The **16th Respondent** is the Inspector General of Police who is the overall command of the Sri Lanka Police,
- q. The **17th Respondent** is the Secretary to the Ministry of Defence,
- r. The **18th Respondent** is the Secretary to the Ministry of Law and Order,
- s. The **19th Respondent** is the Minister of Public Security,

- t. The **20th Respondent** is the Hon. Attorney General who has been made a party respondent, both in terms of the *Rules of the Supreme Court* as well as *Article 35 of the Constitution* as amended by the *20th Amendment* thereto, to represent His Excellency the President of the Democratic Socialist Republic of Sri Lanka, who is the Minister of Defence of Sri Lanka.
- u. The Petitioner respectfully reserves the right to add parties to the instant application *in limine* and/or in the event of further material becoming available regarding the action complained of in the following paragraphs.

The Petitioner is unaware of the names and/or ranks of the various officers involved in the Petitioner's arrest and detention and respectfully reserves his right to submit the same as parties once such become known;

OR in the alternative, seeks an appropriate direction from Your Lordships' Court directing any one or more of the Respondents to submit to court, the details of the same and permit the Petitioner to add the same as Respondents to the instant Application.

SUBJECT MATTER OF THIS APPLICATION

5. The Petitioner states that the Petitioner respectfully invokes the Jurisdiction of Your Lordships Court under and in terms of *Articles 17 and 126 of the Constitution* against the violation and/or imminent violation of the Petitioner's Fundamental Rights as guaranteed by **12(1), 13(1), 13(2), 14(1)(a)** and **14(1)(g)** of the *Constitution*.

BACKGROUND OF THE PETITIONER'S CAREER AT SRI LANKA AIR FORCE

6. The Petitioner states that he was previously employed as a Flying Officer attached to the Sri Lanka Air Force. He joined the Sri Lanka Air Force on 01st August 1997 as a Cadet Officer and after the training, he was commissioned as a Pilot Officer and posted to Hingurakgoda Air Base as Adjutant, Officer in Charge at Air Force Police and on the 12th of July 2001, he was promoted to the rank of Flying Officer.

A true copy of the letter of appointment as a Commissioned Officer is annexed herewith marked as P-1 and pleaded part and parcel of this Petition.

7. The Petitioner states that in the year 2000, he was transferred to the Air Force base at Puliyankulama as a Group Administrative Officer and later he became permanently disabled at the Warfront. The Petitioner further states that he was directed to the Air Force Medical Board to assess his fitness to serve the Sri Lanka Air Force and he was declared fit to serve but as a disabled officer under the category of 'Light Duties'.

A true copy of the Medical Board Proceedings dated 3.10.2002 is annexed herewith marked as P-2 (a) and P-2 (b) and pleaded part and parcel of this Petition.

8. The Petitioner further states that while he was at the Air Force, he was assigned with several internal investigations those had been conducted against higher Ranking Officers. The Petitioner states that as a result of those investigations some of the parties whom had been investigated harboured animosity with the Petitioner and he was intimidated and threatened with his life in several occasions and there was an incident where he was kidnapped and assaulted by an unknown group of people. Thereafter, the media which reported the said incident alleged that some of the officers of the Air Force were involved in the said crime.

True copies of the Newspaper Articles are annexed herewith marked as P-3(a) and P3(b) and pleaded part and parcel of this Petition.

9. The Petitioner states that in March 2004, he was arrested and detained by the Air Force Police, without informing the reasons for his arrest and has been detained for five months and thereafter he was released without any trial or inquiry under the Air Force Act or any other law.
10. The Petitioner states that thereafter he was arbitrarily, maliciously and illegally discharged and terminated from service for the allegation of misappropriation of funds. The Petitioner states that he was summoned before a Court of Inquiry to record a statement regarding the alleged malpractices in the 'Service Institute Fund' and thereafter was served a charge sheet and a summary trial was held and at the summary trial the Petitioner requested a Court Martial where the said request was denied. Thereafter, being aggrieved by his dismissal from the service, the Petitioner filed an application for a Writ of Certiorari and Mandamus bearing Case No. CA/WRT/104/2005 to quash the decision of the Commander of the Sri Lanka Air Force.
11. The Petitioner states that their Lordships' Hon. Justice Sripavan and Hon. Justice Sisira De Abrew delivered the Judgement on 11th January 2007, in the aforesaid case issuing a Writ of Certiorari quashing the termination of the Petitioners service. The Petitioner further states that in the said Judgment it was held that he has been discharged and terminated from service without following the due procedure laid down in *Section 133(1) (e)* of the Air Force Act No 21 of 1979.

A true copy of the Judgement dated 11.01.2007 is annexed herewith marked as P-4 and pleaded part and parcel of this Petition.

12. The Petitioner further states that their Lordships' Hon. Justice Sripavan and Hon. Justice Sisira De Abrew in the said judgement has stated that there is a Constitutional barrier of issuing a Writ of Mandamus as prayed in the Writ Application CA/WRT/104/2005, for the reason that her Excellency the President has approved the withdrawal of the Petitioners commission. Moreover, the Petitioner states, that their Lordships' have directed the Petitioner to make a formal request to

the then President to reinstate him back to Air Force, however, he was not reinstated.

13. The Petitioner states that thereafter he left the Country and from 16th July 2008 to 30th of July 2020, the Petitioner was employed as a Retail Auditor at Landmark Group in Dubai.

A true copy of the Experience Certificate is attached herewith marked as P-5 and pleaded as part and parcel of this Petition.

ARTICLES WRITTEN BY THE PETITIONER

14. The Petitioner states that as stated above in paragraph 3 of the Petition, at present the Petitioner works as a freelance journalist in Sri Lanka and that he is closely working with the local media networks and with the Civil Society.

15. The Petitioner states that he has written many articles, regarding malpractices of high-profile persons and has exposed state officers, politicians, officers attached to the Forces who were engaged in various crimes including, corruption and bribery. The Petitioner further states that prior to the assassination of the underworld figure namely, Tharaka Perera Wijesekara alias 'Kosgoda Tharaka', the Petitioner brought to the notice of the general public that there was a danger to Kosgoda Tharaka's life as there was a conspiracy to murder him by the police while in police custody. The Petitioner states that the said article was published in lankaenews.org and after publishing the said article, on the same night, he was killed while he was in the hands of the police. The below-listed Articles are *inter alia* some of the recent articles of the Petitioner published in Lanka e-news website,

- I. The article written on the 12th of May 2021 about the assassination of Kosgoda Tharaka;
- II. Article written on the 20th of June 2021 about the 15th Respondent,
- III. Article written on the 12th of October 2019 about alleged assassination of 11 youths by several Navy Officers

True copies of the Articles dated 12th May 2021, 20th June 2021 and 12th October 2019 are attached herewith marked as P-6(a), P-6(b) and P-6(c) and are pleaded as part and parcel of this Petition.

16. The Petitioner states that prior to the assassination of Kosgoda Tharaka, the Petitioner took steps to inform the Attorney at Law who represented Kosgoda Tharaka and his family. The Petitioner states that he came to know that there was a communication made by the President of the Bar Association of Sri Lanka, to the 16th Respondent and to the Human Rights Commission, requesting to ensure the safety of Kosgoda Tharaka. However, even after the request of the President of the Bar Association of Sri Lanka, the said person was killed while he was in police custody.

A true copy of the letter dated 13th May 2021 written by the Bar Association of Sri Lanka to the 16th Respondent is annexed herewith marked as P-7 and pleaded as part and parcel of this Petition.

THE INFORMATION PROVIDED BY THE PETITIONER TO THE INDIAN HIGH COMMISSION

17. The Petitioner states that he received information from an Indian national who lives in India, who is having connections with the National Investigation Agency of India, that there is a possibility of having a terrorist attack to the High Commission of India in Colombo on the 15th of August 2021, which is the Independence Day of India. The Petitioner states that he was further informed about an extremist individual living in Sri Lanka, who is in connection with the 'Taliban Islamic Fundamentalist Political Movement and Military Organisation' based in Afghanistan, who he believes, is capable of carrying out an attack on the Indian High Commission in Sri Lanka.
18. The Petitioner states that he was terrified and shocked by the information and therefore, as a responsible person the Petitioner informed the Head of the Political Division of the Indian High Commission in Sri Lanka, Miss. Banu Prakash, who is known to him in a personal capacity, by way of a WhatsApp message on the 12th of August 2021.
19. The Petitioner states that thereafter, he became aware that the aforesaid WhatsApp message sent to Miss Banu Prakash has been reported by the Indian High Commission in Colombo to the Government OF India and thereafter, the Government of India has requested the Government of Sri Lankan to strengthen the security of the Indian High Commission in Colombo and other consulates in Sri Lanka.

THE ARBITRARY ARREST AND DETENTION OF THE PETITIONER

20. The Petitioner states that he was informed by his wife namely, Mrs.R.W.Rasika Ariyakumari that on the 13th of August 2021, two officers attached to Peradeniya Police station had visited their house and has informed his wife to notify the Petitioner to report to the Kollupitiya Police station for a Police inquiry on the 14th of August 2021.

A true copy of the Sri Lanka Police message Form is attached herewith marked as P-8 and pleaded part and parcel of this Petition.

21. The Petitioner further states that the 1st Respondent called the Petitioner on the same day, and informed him that an officer attached to the Indian High Commission has lodged a complaint based on the information provided by the Petitioner, to the said Miss. Banu Prakash, and requested the 16th Respondent to take action to protect the Indian High Commission. The Petitioner further states that 1st Respondent informed the Petitioner to contact the 15th Respondent and to provide available information to the 1st Respondent. The Petitioner states that thereafter, he called the 15th Respondent and the 15th Respondent informed him to immediately visit the Kollupitiya Police Station or the Colombo Crimes Division to give a statement.

22. The Petitioner states that upon the instructions of the 15th Respondent, the Petitioner visited the Kollupitiya Police Station on the 14th of August 2021, on or around 9.00 am whereas the details had been obtained about the aforesaid information he provided to the Indian High Commission, and a statement was recorded from the Petitioner by the 1st Respondent. However, after recording the statement the Petitioner was asked to sign the same without providing an opportunity to read the said statement.
23. The Petitioner states, while he was present at the Kollupitiya Police Station, two Officers of the State Intelligence Service (hereinafter sometimes referred to as the 'SIS') visited the Kollupitiya Police Station and introduced themselves as officers of the SIS and further questioned the Petitioner about the said WhatsApp message.
24. The Petitioner states that while he was questioned by the SIS officers, a team of officers of the Colombo Crimes Division (hereinafter sometimes referred to as the 'CCD') came to the Kollupitiya Police Station and intercepted the questioning that the SIS Officers were conducting and arrested the Petitioner without informing the Petitioner the reason for such arrest. The Petitioner further states, that a mobile phone, a power bank and a notebook in his possession were forcefully taken into the custody of the CCD officers.
25. The Petitioner states that he was treated in an appalling manner at the Kollupitiya Police Station and an officer present at the Police Station verbally abused the Petitioner and stated as follows;

උබ දැනගනින් උබ ඉන්නේ දැන් අපේ ගෙදර, අපේ ගෙදර නඩු විසඳන්නේ අපිට ඔබේ විදිහට

26. The Petitioner states that subsequent to the arrest by the CCD, the Petitioner was taken to his temporary place of residence situated at Homagama by the CCD, and a thorough search of his residence was conducted for approximately one and a half hours, and a mobile phone, laptop and other belongings of the Petitioner were seized, and he was not given a receipt for the seizure of such items.
27. The Petitioner states that thereafter, he was taken to the CCD and held in custody and a statement was obtained from him in the presence of the 4th Respondent.
28. The Petitioner states that on the night of the arrest, certain officers of the CCD attempted to take the Petitioner to Kandy for reasons unknown to him, however, the Petitioner refused and objected to such travel as he verily believed that there could be a harm to his life while was taken to Kandy. The Petitioner states his family, relatives and media came to know of his arrest and the attempt of the CCD to take him to Kandy and they informed his lawyers and thereafter, the attention was brought to the President of the Bar Association of Sri Lanka, and the President of the Bar Association has written to the 16th Respondent and to the Human Rights

Commission of Sri Lanka requesting the safety of the Petitioner at the CCD custody. Thereafter, they have aborted the said attempt of taking him to Kandy.

29. The Petitioner states that on the 17th of August he was informed that a Detention Order was issued by His Excellency the President of Sri Lanka, under and in terms of *Section 9(1) of the Prevention of Terrorism (Temporarily Provisions) Act No. 48 of 1979 (herein after sometimes referred to as the PTA)* to detain him at the CCD. The Petitioner states that he was surprised by such information as he has not committed any offense under the PTA or any other law of the Country. The Petitioner further states that neither an arrest receipt was issued to him nor a detention order was shown to him.
30. The Petitioner states that thereafter, on the 18th of August 2021, the Petitioner was handed over to the custody of the Criminal Investigations Department for further investigations. The Petitioner further states that, he was not informed or shown of any Detention Order issued to detained him in CID custody and he was not given any arrest receipt.
31. The Petitioner states that the CID initially questioned him about the WhatsApp message he has sent to Miss. Banu Prakash, but at present the line of questioning has deviated to articles he has written and published as a journalist and the sources of such articles. The Petitioner states that he is currently questioned in an intimidating manner on his articles those have been written criticizing and exposing the conduct of the 15th and 19th Respondents.
32. The Petitioner states that he was informed by his wife, that on or about 15th of August 2021, several officers attached to the Criminal Investigation Department had visited their house and that they have conducted a thorough search. The Petitioner states that he was further informed that several devices including the laptop used by his daughter for educational purposes have also been taken into their custody.

A true copy of the Official Receipt issued by the CID is attached herewith marked as P-9 and pleaded part and parcel of this Petition.

33. The Petitioner further states that he came to know several Police Officers attached to the Criminal Investigation Department, visited the residence of a close friend of the Petitioner namely, Nilmini Thushara Wanniarachchi on two occasions and searched her house and questioned her and took into their custody a pen drive, laptop and 4 mobile phones those are not belonging to the Petitioner.

An Affidavit of the said Nilmini Thushara Wanniarachchi is annexed herewith marked as P-10 (a) and the Official receipt issued by the CID is annexed herewith marked as P-10 (b) and pleaded part and parcel of this Petition.

34. The Petitioner states that he came to know, that a complaint has been made by the said Mrs. Wanniarachchi, to the Human Rights Commission of Sri Lanka, on the 13th

of September 2021, regarding the arbitrary arrest and the detention of the Petitioner.

A true Copy of the complaint dated 13th September 2021 is annexed herewith marked as P11(a) and the acknowledgement notice dated 27th September 2021 issued by the Human Rights Commission of Sri Lanka bearing No. 1871/21 is annexed herewith marked as P-11(b) and pleaded part and parcel of this Petition.

VIOLATION OF PETITIONER'S FUNDAMENTAL RIGHTS

35. In the foregoing circumstances the Petitioner states that the totality of the facts and circumstances as hereinbefore more fully enumerated, clearly demonstrates that the Petitioner has been treated in a manner violative of the Petitioner's Fundamental Rights as guaranteed to him under and in terms of the following Articles of the Constitution:

- a) That the Petitioner has never committed any offence under the PTA or any other law in the country, and that the 1st to 16th Respondents have still failed to inform him the suspected crime he has committed, which warranted his arrest and further the Respondents deviation of the questioning pattern from the said WhatsApp message to articles he has written clearly demonstrates that the arrest is tainted with malice and extraneous hence, is unlawful and is a violation of the Petitioners Fundamental Right of equality before the law and the equal protection of the law which has been guaranteed under **Article 12(1) of the Constitution;**
- b) That the Petitioner was asked to report to the Kollupitiya Police Station to obtain details of the information given by him to the High Commission of India and at the time of his arrest none of the Police Officers attached to the Kollupitiya Police Station nor the officers of the CCD, SIS or CID informed the Petitioner the reasons of his arrest and thus did not follow the procedure established by law which has been guaranteed under **Article 13(1) of the Constitution;**
- c) That up to date the Petitioner has not been produced before a competent Court of Law nor any detention order was showed; and that there is no credible material produced or otherwise which illustrates that there was any act committed in violation of the PTA, which merits a detention order being issued and/or for the Petitioner to being detained under PTA ; thus the purported detention order under the PTA is being sought for collateral purposes and/or is tainted with mala fide which has been guaranteed under **Article 13(2) of the Constitution;**

- d) That after the arrest he was extensively questioned about his articles and sources of information in an intimidating manner threatening him to divulge and expose the sources of information of articles tantamount to a violation of the Petitioners Right to freedom of speech and expression including publication which has been guaranteed under **Article 14(1)(a) of the Constitution;**
- e) That there is a fear of continuing his occupation as a journalist has occurred due to the intimidation caused to him by the officers of the CCD and CID and hence the Petitioner is in fear to continue his occupation which is an imminent violation of the Petitioners Right to engage in any lawful occupation, profession, trade or enterprise which has been guaranteed under **Article 14(1)(g) of the Constitution;**

Thus, the acts and/or omissions of one or more or all of the above 1st to 16th Respondents constitutes a violation and/or an imminent infringement of the Petitioners Fundamental Rights as Guaranteed by the Constitution.

36. The Petitioner seeks 100 million Rupees as compensation.

37. The Petitioner states that as he is incarcerated and due to the prevailing Pandemic COVID-19 situation of the Country, he has been able to consult his Attorneys-at-Law only on two occasions and for a very limited period of time and only limited instructions to his Attorneys-at-Law have been given and thus the Petitioner respectfully seeks the indulgence of Your Lordships' Court to reserve his right to amend the Petition and tender further material becoming available regarding the actions complained of in the proceeding paragraphs.

38. The Petitioner states that the Petitioner has not previously invoked the jurisdiction of Your Lordships' Court in respect of this matter.

WHEREFORE THE PETITIONER PRAYS THAT YOUR LORDSHIP'S COURT BE PLEASED TO:

- a. Grant the Petitioner leave to proceed with this application in the first instance;
- b. Declare that the Respondents have violated and/or imminent danger of violating the Petitioner's Fundamental Rights guaranteed to him under and in terms of Articles 12(1) and/or 13(1) and/or 13(2) and/or 14(1)(a) and/or 14(1)(g) of the Constitution have been infringed;

- c. Quash the Detention Order(s) if any issued and/or declare that such Detention Order(s) cannot be issued under and in terms of Section 9(1) of the Prevention (temporary provisions) Act No. 48 of 1979;
- d. Direct any one or more or all of the Respondents except the 17th and 18th Respondent to produce the complaint (if any) and the statement(s) of the Petitioner to Your Lordships' Court;
- e. Direct any one or more or all of the Respondents except the 17th and 18th Respondents to release the Petitioner from incarceration;
- f. Direct any one or more or all of the Respondents except the 17th and 18th Respondents to release any personal belongings in their custody to the Petitioner;
- g. Grant Rupees 100 million as compensation;
- h. Grant Costs;
- i. Grant the Petitioner such other and further relief as Your Lordships' Court may seem meet.

Attorney-at-Law for the Petitioner

Settled by:

Shellomy Gunaratna, AAL,
Oshini Ruberu, AAL,
Upul Kumarapperuma, AAL