

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

Bathiudeen Mohamed Riyaj,  
No. 29/1/1,  
Sarraj Tower,  
Fredrica Road,  
Colombo 6.  
Petitioner

**CASE NO: CA/WRIT/398/2020**

Vs.

1. C.D. Wickramaratne,  
Acting Inspector General of Police,  
Police Headquarters,  
Colombo 1.
2. Nuwan Wedasinghe,  
Former Deputy Inspector General  
of Police,  
Criminal Investigation  
Department,  
4<sup>th</sup> Floor,  
New Secretariat Building,  
Colombo 1.

3. Prasanna De Alwis,  
Senior Superintendent of Police,  
Director, Criminal Investigation  
Department,  
4<sup>th</sup> Floor,  
New Secretariat Building,  
Colombo 1.
4. Chief Inspector Mihindu  
Abeysinghe,  
Officer in Charge,  
Criminal Investigation  
Department,  
4<sup>th</sup> Floor,  
New Secretariat Building,  
Colombo 1.
5. Chief Inspector Deepani Menike,  
Criminal Investigation  
Department,  
4<sup>th</sup> Floor,  
New Secretariat Building,  
Colombo 1.
6. Chief Inspector Sugath Kumara,  
Criminal Investigation  
Department,  
4<sup>th</sup> Floor,  
New Secretariat Building,  
Colombo 1.

7. S.P. Ranasinghe,  
Acting Deputy Inspector General  
of Police,  
Criminal Investigation  
Department,  
4<sup>th</sup> Floor,  
New Secretariat Building,  
Colombo 1.  
Respondents

1. Senarath Arachchige Jude Prasad  
Appuhamy,  
No.140/4,  
St. Jude Mawatha,  
Katuwapitiya,  
Negombo.
2. Fr. Lawrence Ramanayake,  
Director,  
Seth Sevana,  
Archbishop's House,  
Colombo 8.  
Intervenient-Petitioners

Before: Mahinda Samayawardhena, J.  
Arjuna Obeyesekere, J.

Counsel: Faisz Musthapha, P.C., with Shantha Jayawardena for the Petitioner.

Sarath Jayamanna, P.C., S.A.S.G., with Dr. Avanthi Perera, S.S.C., for the Respondents.

Sanjeewa Jayawardena, P.C., with Rukshan Senadheera for the Intervening Petitioners.

Supported on: 20.10.2020

Decided on: 21.10.2020

Mahinda Samayawardhena, J.

The Petitioner was arrested on 14.04.2020 in connection with the Easter Sunday terror attacks on 21.04.2019, by a team of officers of the Criminal Investigation Department led by the 6<sup>th</sup> Respondent. The Petitioner was detained on Detention Orders P11(a) and P11(b) signed by the President under the Prevention of Terrorism (Temporary Provisions) Act. Before the second Detention Order lapsed, the Petitioner had been released by the Criminal Investigation Department on 29.09.2020.

The Petitioner in paragraph 32 of the petition says “*the release of the Petitioner by the CID as aforesaid clearly contemplates the fact that the CID has concluded investigations in this regard and there was no evidence/proof to proceed with the investigations and/or prosecution against the Petitioner.*”

However, the Petitioner himself admits in paragraph 34 of the petition that from the time of his release, fervent attempts were

made to re-arrest him. After he was released on 29.09.2020, the Petitioner says officers of the Criminal Investigation Department came in search of him the very next day. The Petitioner in the said paragraph says *“On 30.09.2020, a group of officers of the Criminal Investigation Department led by the 5<sup>th</sup> Respondent (Officer in Charge of Unit III) has visited Petitioner’s residence at No. 29/01/01, Sarraj Tower, Fredrica Road, Colombo 06 and has inquired about the Petitioner. When Petitioner’s wife informed them that the Petitioner had gone out, they have left.”* In the same paragraph, the Petitioner also describes the manner in which the Criminal Investigation Department came in search of him on 08.10.2020 and 11.10.2020.

It is noteworthy that the Petitioner has been evading the Criminal Investigation Department from the moment of his release. Why? The conduct of the Criminal Investigation Department and that of the Petitioner is, to say the least, unusual. On the one hand, after the Petitioner was detained for 169 days, there was no reason for the Criminal Investigation Department to go in search of him immediately after his release, unless there was something sinister or devious about the release. On the other hand, as the Petitioner claims in paragraph 20(d) of the petition that *“he was released in accordance with the regular practice of the CID”* after completion of the full investigation, there was absolutely no reason for him to avoid the Criminal Investigation Department after his release and go into hiding.

The release of a suspect by the police during the course of an investigation does not amount to the acquittal of an accused by a Court of law.

Article 12 of the Constitution recognises equality before the law and the equal protection of the law as a fundamental right. Article 13 states no person shall be arrested except according to procedure established by law. However, there is no blanket prohibition in law preventing a suspect from being re-arrested, albeit on solid grounds in terms of the law.

In paragraph 34(b) of the petition, the Petitioner says officers of the Criminal Investigation Department visited the residence of his wife's parents on 08.10.2020 stating that they wanted to record a statement from him. Is this illegal? Absolutely not.

The Petitioner in paragraph 33(b) of the petition says the 2<sup>nd</sup> Respondent, the Deputy Inspector General of Police in charge of the Criminal Investigation Department at that time, has since been transferred and the 7<sup>th</sup> Respondent has been appointed as the new Deputy Inspector General of Police of the Criminal Investigation Department. This transfer seems to have been given effect on 04.10.2020, i.e. within four days of the Petitioner's release. Learned Senior Additional Solicitor General for the Respondents informs Court the said transfer was on disciplinary grounds.

According to paragraph 33(a) of the petition, there was a protest on 04.10.2020 by relatives of victims of the Easter Sunday attacks over the release of the Petitioner.

The said paragraph 33 also reveals that 100 members of Parliament handed over a letter P15(c) to the President “*requesting an inquiry against the CID for releasing the Petitioner.*”

All these matters revealed by the Petitioner himself demonstrate that his release is thought to be under dubious circumstances.

Learned Senior Additional Solicitor General says that in this complex investigation, the Attorney-General was consulted by the Criminal Investigation Department for the first time on 12.10.2020, i.e. 13 days after the said release. This, in my view, is unsatisfactory. I am unable to agree with learned President’s Counsel for the Petitioner when he says the Attorney-General could not have summoned officers of the Criminal Investigation Department to revisit the matter because it had already been concluded.

Although this is not the occasion to discuss this at length, let me quote two sub-paragraphs of section 393 of the Code of Criminal Procedure Act to emphasise the powers given to the Attorney-General in the investigation of an offence, particularly an offence of a complex nature such as the instant one.

*393(2) The Attorney-General shall give advice, whether on application or on his own initiative to State Departments, public officers, officers of the police and officers in corporations in any criminal matter of importance or difficulty.*

*(3) The Attorney-General shall be entitled to summon any officer of the State or of a corporation or of the police to attend his office with any books or documents and there interview him for the purpose of—*

*(a) initiating or prosecuting any criminal proceeding or*

*(b) giving advice in any criminal matter of importance or difficulty:*

*The officer concerned shall comply with such summons and attend at the office of the Attorney-General with such books and documents as he may have been summoned to bring.*

Learned Senior Additional Solicitor General says that not only matters directly connected to the terror attacks but also matters related thereto, such as money laundering, are under investigation vis-à-vis the Petitioner and members of his family, and therefore, in any event, it cannot be said the Attorney-General's intervention at this stage is unwarranted. I fully agree.

Learned President's Counsel for the Petitioner, drawing the attention of Court to page 579 of the Hansard dated 06.10.2020, says the conduct of the Criminal Investigation Department after the release of the Petitioner is an affront to the President, as the Petitioner had been released with the knowledge of the President. However, at page 580 of the same Hansard, at the end of the first and second paragraphs, the same Minister states investigations are being continued into this matter under the direction of a new Deputy Inspector General of Police of the



Criminal Investigation Department and there is no barrier to re-arrest the Petitioner if new evidence is found.

Learned President's Counsel for the Petitioner does not dispute the right of the Criminal Investigation Department to re-arrest the Petitioner if new evidence comes to light, but states that an arrest cannot be made in the hope of collecting new evidence. Learned President's Counsel strenuously submits that the authorities shall not yield to the demands or requests of the general public or members of Parliament to re-arrest the Petitioner after his release following a full investigation.

I agree with learned President's Counsel for the Petitioner that suspects cannot be arrested/released/re-arrested/hailed-up to appease or please the public or Parliament. Nonetheless, in the facts and circumstances of this case, it appears to me, if there is going to be a re-arrest, it would be on the basis that the release of the Petitioner was not after completion of the investigation.

That may be the reason the Deputy Inspector General of Police of the Criminal Investigation Department was transferred and the investigation is said to be ongoing under a new Deputy Inspector General of Police, and officers of the Criminal Investigation Department went in search of the Petitioner soon after his release. The Petitioner going into hiding immediately after his release adds credence to this perspective.

Against this backdrop, the submission made on behalf of the Petitioner that there cannot be a reasonable suspicion that the Petitioner was connected to or concerned with any unlawful

activity relating to any offence under the Prevention of Terrorism Act or any other law cannot be readily accepted.

Although learned President's Counsel for the Petitioner took pains to demonstrate that there is no evidence to connect the Petitioner to the Easter Sunday terror attacks, this Court cannot scrutinise the said evidence and express views on the same. In any event, that contention is confined to the evidence unearthed up to the point of the Petitioner's release. The investigation is continuing.

The relief sought by the Petitioner in the prayer to the petition is so broad that even if compelling cogent evidence is found, it would be impossible for the Criminal Investigation Department to re-arrest the Petitioner on new grounds. The said relief reads as follows:

*Grant and issue an Order in the nature of a writ of prohibition prohibiting/restraining one or more or all of the Respondents and any person acting under their direction and control from arresting and/or taking any steps to arrest the Petitioner in relation to the investigations pertaining to or connected with the Easter Sunday Terror Attack that took place on 21.04.2019 and/or in relation to the matters regarding which the Petitioner had been detained in pursuance of the Detention Orders marked P11A and P11B and subsequently released and/or on the allegation that the Petitioner has committed and/or is concerned in the commission or connected with any offence arising out of or*

*in relation to the Easter Sunday Terror attack of 21.04.2019.*

The writ Court cannot monitor criminal investigations as a Magistrate, or perhaps even the Attorney-General, does. Nor can this Court require the Criminal Investigation Department to file further reports appraising the Court of progress of the investigation, to consider whether re-arrest is justifiable. Such matters may be pursued in a different forum. I can understand the concerns of learned Senior Additional Solicitor General when he says he is unable to publicly disclose all the material evidence as the investigation is still underway.

Notwithstanding that learned President's Counsel for the Petitioner has drawn the attention of Court to several cases where Orders have been made by the writ Court prohibiting arrest, I do not think this is a fit and proper matter to issue formal notice on the Respondents.

The application of the Petitioner is dismissed without costs.

Judge of the Court of Appeal

Arjuna Obeyesekere, J.

I agree.

Judge of the Court of Appeal