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

In the matter of an application in terms of Article 140 of the Constitution for mandates in the nature of Writs of Mandamus, Certiorari and Prohibition.

Sellapperumage Sarath Lal Gunarathne,
No.457/C/1, Sirisena Pedesa,
Kudaaruggoda,
Alubomulla.

Petitioner

Application No:
CA (Writ) 687/2023

Vs.

1. S.H.S. Thusitha Kahagalla,
   Inspector of Police,
   Officer-in-Charge,
   Public Complaints Unit,
   Criminal Investigation Department,
   Colombo 01.

2. Kavinda Piyasekara,
   Senior Superintendent of Police,
   Director,
   Criminal Investigation Department,
   Colombo 01.

3. Prasad Ranasinghe,
   Deputy Inspector General of Police,
   Criminal Investigation Department,
   Colombo 01.

4. Inspector General Police,
   Police Headquarters,
   Colombo 01.

5. General Kamal Gunarathna,
   Secretary Minister of Defence,
   Ministry of Defence Headquarters,
   D.P. Wijesinghe Mawatha,
   Sri Jayewardenepura Kotte.

6. Hon. Attorney General,
   Attorney General's Department,
   Colombo 12.

7. Chief Inspector S.K. Senaratne,
   OIC of the Digital Forensic Lab,
   Criminal Investigation Department,
   Colombo 01.

Respondents

8. Sellapperumage Salindu Malshika Gunarathne,
   Presently in custody of the Criminal Investigation Department, Colombo 01.

Respondents Person-in-Custody

BEFORE	:	D. N. Samarakoon J Neil Iddawala J
COUNSEL	:	Ronald Perera P.C. with Suren Gnanaraj for the Petitioner. Shanil Kularatne S.D.S.G with Shemanti Dunuwille S.C. for the Respondents.
Supported on	:	08.12.2023
Decided on	:	12.12.2023

D.N. Samarakoon- J

Whereas the facts of this application and the directions as to relief to be given are stated in the order of my brother Hon. Iddawala, this is written to address certain legal questions of preliminary or empirical nature raised for the respondents.

It was contended for the respondents that the interim relief and the final relief are same and hence cannot be granted.

In this regard the order in **C. A. Writ 174/2017 dated 08th August 2017** was cited.

In that case the Court of Appeal decided that,

"Further considering the fact that the final relief and the interim relief were similar if not identical, I rely on Billimoria case and decide that granting interim relief at this juncture is not suitable. Therefore, I refuse to grant interim relief."

According to the same order what was said in Billimoria case is as follows,

"The respondents quote several cases and objects for the granting of interim relief. In **Billimoria vs. Minister of Lands, Land Development and Mahaweli Development and Two Others (1978 – 1979) 1 SLR 10**, where Neville Samarakoon C. J., stated that,

"in considering the question of interim order the Court must bear in mind that an interim order is made in the exercise of inherent or implied power of Court, in circumstances where the final order is, if the petitioner is successful, be rendered nugatory and the aggrieved party will be left holding a decree worthless for all purposes".

Further at page 15 His Lordship observed that,

"the interest of justice therefore required that a stay order be made as an interim measure. It would not be correct to judge such stay order in the same strict manner as final orders by their very nature must depend a great deal on a judge's opinion as to the necessity for interim action."

I do not see anything in those two passages from the order of the learned Chief Justice which say that when final and interim reliefs are identical the latter should not be granted. In fact, those two passages say that if the final order be rendered nugatory, if the petitioner be successful, an interim order should be issued and that

the question of issuing an interim order need not be considered with the same strictness applied in issuing a final order.

Just before Billimoria's case the order cited for the respondents quote a judgment of Shirani Tilakawardane J., where it was said that,

"it is permissible to grant interim relief which gave substantially the whole of the relief claimed in the action, especially as the facts in this case disclose plainly that there is a strong prima facie case in favour of the party seeking relief". (**People's Bank and seven others vs. Yasasiri Kasthuriarachchi (2010) 1 SLR 227**)

Although this last mentioned case was referred to under the cases relied upon by the petitioner in that case and Billimoria's case was referred to as a case relied upon for the respondents in that case, it appears to me that Bilimoria's case also supported the contention of the petitioner in that case.

The petitioner in that case has also cited the judgment of **Shell Gas Lanka Ltd., vs. Samyamg Lanka (Pvt) Ltd., (2005) 3 SLR 14** in which Justice L. K. Wimalachandra said,

"When it appears that there is no defence for the defendant and he is acting in breach of a covenant, it is not contrary to law to grant an interim injunction even if the granting of the interim injunction would give the plaintiff substantial relief claimed by him".

This judgment has been followed in the above case of **People's Bank and seven others vs. Yasasiri Kasthuriarachchi.**

Therefore, it appears to this Court that either (i) when a need arises to preserve the status quo or (ii) a need arises to grant a relief pending the final determination, the Cour is having a wide discretion in granting interim relief and at times the interim relief could be the final relief or something similar or identical to that. In other words, granting or refusing interim relief depends on considerations independent of the possibility that the interim and final reliefs are same or almost same.

The only limitation followed by courts is that a petitioner cannot ask for the eviction of a person in possession of a premises and to place himself in possession by way of an interim injunction. This was said by Koch J., in POUNDS et al. v. GANEGAMA, 1938 as follows,

"It is a common occurrence in Ceylon for a person unlawfully to enter upon land and turn out the party in possession. Such acts have led to innumerable actions for declaration of title and ejectment by parties so dispossessed and though in such actions it is sometimes asked, and rightly too, that the defendant be restrained from committing wasteful acts on the land pending final determination of title, no decision has been cited to us-and as far as **I am aware there is no such decision-in which under such circumstances the plaintiff was able to be placed in possession pending trial by means of an interim injunction.** The reason, no doubt, is that the law will not permit such a proceeding and, if this is so in such a flagrant type of case, could it be expected that the law will enable a party who was not in actual occupation to enter by injunction and take possession as against a person who, having been in occupation as a licensee, has repudiated that position and claims to be in possession in his own rights."

Furthermore, it was contended for the respondents, that, what is being questioned is a Detention Order that cannot be questioned under Articles 126, 140 or 141 of the Constitution.

It was also argued that in Fundamental Rights jurisdiction under Article 126, the Supreme Court is having a very wide jurisdiction, whereas under Article 140 this Court's jurisdiction is limited only to an unreasonable decision.

Under Article 140 of the Constitution the writs mentioned in that Article could be issued by this Court "according to law". In 1940s and 1950s, which is about 70 years ago, a provision in a statute in this country which had the same words was understood to be a reference to English law. There was a justification in understanding so because at that time Ceylon was either a British Colony or a British Dominion. But presently Article 140 appears in the Second Republican Constitution of Sri Lanka. Furthermore, presently courts under Article 140 applies proportionality too as a ground of review, which was not in English law but arose in the jurisprudence of continental courts. It is an accepted precept in law that the Constitution must be read with its Preamble. Whereas Justice K. J. Sripavan has said so, the principle that "**The title of the Act is part of the Act:..."** was said in **Fielding vs. Morley Corporation [1899] 1 Ch. 1",** 124 years ago.

The Preamble refers to "FREEDOM, EQUALITY, JUSTICE,..." too, in addition to Fundamental Human Rights, as the intangible heritage of the People of Sri Lanka. Whereas one of the main grounds of Judicial Review being ultra vires, or acting

without power, the basis of that is the liberty of the subject, which is synonymous with "FREEDOM, EQUALITY and JUSTICE." **It was Sir William Blackstone who said in the eighteenth century in his Commentaries in the Laws of England, that, English people call their rights their liberties. He said,**

"The absolute rights of every Englishman (which, taken in a political and extensive sense, are usually called their liberties) as they are founded on nature and reason,...their establishment (excellent as it is) being still human". (Book 1 Chapter 1 page 123 Blackstone's Commentaries, Of the absolute rights of individuals)

This is so in Sri Lanka too because the Judges and Lawyers understand this concept in the syntax and the connotation given to it in the English language.

Therefore a decision or an act becomes ultra vires because it goes beyond the limit within which the citizen is bound by the statute. Citizen's freedom and liberty and hence his or her "right" is restricted only up to the limit imposed by law. If the direction or the order has exceeded the limit it becomes liable to be quashed because of the liberty of the subject. Hence it is with the same liberty, as it is said, enshrined in the Constitution, either expressly or impliedly, in its Preamble and several articles, which this Court also deals with under Article 140 of the Constitution.

This concern was raised by no one other than Alexander Hamilton himself in Federalist Papes No. 84 in which he said,

'It has been several times truly remarked that bills of rights are, in their origin, stipulations between kings and their subjects, abridgements of prerogative in favor of privilege, reservations of rights not surrendered to the prince. Such was MAGNA CHARTA, obtained by the barons, sword in hand, from King John. Such were the subsequent confirmations of that charter by succeeding princes. Such was the PETITION OF RIGHT assented to by Charles I., in the beginning of his reign. Such, also, was the Declaration of Right presented by the Lords and Commons to the Prince of Orange in 1688, and afterwards thrown into the form of an act of parliament called the Bill of Rights. It is evident, therefore, that, according to their primitive signification, they have no application to constitutions professedly founded upon the power of the people, and executed by their immediate representatives and servants. **Here, in strictness, the people surrender nothing; and as they retain every thing they have no need of particular reservations**. "WE, THE PEOPLE of the United

States, to secure the blessings of liberty to ourselves and our posterity, do ORDAIN and ESTABLISH this Constitution for the United States of America." Here is a better recognition of popular rights, than volumes of those aphorisms which make the principal figure in several of our State bills of rights, and which would sound much better in a treatise of ethics than in a constitution of government[1]'

According to the 1978 Constitution too, adopted on the basis of the Sovereignty of the People, the fact that Fundamental Rights are enumerated in the Constitution and justiciable under Article 126 does not limit the jurisdiction under Article 140 to see whether the act or the decision is ultra vires, the basis of which is also the liberty of the subject, which cannot be curtailed otherwise than by law. **The jurisdiction to decide whether the act is lawful because it is within power, or the act is illegal because it is ultra vires, therefore, finds its base on the liberty of the subject.** It is well to remember what Frederick Bastiat (**Claude-Frédéric Bastiat** (pronounced as Bastya) 30 June 1801 – 24 December 1850) was a French economist, writer and a prominent member of the French Liberal School), said in this regard as,

"Life, liberty and property do not exist because men have made laws. On the contrary, it was the fact that life, liberty and property existed beforehand that caused men to make laws in the first place[2]".

The rights of the People are not granted by the Constitution. The Constitution is promulgated by the People because they have those rights. Those rights could be curtailed only when and only up to the extent to which the law permits. The jurisdiction under Article 140 is to supervise that function of the law. Hence, to say that the power under Article 140, based on the liberty of the citizen is limited by the Constitution is a "taken for granted law" which does not have any legal basis and as very appropriately observed by **His Lordship Jayewardene A. J.,** in **Samed vs. Segutamby, 1924, 25 NLR 481 at page 495 and 496** in which it was said,

"This seems to be in consonance with what Lord Denman C. J. said in the celebrated case of O' Connel vs Regina (1844) 11 Cl & F. (H. L.) 155 at 372, where referring to a dictum of Lord Mansfield in another case, he said:-

"I am tempted to take this opportunity of observing that a large portion of that legal opinion which has passed current for laws falls within the description of "law taken

[1] https://guides.loc.gov/federalist-papers/text-81-85#s-lg-box-wrapper-25493491
[2] Frederick Bastiat, "The Law" (Dean Russel Translation, The Foundation for Economic Education, Inc., 1950)

for granted." If a statistical table of legal propositions shown be drawn out and the first column headed "Law of Statute" and the second "Law of Decision;" a third column, under the heading of "law taken for granted," would comprise as much matter as both the others combine. **But when, in pursuit of truth, we are obliged to investigate the grounds of the law, it is plain and has often been proved by recent experience that the mere statement and restatement of a doctrine** – the mere repetition of the cantilena of lawyers – **cannot make it law, unless it can be traced to some competent authority and if it be irreconcilable to some clear legal principle."**

Therefore, the above argument of the respondents is unfounded and hence rejected.

The learned Senior Deputy Solicitor General for the respondents also submitted, that, the 08th respondent, who is presently under the Detention Order is a person who flouted the law but now come before this Court to exercise a discretionary remedy.

This reminds me what the great writer and poet Oscar Wilde wrote when he was imprisoned as a result of a prosecution on defamation he instituted against the Marquess of Queensberry. The letter written by Wilde from the prison was given the name **De Profundis** by the journalist Robert Ross. De Profundis in Latin means "from the depths". The title was given from Psalm 130. Wilde wrote,

"'People used to say of me that I was too individualistic. I must be far more of an individualist than ever I was. I must get far more out of myself than ever I got, and ask far less of the world than ever I asked. Indeed, my ruin came not from too great individualism of life, but from too little. The one disgraceful, unpardonable, and to all time contemptible action of my life was to allow myself to appeal to society for help and protection. To have made such an appeal would have been from the individualist point of view bad enough, but what excuse can there ever be put forward for having made it? Of course, once I had put into motion the forces of society, society turned on me and said, 'Have you been living all this time in defiance of my laws, and do you now appeal to those laws for protection? You shall have those laws exercised to the full. You shall abide by what you have appealed to.' The result is I am in gaol. Certainly, no man ever fell so ignobly, and by such ignoble instruments, as I did'.

The petitioner in paragraph 47 and 49 of the petition cites the case of **Rathnayake Tharanga Lakmali vs. Niroshan Abeykoon, Inspector of Police, Embilipitiya S. C. F. R. 577/20** (Supreme Court minutes 17th December 2019) in which it was said,

"…Hence even a convicted criminal has a right not to be arbitrarily deprived of his life except in accordance with the procedure established in law. As was observed by Justice White for the U. S. Supreme Court in Wolff vs. McDonnell [418 U.S. 539, 555-556 (1974)] "**A prisoner is not wholly stripped of constitutional protection when he is imprisoned for crime. There is no iron curtain drawn between the Constitution and the prisons…"**

The Fundamental Rights Chapter in our Constitution does not expressly refer to a right to life. However, the Constitution, as a living document, should not be construed in a narrow and pedantic sense. I am of the view that constitutional interpretation should be informed by the values embodied in it. The preamble/svasti of the Constitution recognizes Dignity and Well being of the People as a fundamental value that should be furthered by assuring to all People FREEDOM, EQUALITY, JUSTICE, FUNDAMENTAL HUMAN RIGHTS and the INDEPENDENCE OF THE JUDICIARY. In my view, recognition of a right to life is in furtherance of this fundamental value." a

Therefore, even a convicted criminal has a right to seek redress in courts.

The above was said by His Lordship Justice S. Thurairaja, P. C. The correct number of the case is S. C. F. R. Application 577/2010. The way in which I referred to the power of the Court under Article 140 also finds confirmation, it is submitted, by this pronouncement of the Supreme Court.

The Preamble begins with the word "SVASTI." It is a concept of wellbeing in Hinduism. "Swasti is a benediction or a blessing seeking the Wellbeing of people and places. It is a declaration of faith in God and in soul. One may use it to invite peace and Wellbeing or drive away negative and destructive forces. It is a standard, spiritual expression, which is used in social interactions and religious congregations to express one's good intentions or positive feelings. Besides, it is also a good karma of the mind and speech."[3]

[3] V Jayaram, 'The Concept of Swasti or Wellbeing in Hinduism' (*Hinduism*, 2019) <https://www.hinduwebsite.com/hinduism/concepts/swasti.asp> accessed 25 April 2023***A Vedic Prayer of Swasti****: Aum, bhadram karnebhih srunuyāma devāh || Bhadram pasyema aksabhir yajatrāh || Sthirair angais*

It is on the above basis that my brother has issued guidelines referred to in his order. I note that he has said, among other things, "Thus, in finality, as mentioned above, these guidelines are tailored to safeguard the rights of the suspects and to screen them from any abuse of law and power by law enforcement authorities. Therefore, adherence to these guidelines is sought to ensure transparency, accountability, fair treatment, and well-being of the individuals detained under the PTA," which is reminiscent of **Vishaka and others V. State of Rajasthan and others.** (AIR 1997 SUPREME COURT 3011).

Judge of the Court of Appeal.

Iddawala - J

The petitioner files this application on behalf of his son (8th respondent) who is currently kept in custody of the Criminal Investigation Department (CID).

During the submissions made by the learned President's Counsel at the support stage, it was reiterated that the petitioner at this juncture is only seeking interim relief with regard to prayer "h" of the petition.

Prayer "h" of the petition states:

"In the alternative, Grant and issue an interim order until the final hearing and determination of the application, staying and suspending that portion of the Detention Order against the 8th respondent bearing number MOD/LEG/PTA/10/2023 and all other Orders extending the said Detention Order to keep the 8th respondent within the

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tustuvām sastanūbhih || Vvyasema devahitam yadāyuh || Swasti na indro vridhasravāh || Swasti nah pūsā viswavedāh || Swasti nastārksyo aristanemih|| Swasti no brihaspatir dadhātu || Aum, santih, santih, santih ||

***Meaning**: Aum! May our ears hear what is good and auspicious. May our eyes see what is good and auspicious. For the sake of gods, may we fully live the ordained span of our lives with good health and strength. May Indra who is extolled in the Vedas, Pusan, the lord of the world, Tarksya, who saves us from harm, Brihaspati who fosters our intelligence grant us prosperity as we are engaged in the study of the scriptures and the practice of truths in them. Aum peace here, peace above and peace all around.*

custody of CID and direct that the 8th respondent be produced immediately before a competent Magistrate's Court and be remanded in the remand prison according to law"

The petitioner states that upon being arrested, the CID ought to have produced the 8th respondent before the Magistrates Court of Panadura. And further claims that however, the 8th respondent was never produced before the Magistrate. Instead, on 15th of March 2023, the CID sought and obtained a Detention Order against the 8th respondent in terms of Section 9(1) of the Prevention of Terrorism Act No 48 of 1979 (as amended by Act No 12 of 2022) - (*hereinafter referred to as the PTA).* The petitioner further stated that the aforementioned Detention Order had been further extended on 13th of June 2023 and on 10th of September 2023 for a period of 90 days each based on an application made by the OIC of the Public Complaints Unit of the CID. Furthermore, the learned SSDSG at the hearing stated that the said Detention Order is further extended on 8th December 2023.

Background

The 8th respondent has been named as a suspect in several legal proceedings currently pending before several courts in Sri Lanka. The petitioner states that *inter alia,* on 23rd of September 2022 in the case bearing No. 96863/22 in the Panadura Magistrate's Court, Chief Inspector C.R. Nissanka, OIC of Divisional Crimes Investigation Unit had reported facts against the 8th respondent under the PTA No 48 of 1979 for purportedly being involved in organized crime and other offences. On 30th of September 2022, the Chief Inspector C.R. Nissanka made an application to obtain an Open Warrant against the 8th respondent (Salindu *alias* 'Kudu Salindu') in order to secure an Interpol Red Notice. Correspondingly, a warrant was issued.

On 1st of March 2023, the 8th respondent was arrested in Madagascar along with Nadun Chinthaka *alias* 'Harak Kata' and extradited to Sri Lanka on 15th of March 2023. Subsequently, on that day the mother of the 8th respondent had filed a Writ application bearing No 139/23 in the Court of Appeal seeking for an order in the nature of Writs preventing the 1st – 5th respondents and their servant, agents from causing any harm to the life of the 8th respondent.

Arguments

During the submissions made by the learned President's Counsel, it was stated that the present application is filed on behalf of 8th respondent who is currently in the custody of the CID. One of the main contentions of the petitioner is that he has been

detained in the custody of the CID for a long period of time without being produced to the Magistrates Court.

The learned President's Counsel at this juncture of his submissions emphasized on Article 13(2) of the Constitution stating that any person held in detention or custody has a fundamental right not be deprived of his liberty and has the right to be brought before the competent court.

Article 13(2) of the Constitution reads as follows:

> *"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 learned President's Counsel also stated that the 8th respondent has a threat to his life. The reasoning brought forward by the learned President's Counsel for the above-mentioned allegation is that a CID officer had solicited a bribe of 13 million rupees to ensure the 8th respondent has continuous access to basic necessities and to ensure the welfare of the 8th respondent. Nonetheless, the learned President's Counsel further stated that he verily believes that pursuant to the 8th respondent having informed the learned Magistrate with regard to the bribe solicited by an officer of the CID, the CID officers turned hostile towards the 8th respondent and had begun to ill-treat the 8th respondent, and thereby the 8th respondent's life is in danger.

The learned President's Counsel during the submissions relied on two Fundamental Right cases. Which is *SC/FR/577/2010* dated 17th December 2019 and *Weerawansa v Attorney General (2000) 1 SLR 387*.

Nonetheless, the learned President's Counsel concluded his submissions by reiterating on the fact that the prayer of the petitioner at this juncture is only to seek an interim order staying and suspending the portion of the extended Detention Order against the 8th respondent to keep the 8th respondent within the custody of the CID and to direct that he be produced immediately before a competent Magistrate's Court and be remanded in the remand prison.

The learned SDSG appearing after the issuance of formal notice states that the said 8th respondent is a suspect of several legal proceedings and was arrested along with Nadun Chinthaka *alias* 'Harak Kata' in Madagascar. The learned SDSG further

stated that the said 8th respondent along with Nadun Chinthaka *alias* 'Harak Kata' fled to Madagascar from Dubai in a private jet bearing aircraft number A6-HAS which was financed and provided by one named Nirmana Bandara *alias* 'Herbbie', who allegedly has direct links with the LTTE. The said Nirmana Bandara *alias* 'Herbbie' while being directly attached to the works of the LTTE, has also been named as an accused in cases of attempted manslaughter and kidnapping of Businessmen and other persons. To buttress the aforementioned the learned SDSG cited the B report attached in the case brief, volume II pages 857 & 876.

Thereby, the learned SDSG firmly reiterated on the fact that the 8th respondent Sellaperumage Salindu Malshika Gunarathne alias 'Kudu Salindu' and Nadun Chinthaka *alias* 'Harak Kata' were both travelling together and was arrested while they were together in Madagascar. Furthermore, it is evident that both Salindu Malshika *alias* 'Kudu Salindu' and Nadun Chinthaka *alias* 'Harak Kata' have purported connections with Nirmana Bandara *alias* 'Herbbie' who is a direct associate of the terrorist group LTTE.

The learned SDSG during his submissions cited the judgments of CA/WRIT/1308/2005 dated 5th of December 2008 and CA/WRIT/174/2017 dated 8th of August 2017. The learned SDSG also drew the attention of the courts to order of CA/WRIT/139/2023 dated 15th of September 2023 which was on a similar application filed by Nadun Chinthaka *alias* 'Harak Kata'.

Furthermore, the learned SDSG drew the attention of the courts citing page 1332 & 1333 of the case brief, volume II and stated that according to the report attached the officers of the Police Bureau was able to identify a group of organized criminal activists who were plotting an attack to the CID to take out the suspects alleged to terrorist activities.

Thus, the learned SDSG states that this matter concerns serious investigations including several other countries, and thereby it is anticipated that this cumbersome investigation will necessitate a comprehensive examination and as such, it is expected to extent over an extended period of time.

The learned SDSG thereby vehemently objected to the issuance of interim order.

Applicable Law

Given that facts have been reported against the 8th Respondent under the PTA (as amended), the applicable law pertaining to the instant application is found in Section 9(1) of PTA (as amended), which reads as follows:

> *"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"* (Emphasis added)

Considering the abovementioned section of the PTA, it is clear that in an instance where there is a valid Detention Order, a person can be detained for a period of 3 months at the first instance and subject to conditions of the Minister, any such order could be extended time to time for a period of three months at a time. Thereby in the instant application the extension of detention period can be deemed lawful according to the PTA.

Through the amendment Act No 12 of 2022 of the PTA, Section 9A and 9B were inserted immediately after Section 9 of the principal enactment. The newly incorporated sections read as follows:

Section 9A

(1) *"The officer in charge of the place of detention shall, forthwith and in any case, not later than forty-eight hours from the time of issuance of an Order under section 9, make available a certified copy of such Order to the Magistrate within whose judicial division the place of detention of the person in respect of whom such Order relates is situated, for the Magistrate to visit such place of detention, in terms of section 9B"*

(2) *"The detention of any person under section 9 shall be communicated to the Human Rights Commission of Sri Lanka in terms of section 28 of the Human Rights Commission of Sri Lanka Act, No. 21 of 1996, for the persons authorized by the Human Rights Commission of Sri Lanka to visit the place of detention in terms of that Act."*

Section 9B

(1) "It shall be the duty of every Magistrate who has received a certified copy of a detention Order in terms of subsection (1) of section 9A, to visit the place of detention of the person to whom the Order relates (in this section referred to as the "suspect") at least once in every month during the period of detention, to ensure that the suspect is protected to the extent provided for in the Convention Against Torture and other Cruel, Inhumane or degrading Treatment or Punishment Act, No.22 of 1994"

(2) For the purpose of subsection (1), the Magistrate who visits any place of detention, shall–

(a) personally see the suspect, and look into his wellbeing, welfare and conditions under which he is kept at such place of detention; and

(b) record his observations and any complaint the suspect may make.

(3) Where the Magistrate is of the opinion, that the suspect may have been subjected to torture, the Magistrate may –

(a) direct that the suspect be produced before a Judicial Medical Officer for medical examination, and a report be submitted to him by such Judicial Medical Officer; and

(b) make an order to change the place of detention of the suspect.

(4) Where the report of such Judicial Medical Officer reveals that the suspect has been subjected to torture, the Magistrate shall make an appropriate order, to provide necessary medical treatment to the suspect.

(5) The Magistrate shall also direct the Inspector General of Police to commence an investigation into the alleged torture in order to enable the Attorney-General to institute criminal proceedings against the person who is alleged to have committed the torture.". (Emphasis added)

Analysis

At the outset, it is pertinent to infer whether the detention of the 8th respondent is in accordance with the law.

The petitioner states that on the 16th of March 2023, a certified copy of the Detention Order issued against the 8th respondent was served on the Fort Magistrate's Court by the case bearing No 24999/23 in terms of Section 9A (1) of the PTA. Thereafter the learned Fort Magistrate visited the 8th respondent at the CID time to time. Thereby, it could be stated that since the Detention Order was obtained against the 8th respondent on the 15th of March 2023 and the Fort Magistrate had been served with a copy of the Detention Order informing with regard to the place of detention of the 8th respondent on 16th of March 2023, it is deemed just and in accordance with Section 9A (1) of the PTA. It was further revealed by the learned SDSG during the hearing that the said Detention Order has been extended at the end of every 3 months. And the said Detention Order was lastly extended on 8th of December 2023.

Having thus ascertained that the detention of the 8th respondent is in conformity with the law, this Court will now turn to another submission made by the President's Counsel for the petitioner. The petitioner states that on 26th of July 2023 the 8th respondent had informed the learned Magistrate during a visit that a CID officer had solicited a bribe of 13 million rupees to ensure the 8th respondents continuous access to basic necessities and welfare. The learned Magistrate had thereafter documented the complaint and directed the same to be investigated.

The learned President's Counsel during his submissions stated that he verily believes that pursuant to the 8th respondent having informed the learned Magistrate with regard to the bribe solicited by an officer of the CID, officers turned hostile towards the 8th respondent and had begun to ill-treat the 8th respondent.

Furthermore, the petitioner states that following the incident of Nadun Chinthaka (Alias 'Harak Kata') attempting to escape the custody of CID, the 8th respondent was further subject to be ill-treated and had been denied with several basic food and hygiene items by the CID officers. And thereby the learned President's Counsel for the petitioner stated, that it is no longer safe for the 8th respondent to be detained at the CID and that his life is in grave danger if he us continued to be kept in the custody of the CID.

According to Section 9B of the PTA, it evidently states that when a Magistrate is served with a certified copy of the Detention Order it is the duty and responsibility of the Magistrate to visit the place of detention at least once every month and to ensure that the suspect is protected from any ill treatment or torture. Further the Magistrate is duty bound to personally inspect the wellbeing of the suspect, record his observations and any complaints and thereafter direct for investigations. Where the Magistrate is of the opinion, that the suspect may have been subject to torture, the Magistrate may direct the suspect to the produced for medical examination and further upon the results of the medical report an order could be made to change the place of detention. In accordance to the submissions made by the learned SDSG, he reconfirmed that the Magistrate had visited the 8th respondent at the CID as prescribed in the law and ensured that the 8th respondent is not illtreated and that all his needs have been met.

Further, emphasizing the points raised by the learned SDSG in his submissions, it is crucial to recognize that the current investigation is intricate and time intensive. The respondents are purportedly implicated in numerous serious illegal activities, not only domestically but also on a global scale. Given this context, the court should refrain from interference unless the investigations are shown to be arbitrary, capricious, or surpass legal limitations.

The amended Section 9B of the PTA is a commendable step forward in ensuring the protection of individuals' rights and well-being. By explicitly outlining the duty of the Magistrate to visit the place of detention regularly, the law demonstrates a commitment to preventing ill treatment or torture of suspects. The provision requiring the Magistrate to personally inspect the well-being of the suspect, record observations, and address any complaints reflects a proactive approach to safeguarding human rights. Additionally, the provision empowering the Magistrate to order a medical examination in cases of suspected torture adds a crucial layer of accountability. This amendment not only strengthens the legal framework but also contributes to building a more just and humane system.

Furthermore, through the decision dated 2nd of May 2023 of the learned Magistrate of the Panadura Magistrate Court, it was concluded that the learned Magistrate of the Fort Magistrate Court has adhered to the duties and responsibilities in accordance with the PTA. The learned Fort Magistrate had visited the 8th respondent at the CID and personally inspected and observed his wellbeing. The learned

Magistrate had also documented complaints made by the 8th respondent and directed for further investigation. However, the learned Magistrate has not declared that the 8th respondent is ill-treated, tortured and neither has the learned Magistrate mentioned with regards to any potential risks or threats to the life of the 8th respondent.

Thereby it is quite evident that the detention of the 8th respondent at the CID is within the purview of the PTA. Thus, at such a juncture I am of the view that this court cannot intervene to suspend the portion of the Detention Order against the 8th respondent to keep the 8th respondent within the custody of CID as there is no substantive evidence to support the act of continued detention of the 8th respondent is contrary to the law.

In light of the clear alignment of the 8th respondent's detention with the provisions of the PTA and the absence of substantive evidence indicating a violation of the law, it is *prima facie* apparent that the detention is legal and not arbitrary, rendering any intervention by the court to suspend or vary the Detention Order unwarranted.

Section 9B of the PTA as amended by Act No 12 of 2022

The implications of the amendments brought forth by Act No 12 of 2022 to the PTA regime in Sri Lanka is far reaching. At the heart of these amendments, one must not lose sight of the fundamental principles enshrined therein. In the absence of a definitive pronouncement by a competent Court of Law, no individual shall be deemed guilty, for every person is presumed innocent until proven otherwise a sacrosanct principle enshrined in the Constitution. Devoid of the court's adjudication, no entity possesses the prerogative to encroach upon or infringe upon personal liberty, safeguarded under the Constitution and PTA, in a capricious or arbitrary manner.

The instant application has drawn significant emphasis on the application of Section 9B of the PTA. It must be remarked with great emphasis that according to Section 9B of the PTA as it presently stands only the learned Magistrate has the lawful authorization to direct a change in the place of detention for the 8th respondent. Furthermore, it must also be reiterated that if a suspect is removed from one place of detention and located at another place of detention solely for the safety of the suspects life, the learned Magistrate has to be informed prior to the change of location. Informing the Magistrate with the aforementioned must be done through

confidential communication to ensure that the change of the place of detention is directed through an efficient approach.

Given that the said amendments are in their infancy, I wish to issue a set of guidelines to be followed in changing or moving from the detention place of suspects under the PTA.

These guidelines intend to strike a balance between the rights of the suspects and the interests of the community at large. In order to achieve such equilibrium, it is imperative to enable judicial intervention to ensure due administration of justice and adherence to the law. Hence, enabling the Magistrate to review the detention of the suspect and providing the Magistrate with periodic updates on the detention are steps in the direction of safeguarding the fundamental rights of the suspects protected by the Constitution and the Prevention of Terrorism Act. Therefore, any such authorization for relocating/movement the suspect must be in strict compliance with human rights standards and non-compliance with these guidelines may result in legal consequences, and the responsible officers may be held accountable for any undue violation of the rights of the suspects.

Hence, the following guidelines are hereby declared:

1. In the event of transferring a suspect from his current detention place to another place of detention, it is incumbent upon the officer in charge of the place of detention to notify the Magistrate of the respective area in advance, it is after such formal notice and receipt of endorsement of the Magistrate, that an order of transferring the suspect shall be authorized.
2. Such notification has to be delivered to the Magistrate prior to authorizing the transfer, in order to enable appropriate judicial oversight and ensure that the Magistrate is duly informed of the reasons for the change in the detention place. The Magistrate shall be notified in this regard through a confidential report submitted by the officer in charge of the place of detention. This confidential report should clearly outline the reasons for such relocation and such reasons may include investigative purposes or the need to discover facts related to the case (Such as to discover an article).
3. It is imperative to safeguard the confidentiality of the aforementioned report submitted to the Magistrate, in order to protect the integrity of the ongoing investigation and the rights of the individuals involved.

4. It is also important to duly record and maintain any documents exchanged between the Magistrate and the officer in charge of the place of detention, pertaining to the relocation of the suspect for legal and accountability purposes.
5. Another seminal guideline to be followed in carrying out investigations is to ensure that periodic updates on the status of the investigation are delivered to the Magistrate. During such periodic updates, the Officers shall report the reasons for the continued need for the detention of the suspect, if such an extension of the period of detention is required.

Thus, in finality, as mentioned above, these guidelines are tailored to safeguard the rights of the suspects and to screen them from any abuse of law and power by law enforcement authorities. Therefore, adherence to these guidelines is sought to ensure transparency, accountability, fair treatment, and well-being of the individuals detained under the PTA.

As to the context with regard to the discretion of courts to order Writs and circumstances in which Writs can be entertained to order interim relief is addressed by my brother Judge Justice D.N. Samarakoon in his order, I am not going to further elaborate that aspect in my order.

In conclusion, based on the considerations and rationale outlined above, this Court, at this juncture, declines to issue interim relief. The decision is reached after careful examination of the presented facts and legal arguments.

The Registrar of this Court is directed to send a copy of this Order to the 4th and 5th respondents, with an emphasis on strict adherence.

Refused to grant an interim relief. A set of guidelines issued.

Judge of the Court of Appeal