

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

*In the matter of an application under and in terms of Article
140 of the Constitution of the Democratic Socialist Republic
of Sri Lanka.*

Nandasena Gotabaya Rajapaksa
No 26A, Pengiriwatta Road, Mirihana.

PETITIONER

CA Writ Application No:
CA/WRT/0443/2026

vs.

1. Priyantha Weerasooriya,
Inspector General of Police
Police Headquarters, Colombo 12.
2. Gnanendra Shani Abeysekara,
Director, Criminal Investigation Department,
Criminal Investigation Department,
Colombo 01.
3. Madhawa Gunawardena,
Officer in Charge, Special Investigations Unit,
Criminal Investigations Department,
Criminal Investigations Department,
Colombo 01.
4. Hon. Attorney General,
Attorney-General's Department,
Hulftsdorp, Colombo 12.

RESPONDENTS

Before: Hon. Justice N. R. Abeyesuriya PC (P/CA)

Hon. Justice K. M. S. Dissanayake

Counsel: Dr. Romesh De Silva PC with M. U. M. Ali Sabry PC, Ruwantha Cooray, Niran Anketell, Pasindu Bandara and Sahan Ginige instructed by Sanath Wijewardane Associates for the Petitioners.

Suharshie Herath, DSG with Rajika Aluwihare SC and Tharaka Kodagoda SC for all the Respondents.

Supported On: 18/06/2026, 24/06/2026, 06/07/2026, 09/07/2026, 23/07/2026, 03/08/2026

Written Submissions Tendered On: 31/08/2026 (Petitioner) 02/09/2026 (Respondents)

Decided On: 01/10/2026

ORDER

N. R. Abeyesuriya, PC, J. (P/CA),

The Petitioner is a former President of Sri Lanka and is former Secretary, Ministry of Defence. The principal grievance of the Petitioner is that without the existence of sufficient and cogent evidence against him, the Petitioner is to be arrested in connection with the tragic and widely known incident called “Easter Sunday Bomb Attack”.

Accordingly, the Petitioner has prayed for, *inter alia*, the following relief, (*vide* paragraph (b) of the prayer)

Issue an order in the nature of writ of prohibition preventing the Respondents and/or any one or more of them, their servants and/or agents and/or anyone coming under or through them arresting and/or take in to custody the Petitioner and/or depriving the Petitioners liberty in connection with the Easter Sunday Attack

Paragraph 5 of the Petition reveals the reason for him to entertain the apprehension of imminent arrest. The said paragraph reads thus,

The Petitioner states that the Petitioner heard through several media reports, including SMS news alerts that the Fort Magistrate's Court had issued a travel ban on the Petitioner in connection with the investigations relating to the Channel 4 revelations of one Asad Mowlana relating to the Easter Sunday attack on 21st April 2019.

Furthermore, the Petitioner in Paragraph 6 of his Petition stated that the Fort Magistrate Court in Case No. B/35882/24 issued a travel ban on the Petitioner preventing the Petitioner from leaving Sri Lanka.

It is evinced from the aforementioned two paragraphs, the basis for the Petitioner to entertain an apprehension of imminent arrest is the imposition of the aforesaid travel ban on him. In the Petition, no other reason is disclosed in this regard.

It appears from the pleadings of the Petitioner that up to date, he has not even been questioned by the Police with regard to the aforesaid crime nor named as a suspect. He merely asserts that the Petitioner is "reliably informed that the Petitioner would be deprived of his liberty and taken into custody either by way of a detention order issued under and in terms of the Prevention of the Terrorism Act and/or by him being arrested" (*vide* Paragraph 10 of the Petition).

In the aforementioned Paragraph 5 of the Petition, reference has been made to a person by the name of Asad Mowlana in the context of certain revelations. It is categorically stated in Paragraph 17 of the Petition that "the Petitioner has never met the said Asad Mowlana and has no connection whatever with him"

Another prominent aspect of the Petitioner's case is the belief entertained by the Petitioner that the 2nd Respondent, who at the time of filing the instant writ application was the Director of the Criminal Investigation Department and in which capacity was supervising the investigations pertaining to the Easter Sunday Attack is

likely to harbour hatred, animosity and *mala fides* towards the Petitioner and therefore, the said investigations are tainted which is prejudicial to his interests.

The following reasons have been cited by the Petitioner for him to believe the *mala fides* of the 2nd Respondent,

- a. Upon the Petitioner being elected as the President of Sri Lanka, the 2nd Respondent was removed from the post of Director, CID.
- b. During the tenure of the Petitioner as the Head of State, the 2nd Respondent was arrested on 31st July 2020 on the allegation that the 2nd Respondent was responsible for fabricating/falsifying evidence regarding the discovery of a *cache* of weapons from the private residence of an individual in Nedimala.
- c. In his capacity as the President of Sri Lanka, the Petitioner appointed a Commission of Inquiry with regard to political victimization pertaining to the period from 08.01.2015 to 16.11.2019. The said Commission of Inquiry made several recommendations against the 2nd Respondent.
- d. The Commission of Inquiry appointed to inquire into and report on the Easter Sunday Attack headed by His Lordship Justice Janak De Silva and several other committees appointed for the same purpose have passed strictures on the 2nd Respondent with regard to his conduct and performance of duties in relation to the Easter Sunday Attack.

The Petitioner has elaborated on the said findings and recommendations against the Petitioner in Paragraph 32 of the Petition. The Petitioner has averred that the 2nd Respondent under the aforesaid circumstances would not be able to act independently and there is a likelihood of bias. Due to this reason, the Petitioner is under the apprehension that the 2nd Respondent may exert pressure on the investigating officers to arrest the Petitioner devoid of evidence and without any lawful justification.

Furthermore, the Petitioner contends that his name did not transpire as a suspect or potential suspect in any of the aforementioned committees and commissions appointed to probe the Easter Sunday Attack.

The Petitioner in the course of both oral and written submissions, relied heavily on the aspect of arrest under the amended PTA with emphasis on liberty of individuals which was described as being “*sacrosanct and cannot be interfered with except for grave cause*” (*vide* written submissions of the Petitioner dated 31.08.2026).

In support of these submissions, the Learned President’s Counsel made corpius reference to the landmark judgment of **In Re Mark Anthony Lyster Bracegirdle (1937) 39 NLR 193**. In the said judgment, the Court succinctly analysed the aspect of excess of Executive Powers and held that even the Governor-General posted to Ceylon (as Sri Lanka was referred to then) is subjected to judicial review and as such prerogative writ shall lie.

In this regard, the Petitioner also cited the case of **Marie Indira Fernandopulle and Another vs. Minister of Lands and Agriculture (1978) 79 NLR 115 at 120** in which Samarakoon CJ made the following observations.

What is the exact limit of a subjective test? Are the Courts obliged to turn a deaf ear merely because some statutory officer is able to proclaim “I alone decide.” “When I open my mouth let no dog bark?” If that be the position when the rights of the subject are involved then the Court would have abdicated its powers necessary to safeguard the rights of the individual. I do not think that is the test

In the same context, the Petitioner also cited the Judgment of Sri Pavan J (as his Lordship was then) in **Joseph Fernando vs. Minister of Land Development and Minor Export Agriculture and Others (2003) 2 SLR 294 at 298**. It was contended that upon analyzing the *dicta* contained in the aforesaid judicial authorities the following legal principles maybe extracted,

- i. Legality of an order of the Executive may and must be questioned no matter how high the status or exalted the position the person making it is.

- ii. Objectively examined by reference to principles of law, whether the order of the Executive can be sustained; and
- iii. Set aside executive action which does not conform to the objective legal test.

With regard to the arrest of individuals, in connection with criminal offences, such as those under the PTA, the Learned President's Counsel contended that Wednesbury Reasonableness is necessary for an arrest and the reasons for such arrest has to be objectively assessed by Court. (*vide* written submissions of the Petitioner dated 31.08.2026)

The aforesaid submissions with regard to arrest were made by the Petitioner, in the context of provisions contained in Section 6 of the Prevention of Terrorism (Temporary Provisions) Act No 48 of 1979 as amended (hereinafter referred to as the PTA) which is contained in Part II of the Enactment under the heading INVESTIGATION OF OFFENCES. It is reproduced below,

INVESTIGATION OF OFFENCES

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; and

*(d) seize any document or thing, connected with or concerned in or reasonably suspected of being connected with or concerned in **any unlawful activity**.*

(2) Any person who obstructs or hinders any police officer lawfully exercising any power conferred on him by or under subsection (1), shall be guilty of an offence and shall on conviction be liable to imprisonment of either description for a period not exceeding seven years.

“Unlawful activity” as it appears in Section 6(1)(d) is defined in Section 31 of the PTA in the following manner,

"unlawful activity" means any action taken or act committed by any means whatsoever, whether Within or outside Sri Lanka, and whether such action was taken or act was committed before or after the date of Coming into operation of all or any of the provision of this Act in the commission or in connection with the commission of any offence under this Act or any act committed prior to the date of passing of this Act, which act would, if committed after such date, constitute an offence under this Act.

As per the aforesaid provisions, the Police may arrest any person who is connected with or concerned in or reasonably suspected of being connected with or concerned in any unlawful activity.

The attention of this Court was drawn to the judgment of the Supreme Court in **Tiran Alles vs. Ilangakoon and Others (SC/FR/171/2015 SC Minutes 02.09.2015)** and submitted that this Court pay due regard to the following paragraph of the said judgment,

The relevant question would therefore be whether it was reasonable for the Peace Officer on whom the power is conferred to be satisfied of the existence of the facts, the existence of which empowered him to make the arrest. I am of the view that the burden is on the Peace Officer to place sufficient material to satisfy Court that the deprivation of petitioner's liberty is not arbitrary, capricious and unreasonable. The standard of review is consonant with the approach to the interpretation of statutory provisions vesting power, should be based on objective standards and subject to review as to its reasonableness.

.....the Constitution is but a higher form of statutory law. Article 13(5) provides that every person shall be presumed innocent until he is proved guilty. These Articles coupled with the constitutional mandate to secure and advance fundamental rights bind the judiciary to make just and equitable orders and directions under Article 126(4). Further, Article 12 prohibits any arbitrary, capricious and/or discriminatory

action. It is now well settled that powers vested in the State, public officers and public authorities are not absolute or unfettered but are held in trust for the public to be used for the public benefit and not for improper purposes. Where a Police Officer has discretion, the exercise of that discretion would also be subject to Article 12 as well as the general principles governing the exercise of such discretion."

...It is for the Court to determine the validity of the arrest objectively. In Dissanayaka Vs. Superintendent, Mahara Prison and Others (1991) 2 S L R 247 at 256 Kulatunga, J. emphasized that "the Court will not surrender its judgment to the executive, for if it did so, the fundamental right to freedom from arbitrary arrest secured by Article 13(1) of the Constitution will be defeated. The executive must place sufficient material before the Court to enable the Court to make a decision, such as the notes of investigations including the statements of witnesses, observations etc. without relying solely on bare statements in affidavits."

...No evidence has been placed before Court to establish that the Petitioner is interfering with any witnesses or might interfere with any of the witnesses. Whenever the Police requested the Petitioner to present himself for investigation, he has complied with such requests.

In any event, by an Order issued by the Magistrate, Colombo Fort, the foreign travel of the Petitioner has been banned.

Reference was also made to Section 32(1)(b) of the Code of Criminal Procedure Act which reads thus,

32.(1) Any peace officer may without an order from a Magistrate and without a warrant arrest any person,

(b) who has been concerned in any cognizable offence or against whom a reasonable complaint has been made or credible information has been received or a reasonable suspicion exists of his having been so concerned;

Submissions were made pertaining to the scope and ambit of Section 32(1)(b) of the Code of Criminal Procedure Act and Section 6(1) of the PTA. In the instant matter,

both the Petitioner and the Respondents were in agreement with regard to the fact that the scope of Section 6(1) of the PTA is wider than the analogous provisions contained in Section 32(1)(b) of the Code of Criminal Procedure Act.

In P. W. T. Dhanushka vs. Inspector General of Police and Others (SC/FR/170/2022 SC Minutes of 30.01.2025) Justice Padman Surasena (as his Lordship the Chief Justice was then) held,

Therefore, one could observe that the threshold requirement under section 32(1)(b) of the Code of Criminal Procedure Act for the existence of 'a reasonable suspicion or being concerned of any cognizable offence' has been reduced under Section 6(1) of the PTA to a threshold requirement of the existence of 'a reasonable suspicion or being connected with or concerned in any unlawful activity'.

I wish to advert to the submissions of the Respondents in response to the aforesaid submissions of the Petitioner.

The principal contention of the Respondents is that the apprehension of arrest entertained by the Petitioner is materially unfounded, devoid of factual justification and premature.

As per the written submissions of the Respondents dated 02.09.2026, the Petition does not contain an iota of material to substantiate the very apprehension upon which this application is founded. There is no document, communication or other material placed before Court to justify the Petitioner's stance. (*vide* Paragraph 6 of the written submission of the Respondents).

The Respondents contended that the most fundamental defect in this Petition is that the principal relief the Petitioner is seeking is overly broad and as such cannot be granted by this Court.

Attention was drawn to the main relief prayed for which is reproduced elsewhere in this Order which is paragraph (b) of the prayer of the Petition. It is the contention of the Respondent that the breadth of this relief is apparent on the plain reading of the

prayer and amounts to a *blanket prohibition against his arrest in connection with the Easter Sunday Attacks*.

According to the Respondents (not controverted by the Petitioner), the investigations into the Easter Sunday Terrorist Bombings are not concluded and in fact the investigations against the Petitioner commenced recently. If this Court was to issue a writ of prohibition as prayed for, the Respondents contend that it would have the effect of the investigators unable to arrest the Petitioner even if sufficiently cogent and justifiable reasons emerging from the investigations which are currently being carried out.

Hence, the granting of such relief would be obnoxious and repugnant to the very core and essence of administrative relief. The Respondents contend that the Petitioner is seeking an order which would extend to an indefinite period of time regardless of the cogency and relevancy of the evidence which maybe uncovered by the investigations.

It was further submitted that the consequence of relief of this nature being granted would extend beyond the Petitioner in the instant matter. It would effectively pave the way and provide a mechanism by which a person who maybe under investigation to file a writ application at the outset of such investigations and obtain immunity from arrest irrespective and notwithstanding evidence obtained by the investigators subsequently.

The Respondents strenuously submitted that the instant writ application is premature. According to the Respondents, it is the imposition of a travel ban on the Petitioner to facilitate the investigations, which triggered the filing the instant writ application.

The Petition discloses that the Petitioner "*verily believes*" that he is to be arrested. It is the contention of the Respondents that such apprehension of arrest cannot by itself, establish that there is a real or imminent threat of arrest.

Furthermore, the Respondents made the following submissions in support of their stance with regard to the instant matter.

- I. The substantial majority of the judicial authorities cited by the Petitioner concern persons who have already been arrested unlike the instant matter where no such steps have been taken or contemplated.
- II. The legality of the procedure followed in arresting a person should be assessed taking into consideration the circumstances which existed at the time of arrest. It cannot be done at a stage in which the investigations have just commenced and the only matter to be considered is that the Petitioner verily believes that he may be arrested. In the instant matter, there has been no arrest and no decision to arrest which has been disclosed. The Respondents questioned as to on what the illegality could be based on for the issuance of writ under these circumstances.
- III. The scope of Section 6 of the PTA which specifies the threshold requirements for arrest under the said enactment is wide enough to cover any “unlawful activity” as defined in Section 31 of the PTA. The Respondents cited the following passage from judgment in SC/FR/170/2022 referred to elsewhere in this Order in support of this contention.

“This means that any action taken or act committed, in connection with the commission of any offence under this Act, would be an unlawful activity. Thus, such ‘action taken or act committed’ although on its own may not constitute an offence (therefore would not constitute a cognizable offence in any case), would still fall under the definition of an ‘Unlawful Activity’, if such action taken or act committed, was done in connection with the commission of any offence under PTA.”

- IV. The superior courts ought not to liberally interfere with the subordinate judiciary or other entity in a situation where there is no apparent illegality or *ultra vires*. In this regard, the Respondents have placed reliance on the *dicta* in the following two cases,

a) CA/WRIT/168/2025 decided on 17.03.2025

b) CA/WRIT/511/2024 decided on 27.03.2026

- V. The Petitioner has suppressed and/or misrepresented a material fact. Attention of Court was drawn to Paragraph 17 of the Petition which reads as follows “*the petitioner states that he has never met the said Asad Mowlana and has no connection or whatever with him*”. It was submitted that the said averment in the Petition is not an ambiguous statement.

On the contrary it contains a clear and unequivocal assertion supported by an affidavit. In effect, what the Petitioner has conveyed in Paragraph 17 is that a person by the name of Asad Mowlana is a total stranger with whom the Petitioner has had no interaction whatsoever. In order to counter this assertion, the Respondents tendered to court a photograph marked D2 which is an attachment to the motion filed by the Respondents dated 18.06.2026. Respondents claim that the said photograph depicts the Petitioner standing next to none-other-than the said Asad Mowlana.

It is also claimed by the Respondents that the said photograph was taken not in public but at the private residence of the Petitioner. The authenticity of D2 was not challenged in the course of the proceedings before this Court. Nor was it suggested by the Petitioner that the person the Respondents are claiming to be Asad Mowlana is in fact some other individual.

It was also not disputed that the said photograph was taken at the private residence of the Petitioner.

In support of these contentions, the following passage in **Blanca Diamonds (Pvt) Ltd., v. Wilfred Van Els and Two Others (1997) 1 SLR 360** was cited by the Respondents.

When a party is seeking discretionary relief from this Court upon an application for a writ of certiorari, he enters into a contractual obligation with

the Court when he files an application in the Registry and in terms of that contractual obligation, he is required to disclose uberrima fides and disclose all material facts fully and frankly to Court.

- VI. The alleged animosity between the 2nd Respondent and the Petitioner is refuted. No material has been placed before Court to establish that in fact the 2nd Respondent has directed that the Petitioner be arrested. Neither is there any evidence to establish that any person acting under the direct supervision of the 2nd Respondent has decided to arrest the petitioner.

It was further submitted that it is not sufficient to merely to allege animosity or *mala fides* but that it must be proved by the person alleging such.

The case of **Seneviratne and Others vs. Urban Council Kegalle and Others (2001) 3 Sri L.R. 105** was cited in support of the aforesaid contention. The Court in the said case has cited a passage from *Principles of Administrative Law* (Jain & Jain, 4th Edition 1988 Page 564),

“The plea of mala fides is raised often but it is only rarely it can be substantiated to the satisfaction of Court. Merely raising a doubt is not enough. There should be something, specific, direct and precise to sustain the plea of mala fides. The burden of proving mala fides is on the individual making the allegation as the order is regular on its face and there is a presumption in favour of the administration that it exercises its power in good faith and for the public benefit.”

It was submitted that the Petitioner has failed to prove that in fact there exists such malice or *mala fides*.

As per Paragraph 28 of the Petition, it is alleged that the 2nd Respondent was arrested for a criminal offence which has absolutely no relevance to the Easter Bombing or any matter of such nature, during the tenure of the Petitioner, as the President of Sri Lanka. It is the contention of the Respondents that merely because the arrest took place during such period which is a purely judicial

and administrative step, it does not necessarily mean that there is malice and that the 2nd Respondent may attribute his arrest to the Petitioner.

As referred to elsewhere in this Order, the principal relief prayed for by the Petitioner is a writ of prohibition preventing the arrest of the Petitioner in connection with the Easter Sunday Attack.

In order to make a determination in this matter, it is essential to consider the scope of the writ of prohibition. Writs in the nature of Prohibition are issued against judicial and quasi-judicial authorities where such authorities wrongly exercise jurisdiction or exceeded their jurisdiction. The Writ of Prohibition is directed to the inferior court forbidding that court to continue proceedings in excess of that court's jurisdiction. A Writ of Prohibition is available only so long as the proceedings are pending before an inferior court or tribunal.

In this regard, I am guided by the *dicta* of the Supreme Court of India in **Govinda Menon vs. Union of India (AIR 1967 SC 1274)**

The jurisdiction for grant of a writ of prohibition is primarily supervisory and the object of that writ is to restrain courts or inferior tribunals from exercising a jurisdiction which they do not possess at all or else to prevent them from exceeding the limits of their jurisdiction. In other words, the object is to confine courts or tribunals of inferior or limited jurisdiction within their bounds. It is well-settled that the writ of prohibition lies not only for excess of jurisdiction or for absence of jurisdiction but the writ also lies in a case of departure from the rules of natural justice (See Halsbury's Laws of England, 3rd Edn., Vol. II, p. 114).

... But the writ does not lie to correct the course, practice or procedure of an inferior tribunal, or a wrong decision on the merits of the proceedings. It is also well-established that a writ of prohibition cannot be issued to a court or an inferior tribunal for an error of law unless the error makes it go outside its jurisdiction

M. R Mallick in Writs: Law and Practice 2nd Edn, Page 530 analysed the above judgement as referred below;

A clear distinction must therefore be maintained between want of jurisdiction and the manner in which it is exercised. If there is want of jurisdiction then the matter is coram non Judice and a writ of prohibition will lie to the court or inferior tribunal forbidding it to continue, proceedings therein in excess of its jurisdiction”

The object of both Writ of Prohibition and Certiorari is to restrain inferior courts from exceeding their jurisdiction, and, they could be issued not merely to courts but to all authorities exercising judicial or quasi-judicial functions. There is one fundamental distinction between two writs. When an inferior court takes up for hearing a matter over which it has no jurisdiction, the person against whom the proceedings are taken can move the superior court for writ of prohibition and on that, an order will issue forbidding the inferior court for continuing the proceedings. On the other hand, if the court completes that course or matter and gives the decision, the party aggrieved would have to move to superior court for a writ of certiorari, and on that an order will be made quashing the decision on the ground of want of jurisdiction. Broadly speaking right of prohibition will lie when the proceedings are to any extent pending and the writ of certiorari for quashing after they have terminated in a final determination.

Views which are similar to the aforesaid were expressed in **Hari Vishnu vs. Ahmed Ishaque AIR 1955 SC 233** by the Supreme Court of India.

The writ of Prohibition act as a remedy for the future by preventing a public authority such as an inferior tribunal from proceeding to exercise power on the ground that if writ is not issued, it would tantamount to invalid exercise of power due to the fact that it is *ultra vires* or in excess of power.

Atkin L.J. in the case of **R vs. Electricity Commissioners (1924) 1 KB 171 206** made the following observations,

I can see no difference in principle between certiorari and prohibition, except that the latter may be invoked at an earlier stage. If the proceedings establish that the body complained of exceeding its jurisdiction by entertaining matters which would result

in its final decision being brought up and quashed on certiorari, I think that prohibition will lie to restrain it from so exceeding its jurisdiction.

In other words, writ of prohibition would lie in order to prevent an officer or authority from proceeding in a given matter to exercise a power which it does not have under the law or acting in excess of it. Both writs of certiorari and prohibition are designed to prevent excess or abuse of power by public authority. Prohibition will not be granted if the authority has acted within its lawful jurisdiction even if its decision may later prove to be wrong.

Wade and Forsyth in their monumental work titled '**Administrative Law**' has analysed a quashing order (*certiorari*) and prohibiting order (prohibition) and have expressed the view that quashing order and the prohibiting order are complimentary remedies, based upon common principles so that they can be classed together. (10th Edition at Page 509)

A prohibition order issues to forbid some act or decision which would be ultra vires. The quashing order looks to the past, a prohibiting order to the future.

The said learned authors have expressed the view that a writ of prohibition shall have prospective effect and not retrospective as certiorari.

Primarily it lay to prohibit an inferior tribunal from doing something in excess of its jurisdiction (vide 10th Edition at Page 511)

Lord Denning MR in **R vs. Greater London Council ex p. Blackburn** [1976] 1 WLR at 559 made the following observation with regard to the writ of prohibition,

It is available to prohibit administrative authorities from exceeding their powers or misusing them. In particular, it can prohibit a licensing authority from making rules or granting licences which permit conduct which is contrary to law.

In **Warnakulasuriya Chathura vs. Officer in Charge (CA/WRT/518/2024 decided on 09.08.2024)** Sobhitha Rajakaruna J has cited the following *dicta* of Atkin L.J in **R vs Electricity Commissioners** case.

*“Although a prohibiting order was originally used to prevent tribunals from meddling with cases over which they had no jurisdiction, it was equally effective, and equally often used, to prohibit the execution of some decision already taken but ultra vires. So long as the tribunal or administrative authority still had some power to exercise as a consequence of the wrongful decision, the exercise of that power could be restrained by a prohibiting order.” (Vide **H.W.R.Wade and C.F.Forsyth, Administrative Law [11th Edition] p.511**).*

In the said case, Rajakaruna J has expressed the view that prohibiting orders need to be linked with an alleged wrongful decision which is disclosed in the writ application.

In case of absence or total lack of jurisdiction, a Writ of Prohibition would be available against a judicial or quasi-judicial authority prohibiting it from exercising the jurisdiction as was held in **Assistant Collector, Central Excise vs. National Tobacco Co. AIR 1972 SC 2563; (1972) 2 SCC 560; Isha Beevi vs. Tax Recovery Officer AIR 1975 SC 2135; (1976) 1 SCC 70.**

Upon the consideration of the said judicial authorities, it is clear that a Writ of Prohibition may be issued when there is a violation of the principles of natural justice as per **Hari Vishnu Kamath vs. Ahmad Ishaque AIR 1955 SC 233; R vs. Paddington Rent Tribunal [1949] 1 All ER 720; [1949] 1 KB 666.**

According to **Dr. Sunil Cooray in ‘Principles of Administrative Law in Sri Lanka’ [Vol. II, 4th edn, (2020) Page 911:**

The circumstances in which certiorari and prohibition will be available have been summed up by Lord Justice Atkin, an English judge, in the following famous words which on numerous occasions have been cited and followed by our Courts:

‘Whenever any body of persons having legal authority to determine questions affecting the rights of subjects, and having the duty to act judicially, act in excess of their legal authority they are subject to the controlling jurisdiction of the King's

Bench Division exercised in these Writs [R V Electricity Commissioners (1924) 1 KB 171]

In **Ceylon Mineral Waters Ltd vs. The District Judge, Anuradhapura (1966) 70 NLR 312**, the Court held that “*an application for Writs of Certiorari and Prohibition should not be made prematurely*”.

The Respondents strenuously contended that the instant writ application is premature and therefore should be dismissed *in limine*. According to them, the only reason cited by the Petitioner for filing this writ application is that “the Petitioner verily believes that he would be arrested”. In my view, in order that the issuance of a writ may not be premature or useless, it must appear that the court, tribunal or the relevant public authority has taken some steps towards doing the act which is prohibited. Mere apprehension of the prospect of an arrest would not suffice. The action sought to be prohibited must be pending.

Furthermore, the writ will not be issued when it would be ineffectual as where if the act sought to be prohibited is performed, it would be void and therefore could not affect the rights of the parties.

In the instant matter, there is no decision to arrest the Petitioner, nor is there indication that such a course of action is pending, the only step taken is the imposition of a travel ban. It transpired that not even a statement was recorded from the Petitioner. I am inclined to agree with the submissions of the Respondents on this aspect and hold that the instant application is premature. For this reason alone, the instant matter may be dismissed.

In **Sub-Divisional, Officer, Mirzapur vs. Raja Sri Niwas Prasad Singh 1966 AIR SC 1164**, the Supreme Court of India held that when the compensation officer did not decide as yet either to allow or not to allow the objections against cases to be reopened, then in such circumstances at that stage the Writ of Prohibition was not called for.

In the said case the Supreme Court of India held thus;

The question whether the Compensation Officer would or would not allow the objection cases to be reopened still remains to be decided and the High Court was in error in issuing a writ of prohibition when the Compensation Officer had clearly jurisdiction to determine whether to reopen the proceedings. The question of jurisdiction can only be decided after it has been considered by the Compensation officer and he proceeds to reopen the proceedings. No such question appears to have been raised before the Compensation Officer and in fact it was not so raised even in the petition before the High Court. In such circumstances the writ of prohibition was not called for and ought not to have been issued. It is manifest that the State Government was not sent a notice of the hearing of the, objection cases and it has a right to move the Objection Officer to reopen the proceedings. Whether the Compensation Officer would, reopen the proceeding or not is a matter for the Objection Officer to decide in the first instance. It cannot be said at this stage that there is no jurisdiction in the Objection Officer to consider the petition of the State Government.

Similarly in **M/S. Guduthur Bros. vs. The Income-Tax Officer, Special Circle, Bangalore (1960 AIR 1326)**, it was held that when only show cause notice was issued against the Petitioner as to why proposed action would not be taken against him, the Writ of Prohibition should not be issued.

Another aspect of this case which warrant the attention is as to whether the relief prayed for by the Petitioner in Paragraph (b) is overly broad, vague and open-ended. The Respondents have submitted that it is so. I agree with the contention of the Respondents. The terminology used in the said paragraph (b) is such that if such relief is granted as prayed for, the Petitioner could never be arrested in connection with the Easter Sunday Bomb attack irrespective of whatever evidence available justifying such arrest, and this is indeed too broad.

In this regard, I am guided by the judgement in **K Gunapalan and Others vs. Hon. Minister of Rural Economic Affairs (CA/WRT/431/2016) decided on 25.09.2020**. In the said case, the Petitioner has prayed for *inter-alia* the following;

“(i) Make order compelling the 1st and/or the 2nd Respondent or any other person or authority named by Your Lordship’s Court, to hold an inquiry into the claim or dispute of the Petitioners morefully set out in the petition;

(ii) Make order preventing or restraining any Government authorities from naming any institution, with hospitals, schools etc. put up by them other than with the name of Paddiruppu.”

In prayer (i), the words used are “any other person or authority named by Your Lordship’s Court” while in prayer (ii), “any Government authorities”. I wish to cite the following two paragraphs from the said judgement of Obeysekere J

*“The learned Senior Deputy Solicitor General has also submitted that the relief sought by the Petitioners is broad and vague. The order sought in paragraph (a) above is not limited to the 1st and 2nd Respondents but is directed at ‘any other person or authority named’ by this Court. Similarly, the relief sought in paragraph (b)(iii) above is directed at any Government authority which demonstrates that the Petitioners themselves do not know who has the power to name roads etc. This Court, in **Sipkaduwa Anthony Danawathie Wimalasuriya vs Commissioner General of Lands and Others CA (Writ) Application No. 47/2014; CA Minutes of 29th July 2018(9)** held that, “This Court cannot issue writs in such vague terms against an array of Government Officials. This application, filed seeking vague reliefs, shall, in my view, be dismissed in limine on that basis.”*

In the above circumstances, this Court upholds the above legal objections raised by the learned Senior Deputy Solicitor General, with the consequence being that this application is liable to be dismissed in limine.”

Respondents also contended that there is misrepresentation and/or suppression of material facts. Primarily the said contention of the Respondents is based on Paragraph 17 of the Petition which alludes to the fact that the Petitioner had no interaction with the person named Asad Mowlana. As I have stated elsewhere in this Order, the Respondents produced a photograph marked D2 depicting the Petitioner

with the said Asad Mawlana. No clear explanation was offered by the Petitioner as to under what circumstances the said photograph was taken except the fact that the Petitioner cannot recall. The Respondents submitted that there is a clear distinction between asserting as in Paragraph 17 of the Petition that the Petitioner has never met the said person and had no interaction with him whatsoever and stating that he cannot remember meeting Asad Mawlana.

The Respondents submitted that the Petitioner ought to have acted more responsibly in placing before Court facts by way of a categorical assertion since such assertions are confirmed by an affidavit.

I am inclined to agree with the Respondents with regards to this matter. The superior courts in this country as well as courts in other jurisdictions have consistently held that suppression and misrepresentation may form the basis for the dismissal of the writ application.

In **Biso Manika vs. Cyril De Alwis and Others (1982 1 SLR page 368)** It was held that;

A person who applies for the extra ordinary remedy of writ must come with clean hands and must not suppress any relevant facts from courts. He must refrain from making any misleading statements in courts.

In **Pearls Hotel vs. Cey-Nor Foundation Ltd and Others (CA Writ 266/2018)** decided on 02.08.2021 It was held thus;

It is settled law that a party seeking prerogative relief should come to court with clean hands. The expression is derived from one of equity's maxim - He who comes to equity must come with clean hands.

In the case of **Thuppahi Arachchige Ruwan Prasad and Others vs. Inspector General of Police and Others (CA/ WRIT/511/2024)** decided on 27.02.2026 the court cited with approval the case of **S.J.S Business Enterprises (Pvt) Ltd vs. State of Bihar and Ors AIR 2004 SC 2421** in which it was held thus;

As a general rule, suppression of a material fact by a litigant disqualifies such litigant from obtaining any relief. This rule has been evolved out of the need of the Courts to deter a litigant from abusing the process of Court by deceiving it. But the suppressed fact must be a material one in the sense that had it not been suppressed it would have had an effect on the merits of the case. It must be a matter which was material for the consideration of the Court, whatever view the Court may have taken.

Similarly, the following *dicta* in **W.S. Alphonso Appuhamy vs. L. Hettiarachchi (1975-76) 77 NLR 131** was cited with approval by Laffar J in **Deshabandu Tennakoon vs. Hon. Magistrate of Matara (CA/WRT/168/25) decided on 17.03.2025.**

The necessity of a full and fair disclosure of all the material facts to be placed before the Court when an application for a writ or injunction is made and the process of the Court is invoked is laid down in the case of The King v. The General Commissioners for the Purpose of the Income Tax Acts for the District of Kensington – Ex-parte Princess Edmond de Poignac – (1917) (1917) 1K.B. 486 Kings Bench Division 486. Although this case deals with a writ of prohibition the principles enunciated are applicable to all cases of writs or injunctions. In this case a Divisional Court without dealing with the merits of the case discharged the rule on the ground that the applicant had suppressed or misrepresented the facts material to her application. The Court of Appeal affirmed the decision of the Divisional Court that there had been a suppression of material facts by the applicant in her affidavit and therefore it was justified in refusing a writ of prohibition without going into the merits of the case. In other words, so rigorous is the necessity for a full and truthful disclosure of all material facts that the Court would not go into the merits of the application, but will dismiss it without further examination.

In **Walker Sons & Co. Ltd vs. Wijayasena (1997) 1 SLR 293**, Ismail J held that;

A party cannot plead that the misrepresentation was due to inadvertence or misinformation or that the Applicants was not aware of the importance of certain facts which he omitted to place before court.

This same issue was considered by Marsoof J in **Dahanayake and Others vs. Sri Lanka Insurance Corporation Ltd and Others (2005) 1 SLR 67** which is also another judgement cited by Laffar J in **Deshabandu Tennakoon**

The 1st Respondent has also taken up a preliminary objection on the basis that the Petitioners have suppressed or misrepresented material facts. This by itself is a serious obstacle for the maintenance of the Petitioners' case. Our Courts have time and again emphasised the importance of full disclosure of all material facts at the time a Petitioner seeks to invoke the jurisdiction of this court, by way of writ of certiorari, mandamus or any of the other remedies referred to in Article 140 of the Constitution.

Even the Supreme Court of India has considered this issue in several of its judgements where Ruma Pal J in **S.J.S. Business Enterprises (P) Ltd. V State of Bihar and Ors AIR 2004 SC 2421** held thus;

As a general rule, suppression of a material fact by a litigant disqualifies such litigant from obtaining any relief. This rule has been evolved out of the need of the Courts to deter a litigant from abusing the process of Court by deceiving it. But the suppressed fact must be a material one in the sense that had it not been suppressed it would have had an effect on the merits of the case. It must be a matter which was material for the consideration of the Court, whatever view the Court may have taken.

The instant writ application was filed seeking the prevention of arrest of the Petitioner. However, in the prayer it is not specifically stated in respect of which matter pending before a Magistrate that the reliefs have been sought. The only pending judicial proceedings the Petitioner has averred to pertains to Colombo Fort Magistrate Court case bearing No. B/35882/24 in which a travel ban on the Petitioner has been imposed.

I wish to place on record the fact that, in the recent past, considerably significant number of writ applications have been filed before this Court seeking relief by way of Writ of Prohibition preventing the arrest of individuals suspected of or concerned with various matters of a criminal nature. It is my view that, the Petitioners in some

of these matters may not have adequately comprehended the scope and ambit of Writ of Prohibition.

In criminal matters, the writ court cannot and should not perform the role of a trial court before which evidence would be placed, witnesses cross examined, the testimonial trustworthiness of witnesses assessed, and the court to determine as to whether the prosecution has proved the case beyond reasonable doubt.

The primary functions of the writ court must be clearly distinguished from those of the trial court. If the moment an investigation is commenced and the persons who are subjected to such investigations were to come before this Court even prior to such persons being questioned and statements recorded and endeavor to obtain interim relief or substantive relief by way of Writ of Prohibition, it would lead to a situation where the criminal justice system of this country would be severely jeopardized, pace of investigations retarded, and suspects enjoying immunity from arrest for a prolonged period of time. Furthermore, the writ court would be flooded with applications of this nature which are premature, vague or overly broad. In this scenario, neither administration of criminal justice nor interests of justice would be served. Thereby, the ultimate loser would be the general public at large.

The unwarranted intervention of this Court which properly fall within the province of an ongoing criminal investigation or proceedings before a Court of First Instance must be guarded against and resisted. A superior court must remain mindful of its supervisory and discretionary limits and exercise due judicial restraint, particularly where its intervention may impede, pre-empt or otherwise interfere with the lawful course of a criminal investigation or the proper exercise of jurisdiction vested in the subordinate courts.

In **Deshabandu Tennakoon**, the Court held that it is entitled to take into consideration the wider ramifications of its pronouncements and decisions. In the said case, Court held thus;

Furthermore, it is a well-established legal principle that when Courts exercise their writ jurisdiction, they do not consider only the legal aspects of a case but also the broader impact of their judgement on society.

I have already elucidated on the scope of the Writ of Prohibition elsewhere in this order and do not wish to repeat it.

I am also guided by several judicial authorities which considered these matters and held that the writ court should not step into the shoes of the Magistrate Courts or any other trial court.

In **Warnakulasuriya Chathura (Supra)**, Rajakaruna J held thus;

The trite law is that there should be (a) a reasonable complaint, (b) credible information or (c) a reasonable suspicion to arrest a person without a warrant. The said principle is embodied in Section 32(1) (b) of the CCPA. Hence, based on the circumstances of this case, I am of the view that it is not this Court but the prosecution or the learned Magistrate are the best persons to assay the document marked 'P8' by which the Petitioner has borrowed a large sum of money from the 2nd Respondent and the subsequent conduct of the Petitioner who has admitted his liability by making part payments to the said 2nd Respondent. Similarly, it is in the hands of the prosecution to ascertain whether credible information or reasonable suspicion exists against the Petitioner. It can be inferred that the learned Magistrate was likely persuaded to believe that a reasonable suspicion exists regarding the Petitioner's involvement in an offence, based on the observations ('X') made by the CID. The document marked 'P8' cannot be considered as a reasonable commercial agreement upon which the Petitioner could claim alternative remedies to resolve the disputes between the Petitioner and the 2nd Respondent. The judicial process concerning judicial review must be approached with responsibility and should not be misused by filing Review Applications without merit, thereby transforming the Review Court into a de facto Bail Court. Judicial review, especially in respect to prevent arrest or to quash judicial orders, should only be sought where there is a clear

and blatant error in the decision or the decision-making process or when the authorities have acted beyond their jurisdiction.

In this context, the *dicta* of Mahinda Samayawardhena J in **Bathiudeen Mohamed Riyaj vs. Acting Inspector General of Police and Others (CA/WRT/398/2020 decided on 21.10.2020)** is relevant. The said matter pertained to a suspect arrested in connection with the Easter Sunday terror attacks by the Criminal Investigation Department and was detained on detention orders signed by the President under the Prevention of Terrorism (Temporary Provisions) Act. The Court held thus;

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 scrutinize 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.

Although the learned President's Counsel and the learned DSG alluded to provisions of the PTA and Code of Criminal Procedure Act and Article 126 of the Constitution with regard to the power of arrest of suspects, I do not think that it is necessary in the instant matter to make pronouncements on those submissions, taking into consideration the other aspects of this matter to which I have adverted to.

However, one other matter may warrant to be mentioned. Whilst the Order in the instant matter was pending, the Petitioner filed a motion dated 30.09.2026 by which the attention of this Court was drawn to the judgement delivered by another division of this court in **CA/WRT/07/2025 (Ceylon Newspapers (Private) Limited vs. Inspector General of Police and Others)** on 30.09.2026. In the said case, Writ of Prohibition was issued preventing the arrest of the directors, officers and employees of the Petitioner Company. In the interests of justice, I have considered the aforesaid judgement and hold that the facts of that case could be distinguished from the instant matter and therefore it need not be followed.

Unlike in the instant matter, the investigations in **Ceylon Newspapers (Private) Limited** had proceeded to a considerable extent. The learned Magistrate, upon the consideration of the facts reported by the relevant investigative agency, directed that the Chairman of the Petitioner Company be produced before Court. Subsequently,

the Chairman of the Petitioner Company was formally named as the third suspect. It was only thereafter; the Petitioner had invoked the supervisory jurisdiction of this Court.

Furthermore, the employees of Ceylon Newspapers (Private) Limited were questioned by the police in connection with the transactions in issue and some employees were arrested. However, in the instant matter, quite apart from being named as a suspect, the Petitioner has not even been questioned. In that case, there was a specific allegation pertaining to the issuance of certain cheques, whereas in the instant matter, it is far too early to identify such allegations since the investigations are proceeding and as of now at an early stage. It is entirely possible that the investigations may ultimately disclose no material whatsoever against the Petitioner, in which event the present concern may not arise at all.

For the reasons adumbrated above, I refuse to issue formal notices on the Respondents. The application is dismissed.

No order with regard to costs.

PRESIDENT OF THE COURT OF APPEAL

K. M. S. Dissanayake, J.

I agree.

JUDGE OF THE COURT OF APPEAL