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

In the matter of an application for the mandates in the nature of a Writs of Certiorari, Mandamus and Prohibition under and in terms of the article 140 of the Constitution of the Democratic Socialist Republic of Sri Lanka.

CA Writ Application
No.: CA/writ/788/24
Matale High Court Case No.:
MT/HC 31/2024

Amil Patel alias Yogi Patel
No.323, Sherwood DR,
Yardley PA 19067.
Presently at Clear Point Residencies
Apt # 16B,
14, Perera Mawatha,
Kotugoda,
Rajagiriya,
Colombo,
Sri Lanka

Petitioner

Vs

1. Hon. Attorney General
   Attorney General's Department
   Colombo 12

   1st Respondent

2. Hon High Court Judge,
   High Court
   Matale

   2nd Respondent

3. Officer-in Charge
   Sports Crime Investigation Unit
   Sports Ministry,
   Sugathadasa Indoor Sports Complex
   Colombo 14

   3rd Respondent

4. The Minister,
   The Ministry of Sports and Youth Affairs,
   No.09, Philip Gunawardena Mawatha,
   Colombo 07

   4th Respondent

5. The Minster
The Ministry of Foreign Affairs,
Foreign Employment and Tourism,
No.696/4, Maradana Road,
Colombo 10

5th Respondent

Before:	Dhammika Ganepola, J. Damith Thotawatte, J.
Counsel	Neranjan Jayasinghe, with Mahesh Kalugampitiya, Randunu Heellage, and Imangsi Senarath for the Petitioner. Suharshi Herrath, DSG for the Respondents.
supported	05-03-2025
Written submissions tendered on:	18-03-2025 By the Petitioner
Order Delivered on:	02-04-2025

Damith Thotawatte, J.

The Petitioner was indicted in the High Court of Matale under indictment No MT/HC/31/2024 for committing the offence of corruption in sports, under The Prevention of Offences Relating to Sports Act, No. 24 OF 2019. The Indictment had been served on the Petitioner on 14-05-2024 and one of the bail conditions imposed on the Petitioner had been that he should not leave the country until the conclusion of the trial. On 09-08-2024 upon the Petitioner entering a plea of "not guilty" the trial has commenced with the prosecution leading the evidence of the 1st witness.

As the Petitioner (accused) is a United States citizen, several applications had been made to relax his bail conditions enabling him to visit his family. The High Court has refused to lift the relevant travel restrictions. There is no indication the Petitioner attempted to revise this order.

It is the position of the Petitioner that the decision taken by the 1st Respondent to indict him under Act No. 24 of 2019 is arbitrary, unreasonable and ultra-vires.

The Petitioner has filed this present Application seeking, *inter alia*, the following reliefs:

c) Grant and issue Writ of Certiorari to quash the indictment filed in case H.C. Matale MT/HC 31/2024
d) Grant and issue writ of Certiorari to quash the orders of the Learned High Court Judge of Matale (2nd Respondent) dated 22.10.2024 and 05.12.2024 refusing to lift the travel ban temporarily.
e) Grant and issue writ of Mandamus directing the 2nd Respondent to lift the travel ban.
f) Grant and issue an interim order lifting the travel ban imposed by the High Courts of Matale in case No. MT/HC 31/2024, until the final determination of this application.

After filing this application, the Petitioner had left the country in violation of the bail conditions imposed by court and as such presently can be considered a fugitive. As such relief sought by prayer d e & f is now redundant. The counsel for the petitioner informed court he will be pursuing only prayer c.

prima facie there are three threshold issues that should be considered regarding this application.

The Petitioner is challenging the indictment on the ground that he cannot be prosecuted for an offence under Act, No. 24 of 2019 as the sports event he was involved in does not fall in to the category of sports events envisaged by the said act and as such the indictment is arbitrary, unreasonable and ultra-vires.

It is the Petitioners contention that alleged conduct attributed to him cannot be considered an offence due to the fact the activity he was involved in at that time is not covered by Act, No. 24 of 2019. The Petitioner was served with the indictment on 14-05-2024 and at least from that date he should have been aware of the above. This application has been submitted on 10-12-2024 and the Petitioner has given no explanations for the for the nearly a seven-month delay in invoking the Jurisdiction of this court

In Biso Menika Vs. Cyril de Alwis and Others[1] it was observed that, "What is reasonable time and what will constitute delay will depend upon facts of each particular case". Considering the facts and circumstances of this particular case it is my view that there is an unreasonable and unexplained delay Seeking redress and as such the Petitioner is guilty of laches.

[1] (1982) 1 **Sri LR** 368

Further a jurisdictional challenge could have been taken up in the trial court itself. The trial Court has the power to rule regarding such issues. In spite of the availability of a relatively convenient and speedier remedy the petitioner has opted to seek judicial review via prerogative writs.

Under Sri Lankan administrative law, the general rule is that a petitioner should pursue any alternative remedy provided before invoking the writ jurisdiction of the Court of Appeal. The basis for the rule primarily lies in judicial precedent and the from the wide discretion given regarding issuance of writ granted by Article 140 of the constitution.

Initially In Sri Lankan courts had taken a restrictive approach regarding this rule. In Obeysekera v. Albert and others[2] The court emphasized that certiorari is not a right but a discretionary remedy, only available if reasonably available and equally appropriate other remedies are first exhausted.

In Somasunderam Vanniasingham v. Forbes and Another[3] The Supreme Court overruled the earlier Court of Appeal decision in Obeysekera v. Albert and similar cases, stating that they wrongly restricted judicial review. Rejecting this restrictive view The Supreme Court held: that there is no rule requiring exhaustion of alternative administrative remedies before seeking judicial review, if those remedies are not satisfactory.

It is clear that the reason to overlooked general rule is the fact that the available alternate remedies are inadequate or inefficient to achieve the required purpose. An alternate remedy even if provided by statute will not preclude a writ if that alternate remedy is not capable of curing the defect in question.

In "Somasunderam Vanniasingham" Supreme Court has further remarked that the delay in securing an effective other remedy has been considered unsatisfactory. This means an alternative remedy that is not speedy, effective or adequate is ground for issuance of a writ of certiorari.

In Virakesari Ltd. v. P. O. Fernando[4]. despite an appeal to the Commissioner of Labour being provided by law. The Supreme Court quashed the decision, recognizing that the officer's order was illegal on its face. The principle appears to be "if there is an illegality, there is no question that the Court can exercise its powers of review."

The situations where relief may be granted despite the availability of alternative remedies does not appear to be exhaustive. The decision appears to be based on the adequacy of the alternate remedy available under the circumstances to effectively achieve the relevant purpose or prevent an injustice.

[2] (1978–79) 2 Sri LR 220
[3] (1993) 2 Sri LR 362
[4] (1963) 66 NLR 145

In the instance case the alternate remedy available is prima facie faster and effective than seeking judicial review via prerogative writs. The Petitioner has not disclosed any grounds that would demonstrate any shortcoming of the alternate remedy other than relying on the Judgement of Gulam Hussain Ali Asgar Shabbir and Others Vs. LOLC Finance[5]. In the "Gulam" case the court has not rejected the submissions regarding an availability of alternate remedies but has decided to consider it at a later stage.

In "Gulam" his Lordship Justice Rajakaruna has stated; "Having overruled the first preliminary objection, this Court needs to consider the other preliminary objection on the availability of an alternative remedy, only when assaying whether the Petitioner has made out an arguable case, based on prima facie questions of law which warrants this Court to take into consideration at the merit stage of the instant Application."

The above decision does not indicate that availability of an alternate remedy cannot be considered at the threshold state. How the court would approach this issue depends upon the nature and the circumstances of each case. In the Instant case I see no impediment to consider this matter at the threshold stage.

As the Petitioner had not satisfied the court regarding not availing themselves of the effective and adequate remedy that was available, the petitioner is not entitled relief sought by this application.

In WTL Automobiles (Pvt) Ltd v. Commissioner General of Inland Revenue[6] his Lordship Justice Laffar referring to a number of authorities has stated: "Furthermore, it is settled law that a party seeking prerogative relief should come to Court with clean hands. The expression is derived from one of Equities maxims: 'He who comes to Equity must come with clean hands.' 'Clean hands' is the legal principle that only a party that has done nothing wrong can come to a Court with a lawsuit against the other person. If the party bringing the suit has acted in an unfair, illegal, dishonest, or otherwise immoral way in regards to the subject matter at issue then they have violated an equitable principle and have "unclean hands." Someone who violates equitable norms cannot then seek equitable relief or claim a defence based on the law of equity."

In the instant case the Petitioner after filing this application has fled the country deliberately violating the conditions upon, he was released on bail. As writ is a discretionary remedy the conduct of the Petitioner is also very relevant. The Petitioners action indicate that whilst seeking relief from court he has taken steps or planned to evade consequential legal liabilities in the event he is unsuccessful. It is my view that a person with such contempt for legal processes should not be entitled to seek prerogative remedies from this court.

[5] CA Writ 181/2024
[6] CA/WRT/0014/2020

On above grounds I am of the view that the Petitioner has not satisfied the minimum threshold requirements which warrant this court to issue formal notice of this application to the respondents

Application is dismissed.

JUDGE OF THE COURT OF APPEAL

Dhammika Ganepola, J.

I agree.

JUDGE OF THE COURT OF APPEAL