

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

In the matter of an application under and in terms of Article 126 of the Constitution of the Democratic Socialist Republic of Sri Lanka.

SC / FR / 644 / 2010

Manjula Balasuriya,

Attorney – at – law

On behalf of the Detainee.

Senarathge Lakshman Cooray,

No. 154, Tissa Mawatha, Bangalawatta,
Kottawa.

(Detained at the Terrorist Investigation
Division, Boossa)

PETITIONER

-Vs-

1. Prasanna Alwis,

Officer-in-charge,
Terrorist Investigation Division,
Colombo 01.

2. Director,

Terrorist Investigation Division,
Colombo 01.

3. Mr. C.N. Wakishta,

Deputy Inspector General of Police,
Terrorist Investigation Division,

Colombo 01.

4. R.M.N.G.A. Perera,

Superintendent of Police,
Terrorist Investigation Division,
Colombo 01.

5. Senaka Kumarasinghe,

Assistant Superintendent of Police,
Criminal Investigation Department,
Colombo 01.

6. Abdeen,

Inspector of Police,
Officer in Charge-Unit II,
Terrorist Investigation Division,
Colombo 01.

7. Subhair,

Sub Inspector,
Terrorist Investigation Division,
Colombo 01.

7A. Sandaruwan,

Police Constable,
Terrorist Investigation Division,
Colombo 01.

8. Inspector General of Police,

Police Head Quarters, Colombo 01.

9. The Secretary,

Ministry of Defence, Colombo 01.

10. The Hon. Attorney General

Attorney General's Department,
Colombo 12.

RESPONDENTS

Before : Murdu N.B. Fernando, PC, CJ,
A.H.M.D. Nawaz, J &
K. Priyantha Fernando, J

Counsel : Saliya Pieris, PC with Anjana Rathnasiri for the
Petitioner.
Azard Navavi, Deputy Solicitor General for the
Respondents.

Argued on : 03.05.2024

Decided on : 25.07.2025

A.H.M.D. Nawaz, J.

1. This application concerns the alleged infringement of the fundamental rights guaranteed under Articles 11 and 13(2) of the Constitution by officers of the Terrorist Investigation Division (TID), against a former Superintendent of Police, who, at the time of arrest, was a serving officer in the Sri Lanka Police.
2. The Petitioner, an Attorney-at-Law appearing on behalf of the Detainee (hereinafter referred to as "the Detainee"), seeks a declaration that the Detainee's fundamental rights were violated by reason of his unlawful detention and the infliction of torture and cruel, inhuman and degrading treatment, while in the custody of the TID from 12th August 2009 to 7th February 2011.

3. Leave to proceed was granted by this Court on 19th July 2011 for alleged violations of Article 11 (freedom from torture or cruel, inhuman or degrading treatment or punishment) and Article 13(2) (freedom from arbitrary detention contrary to procedure established by law).

Factual Background

4. The Detainee joined the Sri Lanka Police Department as a Probationary Assistant Superintendent of Police on 01st February 2001 and was thereafter promoted to the rank of Superintendent of Police on 01st February 2009. He had served in multiple regions, including conflict-affected areas such as Jaffna and Point Pedro, and was the recipient of commendations and awards, including the *Poorna Bhoomi* Medal and several IGP commendations.
5. On 12th August 2009, while serving in the Gampaha Division, the Detainee was summoned to the office of the Senior Superintendent of Police, Gampaha, and arrested by officers of the Terrorist Investigation Division. He was not informed of the reasons for his arrest, nor was a receipt issued to him at the time. That same night, he was taken to his residence in Kottawa, which was thoroughly searched by TID officers. Certain items were seized, some without receipts.
6. The Detainee was then transported back to Colombo and held at the TID facility under harsh and degrading conditions. He was made to sleep on a chair for three days. His statements were recorded intermittently from 15th

to 18th August 2009, with frequent interruptions, revisions, and threats.

The statements were allegedly recorded in a language unfamiliar to the Detainee, and not explained or read back to him.

7. During this period, and on several other occasions, the Detainee was allegedly subjected to sustained physical abuse, including beatings to his head, face, and feet; blows using books and clubs; and assaults to the soles of his feet with a wooden stick. These acts were attributed to the 4th and 7A Respondents, both members of the TID.
8. It is further alleged that the Detainee suffered injuries including deterioration of eyesight, persistent nosebleeds, gum swelling, and dental damage. These injuries, he maintains, were direct consequences of the physical abuse inflicted upon him while in TID custody.
9. On 08th July 2010, after his repeated refusal to provide a confession in the manner desired by the investigating officers, the Detainee was burnt with lit cigarettes by the 6th and 7th Respondents. Medical evidence, including a Medico-Legal Report submitted by Dr. (Mrs.) K.K. Joozar, corroborates the presence of multiple burn scars on his body consistent with the Detainee's allegations.
10. Although the Detainee was produced before Judicial Medical Officers on three earlier occasions on 26/02/2010, 11/03/2010, and 31/03/2010—those reports (marked 1R2, 1R3, and 1R4) did not reflect such injuries. The discrepancy is attributed to the failure of the JMO to examine him

meaningfully and the Detainee's fear of reprisal if he disclosed the extent of the abuse, particularly as TID officers were either present during the examination or stationed outside the examination room.

11. The Detainee was subjected to repeated threats of death and threats against his wife, who was then suffering from a serious spinal condition. In fear for her safety and his own life, the Detainee ultimately wrote multiple "confessions" as dictated by TID officers. It is contended that these purported confessions were fabricated, obtained under duress, and backdated to conceal the circumstances of their extraction.
12. Despite multiple detention orders issued under Section 9(1) of the Prevention of Terrorism (Temporary Provisions) Act No. 48 of 1979, the Detainee was transferred to Boossa Detention Camp on 14/09/2010, in violation of a valid detention order which specified the 6th Floor of the New Secretariat Building, Colombo, as the place of detention until 08/11/2010. This transfer occurred without lawful authority, and a subsequent detention order to detain the Detainee at Boossa was only issued on 07/11/2010, creating a period of 54 days of unlawful detention.
13. On 07/02/2011, an indictment was finally served on the Detainee in High Court Case No. HC 5526/11. On the same day, the Detainee was allegedly threatened once again by the 1st and 6th Respondents, demanding that he plead guilty or risk being returned to TID custody.

Violation of Article 11 – Torture and Inhuman or Degrading Treatment

14. Article 11 of the Constitution mandates in unequivocal terms that “*no person shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.*” This is an absolute right and admits of no exceptions, regardless of the identity of the person or the gravity of the allegations against them.
15. The jurisprudence of this Court has consistently held that even suspects accused of grave offences are entitled to the full protection of their fundamental rights. As was stated in ***Ansalin Fernando v. Sarath Perera and Others***,¹ the absence of medical evidence is not fatal to a claim under Article 11, and “*an allegation can be established even in the absence of medically supported injuries.*”
16. In the present case, however, the allegation of torture is not merely supported by testimonial evidence but also by corroborative medical evidence. The Medico-Legal Report tendered by Dr. (Mrs.) K.K. Joozar, who examined the Detainee upon an order of the High Court, records scars compatible with cigarette burns, injuries which the Respondents have failed to credibly explain. The prior medico-legal reports marked 1R2, 1R3, and 1R4, tendered by the Respondents, were all dated before the date of the alleged burning incident on 08/07/2010 and are therefore of no evidentiary value in refuting the subsequent infliction of torture.

¹ (1992) 1 Sri.LR 411

17. The Detainee's narrative that he was coerced into making a confession, including threats to his life and the safety of his wife, is further borne out by contemporaneous events, including her filing of a habeas corpus application in HCWA 01/2010, and her documented spinal surgery—a fact known to the TID officers. The repeated extraction of confessions under duress, the backdating of statements, and the use of physical violence to enforce compliance amount to conduct that squarely falls within the scope of *torture* as contemplated by Article 11.
18. The burden to provide a lawful justification or credible alternative explanation for the injuries observed while in state custody rests on the Respondents. The 6th and 7th Respondents, who were directly implicated in the acts of burning and assault, deny the allegations in general terms, but do not offer any explanation as to how the injuries occurred. The State, being in custody of the Detainee during the relevant period, bears a heightened duty of care, and the absence of a satisfactory explanation leads to the inescapable inference that the Detainee was subjected to torture while in state custody.
19. Furthermore, the specific methods described—beatings to the head and face, slapping, burning with cigarettes, deprivation of sleep, exposure to physical discomfort in confined, unventilated cells, and the threat of extrajudicial killing—all establish a pattern of cruel, inhuman and

degrading treatment, which cannot be justified under any pretext of national security or emergency.

20. Accordingly, this Court is satisfied that the Detainee has established, by clear and cogent evidence, that his fundamental right under Article 11 was violated by the 4th, 6th, 7th and 7A Respondents, for which the State is also vicariously liable.

Violation of Article 13(2) – Unlawful and Arbitrary Detention

21. Article 13(2) provides that “*no person shall be held in custody or detained except upon and in terms of an order made by a judge according to procedure established by law.*” Compliance with the terms of a detention order, including the place and duration of detention, is a mandatory requirement.

22. It is undisputed that the Detainee was transferred to the Boossa Detention Camp on 14/09/2010, notwithstanding a valid and subsisting detention order (P11E) dated 09/08/2010 that required his detention at the 6th Floor of the New Secretariat Building, Colombo 01 until 08/11/2010.

23. The next detention order authorizing his detention at Boossa was issued only on 07/11/2010, thereby leaving a period of 54 days (from 14/09/2010 to 06/11/2010) during which the Detainee was held in custody without lawful authority, and in clear violation of the detention order.

24. The explanation offered by the 1st Respondent—that transfers between authorized places of detention may be made for “*investigative and administrative purposes*”—is untenable. As held by this Court in

***Dissanayake v. Superintendent Mahara Prison and Others*²,**

compliance with all terms of a detention order, including the designated place of detention, is mandatory, and non-compliance is not excused except in exceptional circumstances. No such exceptional circumstance has been demonstrated in this case.

- 25.** Further, the Respondents have not furnished any detention order or judicial order covering the said period or explained why a new order was not obtained. In the absence of such justification, the transfer to Boossa prior to 07/11/2010 amounts to arbitrary detention in contravention of Article 13(2).
- 26.** It must also be noted that the Detainee was arrested on 12/08/2009 and remained in detention for nearly 18 months without being produced before a judge or being served with an indictment until 07/02/2011. Such protracted pre-indictment detention cannot be reconciled with the requirement of “procedure established by law.”
- 27.** The Detainee’s long-term isolation, denial of access to medical care, and the failure to comply with judicial directions to produce him before medical officers further underscore the arbitrariness and lawlessness that tainted the Respondents’ conduct.
- 28.** Accordingly, this Court finds that the Detainee has discharged the burden of proving a violation of his right under Article 13(2) of the Constitution,

² (1991) 2 Sri.LR 247.

and holds that the 1st to 8th Respondents and the State are liable for the unlawful and arbitrary detention of the Detainee.

Conclusions

29. Upon a comprehensive consideration of the pleadings, oral and documentary evidence, and the legal principles governing fundamental rights under the Constitution, this Court finds that the Petitioner, acting on behalf of the Detainee, has established beyond doubt that:

- The 4th, 6th, 7th and 7A Respondents directly inflicted torture and inhuman and degrading treatment on the Detainee, in contravention of Article 11 of the Constitution;
- The 1st to 8th Respondents, in their capacity as officers of the State, were complicit in or failed to prevent the unlawful detention of the Detainee in violation of Article 13(2);
- The State, as the constitutionally recognized custodian of the fundamental rights of all persons, is vicariously liable for the wrongful acts of its officers committed under color of official authority.

Award of Relief

30. In determining the appropriate relief, this Court is mindful of the grave violations, the duration and severity of the torture, the psychological and

physical trauma endured by the Detainee, and the institutional failure to provide safeguards guaranteed by law.

31. This Court also takes cognizance of the fact that the Detainee was a serving Superintendent of Police, thereby rendering the violation particularly egregious. The State's failure to observe the basic safeguards in treating one of its own officers signifies a profound erosion of the rule of law.

32. Accordingly, acting under Article 126(4) of the Constitution, this Court directs the State to pay a sum of Rupees 30,000/- (Rupees

33. Thirty Thousand) as compensation to the Detainee for the violation of his fundamental rights.

34. In addition, each of the following Respondents shall personally pay compensation as follows:

- The 4th Respondent: Rs. 200,000/-
- The 6th Respondent : Rs. 300,000/-
- The 7th Respondent: Rs.300,000/-
- The 7A Respondent: Rs. 200,000/-

These sums shall be paid to the Detainee within four months from the date of this judgment.

35. The Registrar is directed to forward a copy of this judgment to the Inspector General of Police and the Attorney-General, in order that any necessary and

appropriate disciplinary or prosecutorial action may be considered against the said Respondents in accordance with the law.

36. In the result, we declare that the fundamental rights guaranteed under Articles 11 and 13(2) of the Constitution have been infringed by executive and administrative action and grant the Petitioner relief accordingly.

JUDGE OF THE SUPREME COURT

MURDU N.B. FERNANDO, PC, CJ.

I agree

CHIEF JUSTICE

PRIYANTHA FERNANDO, J.

I agree

JUDGE OF THE SUPREME COURT