

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

In the matter of an application under Article 126 of the Constitution of the
Democratic Socialist Republic of Sri Lanka

S.C. Application No. 643/97

Kolitha Susantha Bandara Wijeratne, Attorney
at Law of 69 Gregory's Road, Colombo 7 for
and on behalf of Ranjith Dahanayeke, 4 33rd
Lane, off Bagatalle Road, Colombo 3.

Petitioner

Vs

1. T.V. Sumanasekera, Deputy Inspector
General, Criminal Investigation Department,
Colombo

2. J.R. Jayawardena Assistant Superintendent
of Police, Criminal Investigation Department,
Colombo

3. Inspector of Police Dhammika, Criminal
Investigation Department, Colombo

4. W.B. Rajaguru, Inspector General of Police,
Police Headquarters, Colombo

5. Chandrananda de Silva, Secretary to the
Ministry of Defence, Ministry of Defence,
Colombo

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

Respondents

**BEFORE: DHEERARATNE, J.,
WIJETUNGA, J. AND
BANDARANAYAKE, J.**

COUNSEL: S. L. Gunasekera with Chanaka Ranasinghe and Nirosha Jayamaha for the petitioner.

Kolitha Dharmawardana, DSG, with N. Pulle, SC for the respondents.

ARGUED ON: 24.07.1998

WRITTEN SUBMISSIONS TENDERED ON: for the petitioner 02.09.1998

For the respondents 09.09. 1998

DECIDED ON: 25.11.1998

JULY 24, 1998

Fundamental rights - Arrest and detention under Emergency Regulations - Regulations Nos. 17, 18 and 19 - Articles 13 (1) and 13 (2) of the Constitution.

The detenu was arrested by the Police on 14.7.1997 under Regulation 18 of the Emergency Regulations on suspicion that he had committed an offence under the Emergency Regulations by attempting to purchase helicopters for the LTTE for the purpose of waging war against the State. He was detained at the office of the CID on an order dated 14.07.1997 made by the 1st respondent under Regulation 19 (2). Thereafter, the 1st respondent by his order dated 21.7. 1997 purported to extend the detenu's detention for another 14 days whereas, in terms of the proviso to Regulation 19 (2) a person arrested under Regulation 18 in any area outside the Northern and Eastern Provinces shall not be detained for a period in excess of seven days and unless detained under Regulation 17 shall be produced before a Magistrate before the expiry of such period of detention or be released from custody. An order under Regulation 17 (1) was made only on 4.8.1997. On 8.8.97 the detenu was produced before a Magistrate on a "B" report when he was remanded to Fiscal custody and kept at the Pelawatte Detention Camp. On 9.9.1997 he was enlarged on bail. The 5th respondent, Secretary, Ministry of Defence did not file an affidavit justifying the order under Regulation 17 (1).

Held:

1. There was no justification to entertain any reasonable suspicion that the detenu had committed or was concerned in the offence of attempting to import helicopters for the LTTE for waging war against the State. Hence his arrest was illegal. There was also no justification to keep him in detention until August, 1997, without producing him before a Magistrate; nor were there any additional grounds to continue his detention under a detention order.

2. Detenu's fundamental rights guaranteed by Articles 13 (1) and 13 (2) of the Constitution were violated by the respondents.

APPLICATION for relief for infringement of fundamental rights.

November 25, 1998.

SHIRANI A. BANDARANAYAKE, J.

This application was made by an Attorney-at-law, on behalf of Ranjith Dahanayake (the detenu), who was in custody at that time.

On or about 12.07.1997, some officers of the Criminal Investigations Department (CID) called over at the house of the detenu when the detenu was away and requested his wife to inform him that he should report to the CID as it was necessary to obtain a statement from him. These officers did not inform the detenu's wife of the reason or in what connection they wanted to record a statement from him. The detenu reported to the CID office on 14.07.1997 as requested and he naturally expected to return home the same day. However, the CID officers detained the detenu and he was kept in custody even at the time this application was filed. Since the detenu's wife was unaware as to where or for what reason the detenu was detained, she made inquiries from the Human Rights Task Force on or about 17.07.1997. She was informed that the detenu was being detained at the CID upon a Detention Order. About 10 days after the detenu was taken into custody, the 3rd respondent recorded a statement from the detenu's wife. In the course of recording that statement, the 3rd respondent made no allegation or suggestion that the detenu was even suspected of having committed any offence under any law. Upon specific inquiries made by the detenu's wife, she was informed by the 3rd respondent only that the detenu was arrested along with two other persons and that he would be dealt with in accordance with the law.

The detenu was kept in custody at the CID office until 08.08.1997 on which date he along with Farook Sally and Rajan Vairavanathan, was produced before the Magistrate, Colombo Fort, in case No. 44377 who remanded him till 20.08.1997. The detenu's wife thereafter found out that the detenu was being detained at the Pelawatte Detention Camp. She visited the detenu at the said Detention Camp on 09.08.1997 and he told her that at no stage was he informed of any reason for the arrest and detention and further that no Detention Order was either shown or served on him.

The detenu alleges that his detention is illegal and that his fundamental rights guaranteed under Articles 13 (1) and 13 (2) of the Constitution were violated by the actions of the 1st to 5th respondents.

The following facts in this case are not in dispute between the parties:

(a) that the detenu was arrested by the CID on 14.07.1997 and kept in custody at the office of the CID until 08.08.1997;

(b) that the detenu was produced before the Magistrate, Fort, upon a 'B' report on 08.08.1997 and remanded to Fiscal custody (1R13);

(c) that on 05.09.1997, after the 6th respondent granted sanction, the Magistrate ordered that the detenu be released on cash bail in a sum of Rs.1,000,000 and the said bail having been furnished on 09.09.1997, he was released on bail after having been detained for a period of 57 days (1 R13).

The only affidavit for the respondents was that filed by the 1st respondent. His position was that the CID had been receiving information from intelligence sources over a period of time that subversives were attempting to secure air control through the procurement of military aircrafts and that information was received that a certain person had inquired from the People's Bank regarding the possibility of obtaining a very large loan facility for the purpose of obtaining military aircrafts (1R1). Military aircrafts, according to the 1st respondent, were usually purchased by the Air Force/Defence Ministry from registered suppliers overseas and there was no record of a Sri Lankan making any direct sale of such aircrafts to the authorities. It was also known to the intelligence sources that the Liberation Tigers of Tamil Eelam (LTTE) had its agents all over the country regularly approached banks to secure financial arrangements for the purpose of procuring arms. In these circumstances, having regard to the significance of the events, a reasonable suspicion was entertained that efforts were underway to secure aircrafts for the LTTE. After further investigations, the person who allegedly made inquiries from the People's Bank was identified as one Rajan Vairavanathan and he was arrested on 11.07.1997 by the officials of the CID at the Bandaranaike International Airport. Before his arrest, it was found that he was not a registered arms supplier to the authorities and this buttressed the suspicion of the CID on him. Subsequent to the arrest of said Rajan Vairavanathan, his statement was recorded (1132) which revealed that one Farook Sally and the detenu were associated with him on a previous occasion to purchase M1-14 helicopter gunships from a company known as Kolnet Ltd. in Israel. Subsequent to the arrest of said Farook Sally and his statement (1R3) been recorded there was further confirmation of the detenu's involvement in an attempt to purchase M1-14 helicopter gunships from Kolnet Ltd., Israel.

In view of a suspicion entertained that the said helicopter gunships were attempted to be purchased for the purpose of waging war against the State, steps were taken to arrest the detenu in respect of an offence committed under Regulation 24 read with Regulation 32 of the Emergency Regulations. Accordingly, on 12.07.1997, Inspector H. K. D. Dayapala of the CID visited the residence of the detenu with a view to taking him into custody. As the detenu was not present at that time at his residence, a female "who claimed to be the wife of the detenu" was informed by Inspector Dayapala that the detenu was required by the CID for questioning in connection with a transaction involving illegal procurement of helicopter gunships, on the information revealed by one R. Vairavanathan who was being questioned by the CID (1R4). The 1st respondent

averred that the detenu was informed of the offence committed by him in terms of the Emergency Regulations, by Superintendent of Police H. H. M. R. Premaratne of the CID and was arrested at 3.00 pm on 14.07.1997 at the CID when he surrendered. The detenu was accordingly detained at the CID under Regulation 19 (2) of the Emergency Regulations on a Detention Order dated 14.07.1997 (1136) issued by the 1st respondent, which was shown to the detenu. A statement of the detenu was recorded subsequently (1R8). In order to conduct further investigations in respect of the offence alleged to be committed by the detenu, he was further detained by a Detention Order dated 21.07.1997 (1R9) issued by the 1st respondent in terms of Regulation 19 (2) of the Emergency Regulations and by a Detention Order dated 04.08.1997 (1 R10) issued in terms of Regulation 17 (1) of the Emergency Regulations. On 22.07.1997 the Fort Magistrate was informed of the detention of the detenu in terms of Regulation 19 (5) of the Emergency Regulations, by report dated 22.07.1997 (1R11), further to the report dated 16.07.1997.

According to the respondents, the origin of the suspicion of the detenu's complicity was the information received by the CID that a certain person had inquired from the People's Bank of the possibility of obtaining a very large loan facility in order to obtain military aircrafts. The CID got this information from K. A. Wijesekera, General Manager, People's Bank. He later identified the person who met him regarding the aircraft deal as Vairavanathan. Wijesekera made a statement to the CID where he stated that Vairavanathan had told him that it was intended to purchase helicopters for the Sri Lanka Air Force and that the company in which Vairavanathan was employed was acting as the agent for this purchase. He has further said that, in the event of the Sri Lanka Air Force taking a final decision to purchase the said helicopters, the company in which he was employed was taking steps to get down the said helicopters for the Sri Lanka Air Force. In these circumstances, in view of a suspicion that the said helicopter gunships were attempted to be purchased in order to wage war or for the purpose of waging war against the State, steps were taken to arrest the detenu in respect of an offence committed under Regulation 24 read with Regulation 32 of the Emergency Regulations.

The position of the respondents was that the detenu was arrested on the statements made by K. A. Wijesekera (1R3), Rajan Vairavanathan (1R2) and Farook Sally (1R1). These 3 statements, they claim, warranted and justified the arrest and detention of the detenu as they created a reasonable suspicion that the detenu together with Vairavanathan and Sally attempted to purchase helicopter gunships from Kolnet Ltd for the LTTE for the purpose of waging war against the State.

However, it was quite clear that what Vairavanathan had told Wijesekera was -

- (a) that it was intended to purchase several helicopters for the Sri Lanka Air Force;
- (b) that the company in which Vairavanathan was employed was acting as the agent for such purchase;

(c) that the company aforementioned was taking steps to get down the said helicopters as an agent, in the event of the Sri Lanka Air Force taking a final decision to purchase the said helicopters;

(d) that therefore Vairavanathan wanted to know whether the People's Bank could open Letters of Credit on behalf of the Sri Lanka Air Force in favour of the foreign supplier in such circumstances.

From the aforesaid it is apparent that Vairavanathan, on behalf of his company, was merely seeking to act as an agent or broker, in respect of a transaction for the purchase of helicopters for and on behalf of the Sri Lanka Air Force. Further, he was only making inquiries as to the possibility of opening Letters of Credit on behalf of the Sri Lanka Air Force in favour of a foreign supplier for such purchase by the Sri Lanka Air Force, in the event it decides to so purchase.

In these circumstances, it is inconceivable that one could entertain a reasonable suspicion that the LTTE was seeking to import helicopters for itself through a stratagem of getting Letters of Credit opened by a State bank in favour of the Sri Lanka Air Force for the said purpose. Furthermore, the circumstances mentioned above do not provide any evidence that the detenu had attempted or was in any way involved in an attempt to purchase helicopters for the LTTE for the purpose of waging war against the State. Nor do the statements of Vairavanathan, Farook Sally, the detenu or his wife indicate that they were even questioned by the CID in regard to any complicity on the part of the detenu with the LTTE or with any other person who attempted to purchase helicopters for the LTTE, or about the detenu having been concerned with an attempt to wage war against the State. I therefore hold that there was no justification to entertain any reasonable suspicion that the detenu had committed or was concerned in the commission of the offence of attempting to wage war against the State by attempting to import helicopters for the LTTE.

Admittedly the detenu was arrested and kept in custody at the office of the CID from 14.07.1997 to 08.08.1997 for a period of 25 days. The 1st respondent claims that the detenu was kept in custody upon a Detention Order dated 14.07.1997 issued by him authorising his detention for a period of 7 days (1R6) and thereafter by another Detention Order dated 21.07.1997 authorising his detention for a further period of 14 days (1R9). The detenu was not produced before a Magistrate until 08.08.1997. From 04.08.1997 a further Detention Order was issued for a period of 3 months in terms of Regulation 17 (1) of the Emergency Regulations (1R10). The reason for this third Detention Order was that the 5th respondent was said to have been satisfied upon the material submitted to him that it was essential to detain the detenu in order to prevent the detenu from acting in a manner harmful to national security or the maintenance of public order. No affidavit came from the 5th respondent.

The detenu was arrested and detained on 14.07.1997 by the CID under Regulation 19 (2) of the Emergency Regulations, which provides that -

. . .when any person is arrested in pursuance of the provisions of Regulation 18 in any administrative district outside the Northern and Eastern Provinces in respect of any offence committed in any such area he shall not be detained under these provisions for a period in excess of seven days and unless detained under the provisions of Regulation 17, shall be produced before a Magistrate before the expiry of such period of detention as is hereinafter provided or released from custody.

When the petitioner was taken into custody, the 1st respondent issued a Detention Order under Regulation 19 (2) for a period of 7 days with effect from 14.07.1997 (1R6). On 21.07.1997, the 1st respondent issued another Detention Order under Regulation 19 (2) for a period of 14 days with effect from 21.07.1997 (1R9). On 04.08.1997, an Additional Secretary to the Ministry of Defence issued a Detention Order under Regulation 17 (1) for a period of 3 months with effect from 04.08.1997 (1R10). Accordingly on the Detention Order obtained on 14.07.1997 (1R6), the detenu could have been kept in custody only for a maximum period of seven days. If the respondents wanted to keep the detenu for more than 7 days they should have obtained a Detention Order under Regulation 17, which would have allowed, if the necessary requirements were satisfied, to keep the detenu under detention for a period of 3 months. Although the detenu was taken into custody on 14.07.1997, a Detention Order under Regulation 17 was obtained only on 04.08.1997. As pointed out earlier, there was no evidence to show that there was a reasonable suspicion to arrest the detenu in the first place and to keep him in detention without producing him before a Magistrate until August, 1997. Furthermore, even after the arrest of the petitioner, there were no additional grounds to entertain any reasonable suspicion to continue to keep the detenu in detention under a Detention Order. From the time the detenu was arrested he was detained and was deprived of his liberty for a period of 57 days. At the time of the detention the petitioner was 58 years of age and was unable to engage in the usual occupation of a businessman as a result of his detention.

On a consideration of all the material placed before us and for the reasons given, I hold that the detenu's fundamental rights guaranteed by Articles 13 (1) and 13 (2) of the Constitution were violated by the respondents. I order the State to pay the detenu Rs.100,000 and the 1st respondent to pay him personally Rs. 25,000, as compensation and costs. In all, the detenu would be entitled to Rs. 125,000 as compensation and costs. This amount should be paid within 3 months from today.

DHEERARATNE, J. - I agree.

WIJETUNGA, J. - I agree.

Relief granted.