

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*

Nadesapillai Vithyatharan
6/2, Bharathi Flats,
37/1 Hampden Lane,
Colombo 00600

Petitioner

SC (FR) Application No:

v.

1. Gotabhaya Rajapakse
Secretary,
Ministry of Defence, Public
Security, Law and Order
Colombo 00100.
2. Anura Senanayaka
Director,
Colombo Crimes Division,
No. 214,
Kolonnawa Road,
Colombo 00900.
3. A.G.T.B Wijeratne
Sub-inspector of Police,
Colombo Crimes Division,
No. 214,
Kolonnawa Road,
Colombo 00900.
4. Ranjith Gunasekara

Senior Superintendent of Police,
Police Spokesman,
Police Headquarters,
Colombo 00100.

5. Jayantha Wickramaratne
Inspector General of Police,
Police Headquarters,
Colombo 00100.
6. Hon. Attorney General
Attorney General's Department
Hulftsdorp,
Colombo 01200.

Respondents

On this 25th day of March 2009

**TO: HIS LORDSHIP THE CHIEF JUSTICE AND THEIR LORDSHIPS THE OTHER
HONOURABLE JUDGES OF THE SUPREME COURT OF THE DEMOCRATIC
SOCIALIST REPUBLIC OF SRI LANKA**

The Petition of the Petitioner above-named appearing by T Gowry Shangari his Registered Attorney-at-Law states as follows:

1. The Petitioner is a citizen of the Democratic Socialist Republic of Sri Lanka and is entitled to prefer this application to Your Lordships' Court in respect of the violation of his Fundamental Rights guaranteed and protected under Chapter III of the Constitution as more fully set out hereinafter.
2. The 1st Respondent above named is the brother of H.E. the President of Sri Lanka and is the Secretary, Ministry of Defence, Public Security, Law and Order.
3. The Petitioner states that the public statements of the 1st Respondent above named more fully set out hereinafter, have contributed to the violation of the

Petitioner's Fundamental Rights and has given rise to apprehension on the part of the Petitioner, that further infringement of his Fundamental Rights is imminent.

4. The 2nd Respondent is the Director of the Colombo Crimes Division and the 3rd Respondent is a Sub-inspector of Police assigned to the Colombo Crimes Division and is also the arresting officer in respect of the abduction and subsequent "arrest" of the Petitioner the details of which are more fully set out hereinafter.
5. The 4th Respondent is the official Spokesman for the Police Department.
6. The 5th Respondent above named is the Inspector General of Police, who is the head of the Police Department and the Police Force. The 5th Respondent is responsible for the management and supervision of the Sri Lanka Police Force and to ensure that its members act in a manner that conforms to the requirements of the fundamental rights that are required to be respected and assured to all persons in Sri Lanka.
7. The 6th Respondent is the Hon. Attorney General of the Republic who is made a party to this application in terms of the requirements of Supreme Court Rule 44(3) read with Article 126(2) of the Constitution.
8. The Petitioner is a journalist by profession and is the present Editor of the newspapers *Sudar Oli* and *Uthayan*. The Petitioner joined *Uthayan* as sub-editor in 1985 and was later promoted to the post of Associate Editor-News and eventually to Chief Editor of *Uthayan*. The Petitioner was also appointed as Editor of *Sudar Oli* in 2002.
9. The Petitioner respectfully states that he is one of the few Sri Lankan journalists who has had the unique privilege of engaging in one on one interviews with key Sri Lankan political leaders including H.E. President Mahinda Rajapakse, H.E. Former President Chandrika Bandaranaike Kumaratunga, the Former Prime Minister Ranil Wickramasinghe, Vellupillai Prabaharan and Dr. Anton Balasingam of the LTTE, and Varatharaja Perumal, the first Chief Minister of the North East Provincial Council.

10. The Petitioner has also had the unique privilege of covering all rounds of peace talks held between the Government of Sri Lanka and the LTTE from 1990 onwards. Such talks include the following:
 - a) Talks held in 1990 in Colombo between President Ranasinghe Premadasa's Government and the LTTE;
 - b) Talks held in 1990 in 1994 -95 in Jaffna between President Chandrika Bandaranaike Kumaratunga's Government and the LTTE;
 - c) Talks held in 2002-2003 between Prime Minister Ranil Wickramasinghe's Government and the LTTE, which included six rounds of talks in Thailand, Germany, Japan, Norway;
 - d) Talks held in 2006 between President Mahinda Rajapakse's Government and the LTTE, which included two rounds of talks in Geneva;

A true copy of the Petitioner's Curriculum Vitae is annexed hereto marked "P1" and pleaded as part and parcel hereof.

11. The Petitioner states that the *Uthayan* Tamil daily newspaper was launched in Jaffna, in November 1985. Furthermore, the *Sudar Oli* national Tamil weekly and daily Newspapers were founded in Colombo on 10th September 2000 and 29th October 2001 respectively.
12. The Petitioner respectfully states that *Uthayan* is the most popular newspaper in Jaffna and is considered by many to be the face of Jaffna.
13. The International Federation of Journalists with the collaboration of five Journalists Associations in Sri Lanka honoured *Uthayan* with the Public Service and Tolerance Journalism Award on 24th October 2008 for *Uthayan's* courageous service to the people amidst threats and pressures.
14. Furthermore, the International Press Freedom Mission to Sri Lanka in its Fact Finding Mission Report in August 2007 describes *Uthayan* as a heroic paper.

15. At the outset, the Petitioner respectfully states that the socio-political environment in this country which has steadily deteriorated with regard to the respect for and the safety and protection of journalists and persons working in the media industry.
16. The Petitioner respectfully draws Your Lordships' attention to the spate of recent despicable incidents involving the murder, abduction, assault and intimidation of journalists and media workers in Sri Lanka. Moreover, the Petitioner states that in response to these incidents, there has been a public outcry against the prevailing conditions, and more specifically, the perpetrators of these grave human rights abuses, who by their actions and/or inaction and/or callous disregard have violated the Fundamental Rights of both the journalists concerned as well as the general public and the citizenry of this country.
17. More specifically, a number of incidents involving intimidation, assault, attempted abduction, attempted murder and murder of employees and damage to property, all of which were aimed at silencing the newspapers, *Sudar Oli* and *Uthayan* have been reported over the past decade.

True copies of two lists, each of which depict such incidents of damage to property, intimidation, assault, attempted abduction, attempted murder and murder in chronological order are annexed hereto marked "P2a" and "P2b" respectively pleaded as part and parcel hereof.

18. Amidst this contextual background, the Petitioner states that he has been victimized as a result of the views and opinions expressed in some of his articles published in the aforesaid newspapers, *Sudar Oli* and *Uthayan*.
19. The Petitioner states that a letter dated 12th February 2009 was sent to the *Sudar Oli* Office in Colombo by the 2nd Respondent requesting that the Petitioner call over at the 2nd Respondent's office to make a statement in terms of "Sections 47(a) and 49(b) of the Emergency Regulations". It was inferred in the said letter that the request was made following an

investigation that was being carried out by the Colombo Crimes Division with regard to the contents of certain news articles published in *Sudar Oli*.

A copy of the said letter dated 12th February 2009 and the annexed news articles are annexed hereto compendiously marked “P3” and pleaded as part and parcel hereof.

20. In response to the aforementioned letter, Eswarapatham Saravanapavan, the Managing Director of Mass Media Syndicate Private Limited (Publishers of *Sudar Oli* Newspapers) issued a letter dated 13th February 2009 informing the 2nd Respondent that the Petitioner was overseas and unavailable. The said Managing Director also requested the 2nd Respondent to furnish an alternative date on which the Petitioner could call over at the 2nd Respondent’s office.

A copy of the said letter dated 13th February 2009 is annexed hereto marked “P4” and pleaded as part and parcel hereof.

21. The Petitioner states that on his return to Sri Lanka he was thereafter summoned by the Colombo Crimes Division on 16th February 2009 and questioned for approximately six (6) hours over two articles published in *Sudar Oli*. The Petitioner was thereafter released.
22. The Petitioner is reliably informed that subsequently, on 25th February 2009, certain unidentified Police Officers searched the *Sudar Oli* head office in Colombo and demanded a list of the names, designations and addresses of all the journalists and other employees working in the office.
23. The Petitioner respectfully states that on 26th February 2009, six (6) men *i.e.* **three (3) in Police uniform and three (3) in civilian clothing**, arrived in a white van at a funeral parlour in Mount-Lavinia at which the Petitioner was paying his last respects to a recently deceased close relative. The said six (6) individuals including Police Officers thereafter restrained the Petitioner and forcibly put him into the said white van and abducted him in the presence of a number of eye witnesses including Eswarapatham Saravanapavan, the aforesaid Managing Director of Mass Media Syndicate Private Limited.

24. The Petitioner further states that when his family, friends and work colleagues protested and tried to prevent his abduction, they were beaten and pushed aside by the six (6) aforementioned abductors.
25. The Petitioner is reliably informed that immediately upon the departure of the aforesaid white van a complaint was lodged at the Mount Lavinia Police station and communications were made to high ranking Police Officers, foreign diplomats, the local media and international media organizations. The Petitioner respectfully states that during such time, neither the Mount Lavinia Police Station nor the Dehiwela Police Station was aware of his abduction and subsequent arrest.
26. One of the early responses issued by the State came from the 4th Respondent, who was recorded to have intimated that the Petitioner had been abducted by an unidentified armed group.
27. The Petitioner however states that amidst the spate of criticism and condemnation from various parties in respect of the Petitioner's abduction, the government authorities including the 4th Respondent sought to deny any abduction and claimed instead that the Petitioner had in fact been arrested and that he was being interrogated by the Colombo Crimes Division.

Copies of published newspaper articles in respect of this incident and citing the initial and subsequent responses of the Government of Sri Lanka are annexed hereto compendiously marked "P5" and pleaded as part and parcel hereof.

28. The Petitioner states that subsequently, a Receipt of Arrest was issued in respect of the Petitioner and it transpired that the 3rd Respondent was the relevant arresting officer. The Petitioner maintains however that his alleged "arrest" on 26th February 2009 was carried out without a requisite warrant and was in fact an abduction which was later converted into an arrest.

A true copy of the aforesaid Receipt of Arrest is annexed hereto marked "P6" and pleaded as part and parcel hereof.

29. The Petitioner further states that a Detention Order was thereafter issued against him under Regulation 19(1) of the Emergency (Miscellaneous Provisions and Powers) Regulations, No. 1 of 2005.

A copy of the said Detention Order dated 26th February 2009 is annexed hereto marked “P7” and pleaded as part and parcel hereof.

30. The Petitioner states that it was later discovered that his arrest was on account of a preposterous and unfounded allegation that he somehow “coordinated the LTTE air attack on Colombo on 20th February 2009” based on a suspicion arising out of a large number of telephone calls he had made on that particular day.

A copy of the B-Report pertaining to the Petitioner dated 18th March 2009 is annexed hereto marked “P8” and pleaded as part and parcel hereof.

31. The Petitioner respectfully states that on 26th February 2009, moments after the Petitioner’s arrest, the 1st Respondent had stated in an interview intended for public viewing that the Petitioner is a “terrorist” and he had coordinated the LTTE air attack on Colombo on 20th February 2008.

A copy of the transcript of the said interview is annexed hereto marked “P9” and pleaded as part and parcel hereof.

32. The Petitioner states that he verily believes that this tirade against him is occasioned by displeasure and intolerance arising from the fact that the 1st Respondent is of the view that the aforementioned newspapers *Sudar Oli* and *Uthayan* publishes articles and news stories that criticize the Government, and is thus and otherwise motivated by malice borne of intolerance.

33. The Petitioner further states that this public statement made by the 1st Respondent is occasioned by a complete misunderstanding which has arisen as a result of false intelligence and misinformation gathered from the “tapping” of the Petitioner’s cellular phone.

34. The Petitioner states that this confusion has arisen as a result of certain authorities listening to the conversations that took place between the

Petitioner and certain others including his sister in respect of the overseas travel of the aforesaid Eswarapatham Saravanapavan, the Managing Director of Mass Media Syndicate Private Limited, who is also the brother-in-law of the Petitioner.

35. The Petitioner respectfully draws Your Lordships' attention to the following facts and circumstances in respect of this matter:

- a) The Petitioner's brother-in-law, Eswarapatham Saravanapavan left Colombo for Paris, France on 14th February 2009 and was scheduled to return from Paris on 20th February 2009.
- b) Immediately after the aforesaid LTTE air attack on Colombo, upon hearing that flights to Colombo were being diverted to India, the Petitioner, Petitioner's sister (*i.e.* the wife of Eswarapatham Saravanapavan) and the Petitioner's brother, being thoroughly perturbed, discussed the issue over the telephone since the said Eswarapatham Saravanapavan did not usually travel to India for political reasons.
- c) Since, the said Eswarapatham Saravanapavan had not conveyed the flight number, flight date and the time of arrival and departure, the Petitioner contacted persons residing at the location in which his brother-in-law stayed in France and made frequent queries and requests for information over the telephone.
- d) Subsequently, one Sellvaratnam and his wife contacted the Petitioner from France and provided some details in respect of the Petitioner's brother-in-law.
- e) During these calls to and from France, terms such as "flight", "airport", "flight No", "date of departure", "time of departure" and "arrival" were invariably used quite often given the circumstances under which such calls were made.

An Affidavit of Eswarapatham Saravanapavan confirming the veracity of above facts and circumstances is annexed hereto marked “P10” and pleaded as part and parcel hereof.

True copies of the relevant travel documents of Eswarapatham Saravanapavan are annexed hereto compendiously marked “P11” and pleaded as part and parcel hereof.

A true copy of a letter issued by Eswarapatham Saravanapavan to the Secretary to H.E. the President Mahinda Rajapakse explaining the above facts and circumstances is annexed hereto compendiously marked “P12” and pleaded as part and parcel hereof.

36. The Petitioner is advised that the aforementioned coincidental facts and circumstances relating to certain phone calls made to France and to his relatives have unfortunately given rise to a misplaced and unreasonable suspicion over his alleged involvement in the aforesaid LTTE air attack on Colombo.

A copy of the Petitioner’s detailed cellular phone records from 24th January 2009 to 26th February is annexed hereto marked “P13” and pleaded as part and parcel hereof.

37. The Petitioner states that the apparent references made to him as a “terrorist” by the 1st Respondent on 26th February 2009 are derogatory and constitute degrading treatment which infringes the rights guaranteed to him under **Article 11** of the Constitution.

38. The Petitioner was also man-handled and beaten at the time of the said abduction and suffered injuries as a result. He was thereafter taken for treatment to the National Hospital by the Respondents themselves subsequent to his “arrest”. By reason of this treatment too the Petitioner’s rights guaranteed to him under **Article 11** of the Constitution has been infringed.

A copy of a medical report and/or other evidence in proof of the above averment would be annexed hereto compendiously marked “**P14**” and pleaded part and parcel hereof no sooner such report and/or other evidence becomes available to the Petitioner.

39. Furthermore, the Petitioner states that at a time when the government has demonstrably and miserably failed to ensure and/or provide a safe atmosphere for journalists not considered pro-government in Colombo, the making of such irresponsible statements aggravate jeopardy of the Fundamental Rights guaranteed under **Articles 12 and 14(1)(g)** of the Constitution.
40. The Petitioner states that the aforesaid statement of the 1st Respondent on 26th February 2009 and the culpable action and/or inaction of the 2nd to 5th Respondents to ensure that the Petitioner is granted equal protection of the law, violate the Petitioner’s Fundamental Rights guaranteed under **Article 12(1) and Article 12(2)** of the Constitution.
41. The Petitioner states that the manner and circumstances under which he was “arrested” by officers of the law who he believes to include the 3rd Respondent and his subsequent detention manifestly violate his Fundamental Rights guaranteed under **Article 13(1) and Article 13(2)** of the Constitution.
42. The Petitioner states that in the circumstances, unless the interim reliefs prayed for are granted, grave and irreparable loss, harm and damage would be caused to the Petitioner.
43. The Petitioner has made this application in the limited time available to him in view of the pressing nature of the prejudice caused to him, and respectfully reserves the right to furnish any further and other material in proof of the matters set out herein, no sooner any such is received and/or made available to him.
44. The Petitioner also respectfully reserves in the circumstances, the right to amend the Petition and/or add other parties to this application as Respondents should involvement of any other persons in the aforesaid

violations and/or new facts transpire or become known to him, which necessitate the same.

45. The Petitioner states that the actions and/or inactions complained of through this application constitute and involve executive and administrative action within the contemplation of Article 126 of the Constitution.
46. The Petitioner states that he has not previously sought to invoke the jurisdiction of Your Lordships' Court in respect of this matter.
47. An Affidavit of the Petitioner is appended hereto in support of the averments contained herein.

WHEREFORE the Petitioner respectfully prays that Your Lordships' Court be pleased to:

- a) Grant Leave to Proceed with this application in the first instance;
- b) Make an Interim Order directing the Respondents to present the Petitioner before the Judicial Medical Officer for the purpose of conducting a medical examination and furnishing a medical report in respect of the injuries that have been sustained by the Petitioner since his abduction and during the period of his detention;
- c) Make an Interim Order directing the Respondents to release the Petitioner forthwith or in the alternative, produce him before a Magistrate in order that an application for bail may be formally made;
- d) Declare that the 1st Respondent and/or the State have infringed the fundamental rights of the Petitioner guaranteed under **Article 11** of the Constitution;
- e) Declare that the Respondents and/or the State have violated the Petitioner's Fundamental Rights guaranteed to him under **Article 12(1)** of the Constitution and that further infringement of the Petitioner's

Fundamental Rights guaranteed to him under **Article 12(1)** of the Constitution is imminent;

- f) Declare that the Respondents and/or the State have violated the Petitioner's Fundamental Rights guaranteed to him under **Article 12(2)** of the Constitution and that further infringement of the Petitioner's Fundamental Rights guaranteed to him under **Article 12(2)** of the Constitution is imminent;
- g) Declare that the 2nd and 3rd Respondents and/or State have violated the Petitioner's Fundamental Rights guaranteed to him under **Article 13(1)** of the Constitution;
- h) Declare that the 1st, 2nd, 3rd and 5th Respondents and/or State have violated the Petitioner's Fundamental Rights guaranteed to him under **Article 13(2)** of the Constitution;
- i) Declare that by the action and/or inaction of the Respondents and/or State that infringement of the Petitioner's Fundamental Rights guaranteed to him under **Article 14(1)(g)** of the Constitution is imminent;
- j) Grant compensation in a suitable sum determined by Your Lordships' Court;
- k) Grant Costs; and
- l) Grant such further and other relief(s) as to Your Lordships' Court shall seem meet.

**Registered Attorneys-at-Law
for the Petitioner**