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

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*In the matter of an applicant in terms of Articles 17  
35, and 126 of the Constitution of the Democratic  
Republic of Sri Lanka*

**Ms. Ambika Satkunanathan**

**PETITIONER**

**Vs**

*SC (FR) Application  
No-*

- 1.A. Hon. Attorney General,**  
Attorney General's Department, Colombo 12
- B. Hon. Attorney General,**  
Attorney General's Department, Colombo 12
- 2. Rathnayake Mudiyansele Sunil Ratnayake,**  
Sri Lanka Army,  
C/O; Commander of the Sri Lanka Army, Army  
Headquarters, Sri Jayawardenepura.
- 3. Mr. Jayasiri Thennakoon,**  
Commissioner General of Prisons, Prison  
Headquarters, No. 150, Baseline Road, Colombo  
09.
- 4. Mr. Nimal Siripala de Silva,**  
Hon. Minister of Justice, Human Rights & Legal  
Reforms, Ministry of Justice, Human Rights and  
Prison Reforms - Sri Lanka Superior Courts  
Complex, Colombo 12.
- 5. Dr. P.B. Jayasundera,**  
Secretary to the President, Presidential  
Secretariat, Galle Face, Colombo 01.
- 6. National Authority for the Protection of  
Victims of Crimes and Witnesses, No. 428/11  
A, First floor, Denzil Kobbekaduwa Mawatha,  
Battaramulla.**

**RESPONDENTS**

*On this 20<sup>th</sup> day of April 2020*

**TO HIS HONOURABLE LORDSHIP THE CHIEF JUSTICE, AND  
THEIR LORDSHIPS; THE OTHER JUDGES OF THE SUPREME COURT OF THE**

**DEMOCRATIC SOCIALIST REPUBLIC OF SRI LANKA**

*The Petition of the Petitioner above named appearing by KARUNALATHA NADARAJAH her Registered Attorney at Law states as follows:*

**THE PETITIONER**

1. The Petitioner states that she is a citizen of Sri Lanka. The Petitioner was a member of the *Human Rights Commission of Sri Lanka [hereinafter HRC]* from 21 October 2015 to 6 March 2020. For two years from February 2018 to February 2020, the Petitioner led the first-ever national study of prisons for the HRC. Through leading the study the Petitioner gained in-depth knowledge about the process of pardoning, including its gaps and shortcomings. This petition is filed in the public interest to ensure that the power of the Executive to pardon persons is done in a transparent and fair manner, according to objective standards, and the existing gaps and shortcomings are addressed. The Petitioner strongly believes that the moratorium on the death penalty in Sri Lanka should continue.
2. The Petitioner verily believes that Presidential Pardons have a positive effect, and the allowance of such clemency takes recognition of the possibility of miscarriages of justice and other extenuating circumstances. However the Petitioner categorically states that there should be **transparency** and **accountability** in the process of granting such pardons which consider intelligible objective criteria, and is therefore subject to judicial review.
3. The Petitioner verily believes that the underlying purpose of incarceration can be duly met by a valid rehabilitation of a prisoner, and the successful re-integration of such individual into society. To that end, Presidential Pardons may be utilized in a transparent and accountable manner, based on specified objective criteria, which duly evaluates the progress of a convict. The Petitioner verily believes that a systematic process is required in the justice system, as opposed to any *ad-hoc* system, that duly provides for pardons in light of the above. Any such process must include certainty about the processes followed and the substantive and objective criteria applied.
4. The application is *also* filed under the Petitioner's duties under *Article 28* of the Constitution and in particular *Article 28(a)* to uphold and defend the Constitution and the law.

**THE RESPONDENTS**

5. The Petitioner states that;

- a) The 1A Respondent is the *Hon. The Attorney General*, the Chief Legal Officer of the State. The said Respondent AG has been added as a Respondent in terms of the Law and in particular *Supreme Court Rule 44* read with *Article 134(1)* of the Constitution;
- b) The 1B Respondent is the *Hon. The Attorney General* and action can be filed against the said *Hon. The Attorney General* in respect of anything done or omitted by the President in his official capacity as provided for under *Article 35* of the Constitution;
- c) The 2<sup>nd</sup> Respondent is ***Rathnayake Mudiyanseelage Sunil Ratnayake***;
  - i. The said Respondent was a Lance Corporal in the *Sri Lanka Army* serving in the *Gajaba Regiment* and at all times material to the instant application was serving a death sentence;
  - ii. The said Respondent was accused of a massacre that took place in *Mirusuvil (Jaffna)*, where 8 Tamil citizens were murdered of whom 3 were children, one as young as 5 years old;
  - iii. And was subsequently found guilty by the HC of Colombo at a Trial-at-Bar, in **HC1092/2002** and sentenced to death after approximately a 13 year trial;
  - iv. The Supreme Court in **SC(TAB) 1/2016** comprising of a bench of 5 judges, partially allowed the appeal of the said Respondent, but unanimously affirmed the conviction and sentence imposed by the High Court on several counts in the indictment, relating to common intention to commit murder (counts 10-18), and to cause hurt to the victim-survivor (count 19);
  - v. Was therefore on death row, awaiting the implementation of death sentence.

d) The Petitioner is unaware of the address of the said 2<sup>nd</sup> Respondent and respectfully seeks an appropriate Order from Your Lordships' Court, to service notice of the instant application through the Commander of the Sri Lanka Army

*OR in the alternative to the above*

- e) To direct any one or more of the Respondent to furnish to Your Lordships' Court the address of the said 2<sup>nd</sup> Respondent;
- f) The 3<sup>rd</sup> Respondent is the Commissioner General of Prisons;
- g) The 4<sup>th</sup> Respondent is the Hon. Minister of the *Ministry of Justice, Human Rights & Legal Reforms*;
- h) The 5<sup>th</sup> Respondent is the *Secretary to the President*;
- i) The 6<sup>th</sup> Respondent is the *National Authority for the Protection of Victims of Crimes and Witnesses*, the administrative body which is to provide the Protection to the Victims of Crimes and Witnesses;
- j) The Petitioner respectfully reserves the right to add further parties as Respondents *in limine* and/or in the event material is revealed and/or otherwise, making such additional parties necessary for the adjudication of the instant application.

#### **BACKGROUND TO THE MIRUSUVIL MASSACRE IN JAFFNA**

6. The Petitioner is aware of the following based on the information available in the public domain;
- a) During the height of the civil war, in or around April 2000, the *Liberation Tigers of Tamil Eelam (hereinafter referred to as LTTE)* captured the *Sri Lanka Army* base situated at *Elephant Pass*;
- b) During subsequent fighting thereafter, the village of *Mirusuvil* was partially abandoned by its villagers, who would habitually return to their homes during the day to harvest whatever produce they could from their village. The partial abandonment was required due to such village being hit by artillery shells, and therefore the villagers were residing close by in temporary residences;

- c) On or around 18-12-2000 several members of the *Gajaba Unit* of the *Sri Lanka Army* were deployed in the general vicinity of *Mirusuvil*;
- d) On or around 19-12-2000 [i.e., the next date], one *Maheshwaran*, the solitary survivor of the incident [*hereinafter referred to as the victim-survivor*] and several others (including a 5 year old child named *Prasad*), had returned to their homes in *Mirusuvil* on their bicycles, as was their usual practice, to obtain whatever harvest/produce they could from their village;
- e) On the villagers including the victim-survivor making preparations to leave their village before dusk to head back to their temporary residences, the 5 year old child named *Prasad* had asked his father who was present to pluck some guava fruit, from a nearby tree;
- f) It appears that at this point, the villagers had been stopped by armed army personnel including the 2<sup>nd</sup> Respondent.

#### **THE MIRUSUVIL MASSACRE**

7. The Petitioner is aware of the following based on the information available in the public domain;
- a) When the villagers were stopped by army personnel, they were required to kneel and answer questions. It appears that only one villager who was present [*Raviwarman*, who had lost his left arm below the elbow in his childhood], was slightly conversant in the *Sinhala* language, the others all being native *Tamil* speakers. The villagers including the victim-survivor had been blindfolded, and assaulted. The said victim-survivor had temporarily lost consciousness due to such assault;
  - b) The victim-survivor had regained consciousness sometime later, when he was thrown over a fence, at which point, his blindfold had come loose. At such point of time, the said victim-survivor was unaware of the whereabouts of the rest of the villagers;
  - c) Thereafter, the victim-survivor was taken near a cesspit which contained blood stains. The said victim-survivor had at that point managed to evade his assailants and fled the area, in fear for his life. On making his way back to his temporary residence, he had sought refuge overnight at his aunt's house, and thereafter recounted his story to his family and others;

- d) On the following day [i.e., on or around 20-12-2000] a complaint had been lodged at the *Eelam Peoples Democratic Party [hereinafter EPDP]* and the said victim-survivor had thereafter been admitted to the *Chandiger* hospital where he received treatment till on or around 22-12-2000;
- e) Thereafter, on or around 23-12-2000, the said victim-survivor was questioned by *Military Police*, and on the following day on or around 24-12-2000, accompanied by the *Military Police*, *EPDP* members and others, the said victim-survivor visited the location of the cesspit referred to in paragraph 7(c) above and discovered what appeared to be goat and reptile carcasses. During this time, certain *Sri Lanka Army* personnel had approached this cesspit, which had evoked a spontaneous reaction from the said victim-survivor who had shouted and identified two individuals as being part of the group that had assaulted the said victim-survivor (and the other villagers). These two individuals being *Lance Corporal Rathnayake* the 2<sup>nd</sup> Respondent and one *Private Mahinda Kumarasinghe*;
- f) At such point, *Major Sydney de Soyza* who in charge of the supervision of the military police, based in the Jaffna region, and who was present at the time, had arrested 5 individuals including the 2<sup>nd</sup> Respondent;
- g) After such arrest, the *Military Police* conducted a search of the area and found an area of loose soil camouflaged with twigs and branches. Subsequently on further inquiries 8 bodies were unearthed, and identified as the villagers who had accompanied the victim-survivor to *Mirusuvil*;
- h) Information in the public domain indicates that deaths were caused by a single injury on the front of the neck about 2 inches deep, on each deceased, who had died due to shock and haemorrhaging;
- i) The care taken to silently carry out such executions, in a highly volatile area such as *Mirusuvil* was indicative of persons taking special precautions to avoid making noise. It appears that the actions taken to cover-up the cesspit with animal carcasses also indicate great care being taken to cover up such crime.

### SUBSEQUENT LEGAL PROCEEDINGS

8. The Petitioner is aware from information in the public domain, that an identification parade had been held, and 5 out of 13 suspects had been identified by the victim-survivor. One such identified being the 2<sup>nd</sup> Respondent.
9. The Petitioner is aware that the *Hon. The Attorney General* had indicted such 5 individuals including the 2<sup>nd</sup> Respondent on 19 counts under *inter alia*;
  - a) *Section 140 of the Penal Code* for being a member of an unlawful assembly intending to intimidate the victims/villagers;
  - b) *Section 296 of the Penal Code* for the murder of the victims/villagers;
  - c) *Section 314 of the Penal Code* for causing hurt to the victim-survivor;
  - d) *Section 32 of the Penal Code* for a common intention to commit murder;
  - e) *Section 32 of the Penal Code* for common intention to cause hurt to the victim-survivor.
10. The Petitioner is aware that a *Trial at Bar* conducted in the *High Court of Colombo* commenced in 2002 bearing number HC1092/2002. After the course of approximately 13 years, the *Trial at Bar* found the 2<sup>nd</sup> Respondent guilty of, *inter alia*, murder, and on or around 25-06-2015, the said Respondent was sentenced to death.
11. The Petitioner is aware that thereafter, the matter was appealed to the *Supreme Court*, in SC TAB 01/2016. The Petitioner is aware that by judgment dated 25-04-2019, Your Lordships' Court, comprising of 5 judges, after carefully analysing all the evidence available, came to a reasoned decision and partially allowed the appeal, whilst affirming and confirming the conviction and sentence of the *High Court* for certain counts relating to *inter alia*, murder. Thus, the death sentence imposed on the 2<sup>nd</sup> Respondent remained unchanged.

*Annexed herewith marked [P1](#) is a copy of the judgment of the Supreme Court in SC TAB 01/2016 S.C.M. 25-04-2019 which is pleaded as part and parcel hereof*
12. The Petitioner states that in the backdrop of Sri Lanka's categorical unwillingness to allow international investigations within Sri Lanka, the above decisions of the domestic legal system must be given due preference and regard, and should not be interfered with in any manner whatsoever.

### **PRESIDENTIAL PARDON OF THE 2<sup>ND</sup> RESPONDENT**

13. The Petitioner was utterly shocked and dismayed, when on or around 26-03-2020, during a time when the country was under curfew due to the COVID-19 outbreak, the Petitioner became aware that the 2<sup>nd</sup> Respondent had been allegedly granted a presidential pardon, less than a year after the judgment of Your Lordships' Court.

*Annexed herewith marked **P2** is a copy of a news item available online at <https://www.newsfirst.lk/2020/03/26/presidential-pardon-to-fmr-army-staff-sergeant-sunil-ratnayake/> dated 26-03-2020 which is pleaded as part and parcel hereof*

14. The Petitioner states that this appears to be in line with the President's undertakings during his election campaign in November 2019, where he specifically pledged to pardon 'war heroes' who have been imprisoned based on false charges.

*Annexed herewith marked **P3** is a copy of a news item that appeared on the adaderana website, titled 'Gotabaya pledges to release imprisoned war heroes by Nov. 17' available online at <http://www.adaderana.lk/news/58267/gotabaya-pledges-to-release-imprisoned-war-heroes-by-nov-17> which is pleaded as part and parcel hereof*

15. However, the Petitioner is unaware of whether the requisite communications prior to issuance of pardon took place as mandated by the Constitution.

### **RESPONSE TO SUCH PARDON**

16. The Petitioner is aware that there has been several statements issued with regard to the specific pardon awarded to the 2<sup>nd</sup> Respondent. The Petitioner states, *inter alia*, as follows;

- a) On 29-03-2020, the *Human Rights Commission of Sri Lanka* issued a letter (via electronic-mail) to the President, expressing "deep concern" regarding the release of the said Respondent. Some relevant portions are recreated for convenience of Your Lordships' Court;

"We are deeply concerned due both to the serious nature of the charges brought by the Hon. Attorney- General against Mr. Ratnayaka, which included the killing of three children, and the strength of the Supreme Court judgment which upheld the conviction (...)

The granting of a presidential pardon to a person convicted of such a heinous offence and whose conviction was upheld



unanimously by the Supreme Court sends a negative message that reinforces allegations of impunity and lack of justice for victims of violations in Sri Lanka (...)

There have been very few such convictions. The granting of a presidential pardon to the convict of such a judgment sets a very negative precedent (...) Our Commission has been resolute in its opposition to the death penalty and has repeatedly called for its abolition and replacement with suitable alternate punishment. Our expression of concern about the pardon in this instance does not in any manner amount to an acceptance of the death penalty. What we wish to emphasize is that a person convicted of such an offence should undergo commensurate punishment. We would have been in agreement if Your Excellency had commuted the death sentence to long term imprisonment given the serious nature of the offence."

*Annexed herewith marked **P4(a)** is a copy of the said letter dated 29-03-2020 issued by the HRCSL available at [www.hrcsl.lk/wp-content/uploads/2020/02/Granting-of-a-Presidential-Pardon-to-Former-Army-Corporal-Sunil-Ratnayake.pdf](http://www.hrcsl.lk/wp-content/uploads/2020/02/Granting-of-a-Presidential-Pardon-to-Former-Army-Corporal-Sunil-Ratnayake.pdf) which is pleaded as part and parcel hereof*

- b) On 27-03-2020 the *International Commission of Jurists [hereinafter ICJ]*, whilst welcoming the lifting of death penalty, expressed grave concerns regarding the full pardons, as it has implications for rights to victim-survivors for reparations, whilst re-enforcing the perceived impunity for violations during the conflict period;

*Annexed herewith marked **P4(b)** is a copy of the statement dated 27-03-2020 issued by the ICJ available on the official website at <https://www.icj.org/sri-lanka-presidential-pardon-of-former-army-officer-for-killing-of-tamil-civilians-is-unacceptable/#.XoXRgp-NhZ8.email> which is pleaded as part and parcel hereof*

- c) Similarly on 27-03-2020, the *UN High Commissioner for Human Rights* called such action an affront to victims, and noted it affected rights to remedies;

*Annexed herewith marked **P4(c)** is a copy of the statement of the UNHCHR dated 2709302929 available on the official website at <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25752&LangID=E> which is pleaded as part and parcel hereof*

- d) Several international human rights groups too condemned such release, pointing out that in the 'rare' instances of accountability, for 'serious human rights violations', that such pardon sends a 'worrying message'

*Annexed herewith marked **P4(d)** and **P4(e)** respectively are statements issued by Amnesty International titled 'Justice reversed for victims of the Mirusuvil massacre, Sri Lanka' available at <https://www.amnesty.org/en/latest/news/2020/03/justice-reversed-for-victims-of-the-mirusuvil-massacre-from-sri-lanka/> and by Human Rights Watch titled **Sri Lanka: Justice Undone for Massacre Victims** available at <https://www.hrw.org/news/2020/03/27/sri-lanka-justice-undone-massacre-victims> which are pleaded as part and parcel hereof*

### **PRESIDENTIAL PARDONS**

17. The Petitioner is aware that the President of the Republic has had the power to grant pardons, since the 1972 Constitution, wherein *section 22* specifically provided for the same, including specific requirements pertaining to prisoners sentenced to death. The Petitioner is aware that similar provisions exist in the current 1978 Constitution, in particular *Article 34*.
18. The Petitioner is aware that *Article 6(4)* of the *International Covenant on Civil and Political Rights [ICCPR]* provides that "Anyone sentenced to death shall have the right to seek pardon or commutation of the sentence. Amnesty, pardon or commutation of the sentence of death may be granted in all cases". The Petitioner verily believes that such allows a convict sentenced to death or otherwise, to seek pardon or commutation, to ensure that amnesties, pardons and commutation may be granted to them in appropriate circumstances. The Petitioner verily believes that such provisions ensure that sentences (and especially death sentences) are not carried out before requests for pardon or commutation have been meaningfully considered and conclusively decided upon. The Petitioner is further aware that Sri Lanka has acceded to such on or around 11-06-1980.
19. The Petitioner is aware that historically, *general* pardons have been granted over time, to mark special occasions such as Vesak Poya, Poson Poya, Christmas, Deepavali, Independence Day, Women's Day etc.

*Annexed herewith marked **P5(a)** & **P5(b)** are copies of media items found online, titled "Vesak Poya: 762 prisoners to be granted Presidential pardon" available on <https://www.newsfirst.lk/2019/05/16/vesak-poya-762-prisoners-to-be-granted-presidential-pardon/> and "In honor of Pope Francis' visit, Sri Lanka, Philippines pardon*

*and release prisoners" available on <https://adobochronicles.com/2015/01/14/in-honor-of-pope-francis-visit-sri-lanka-philippines-pardon-and-release-prisoners/> which are pleaded as part and parcel hereof*

20. The Petitioner is aware that on several occasions in the past, *special* presidential pardons have been awarded to various prisoners. The Petitioner is further aware that a ***special process*** is set out by way of the Constitution in respect of pardons granted to those sentenced to death. The Petitioner verily believes that a systematic transparent process based on substantive and objective criteria would be beneficial in preventing the arbitrary use of such discretionary power vested in the President.

### **PETITIONS FOR RELEASE**

21. The Petitioner is aware that *Rule 235* of the *Prison Rules* entitled prisoners to petition the President for their release, and provides for petitions for release to be forwarded through the relevant Minister. The Petitioner is unaware if the 2<sup>nd</sup> Respondent has petitioned the President for release, or whether the said Respondent has been evaluated by any system within the Prisons to objectively evaluate the viability of release.

*Annexed herewith marked **P6** are copies of the relevant pages of the Prison Rules [i.e., cover page & 818-822] being the Subsidiary Legislation under the Prisons Ordinance which is pleaded as part and parcel hereof*

*The Petitioner respectfully seeks an appropriate Order, directing any one or more of the Respondents and in particular the 3<sup>rd</sup> Respondent to submit to Your Lordships' Court, the petition for release submitted by the 2<sup>nd</sup> Respondent pursuant to Rule 235 of the Prison Rules*

*The Petitioner respectfully seeks an appropriate Order, directing any one or more of the Respondents and in particular the 3<sup>rd</sup> Respondent to submit to Your Lordships' Court any details pertaining to the rehabilitation of the 2<sup>nd</sup> Respondent and re-integration into society.*

22. The Petitioner during her tenure as a *Human Rights Commissioner* became aware that, there previously existed an annual evaluation system that assessed the rehabilitation of long term prisoners, and assessed their suitability for early release. However such system appears to have fallen into disuse in or around 1999. The Petitioner verily believes that such system must be reviewed, and brought in-line with international human rights norms, and reintroduced into the penal

system. The Petitioner verily believes that such a review prior to re-introduction should be done by establishment of an independent panel of persons, with relevant expertise and experience, appointed in a transparent manner by the *Ministry of Justice*. The Petitioner verily believes that the presidential pardon too, like other forms of early release of convicted persons such as release by license, must be granted only following such an evaluation process that ensures transparency and objectivity.

**REQUIREMENT FOR A STANDARDIZED PROCESS FOR CLEMENCY**

23. The Petitioner is aware that under the Constitution, *Article 34(1)* provides the President with power to grant a pardon to any offender, either free or subject to lawful conditions. For convenience of Your Lordships' Court, the relevant constitutional provision is recreated below;

**34.** (1) The President may in the case of any offender convicted of any offence in any court within the Republic of Sri Lanka –  
(a) grant a pardon, either free or subject to lawful conditions;

(b) grant any respite, either indefinite for such period as the President may think fit, of the execution of any sentence passed on such offender ;

(c) substitute a less severe form of punishment for any punishment imposed on such offender ; or

(d) remit the whole or any part of any punishment imposed or of any penalty or forfeiture otherwise due to the Republic on account of such offence :

Provided that where any offender shall have been condemned to suffer death by the sentence of any court, the President shall cause a report to be made to him by the Judge who tried the case and shall forward such report to the Attorney-General with instructions that after the Attorney-General has advised thereon, the report shall be sent together with the Attorney-General's advice to the Minister in charge of the subject of Justice, who shall forward the report with his recommendation to the President.

24. Therefore, the Petitioner is aware, that in respect of individuals sentenced to death, certain conditions need to be met *inasmuch as*;

a) The President is required to cause a report to be made to him by the judge who tried the case. The Petitioner is unaware of any such report;

*The Petitioner respectfully seeks an appropriate Order from Your Lordships' Court, directing any one or more of the Respondents to submit such report to Court.*

- b) Such report of the said Judge is then required to be forwarded to the Hon. The Attorney General, and the said Hon. The Attorney General after, provide advice thereon, and send such report and advice, to the 4<sup>th</sup> Respondent, the Hon. Minister in charge of the subject of Justice. The Petitioner is unaware of any such advice;

*The Petitioner respectfully seeks an appropriate Order from Your Lordships' Court, directing any one or more of the Respondents and in particular the 1A Respondent and the 4<sup>th</sup> Respondent to submit such report and advice to Court.*

- c) On receiving such report and advice, the said 4<sup>th</sup> Respondent, the Hon. Minister in charge of the subject of Justice is required to forward the report with his recommendations to the President. The Petitioner is unaware of any such recommendations;

*The Petitioner respectfully seeks an appropriate Order from Your Lordships' Court, directing any one or more of the Respondents and in particular the 1B Respondent, the 4<sup>th</sup> Respondent and/or 5<sup>th</sup> Respondent Secretary to submit such report recommendations Court.*

25. The Petitioner verily believes that even special presidential pardons which are not solely dependent on the rehabilitation progress of the convict but which may take into account mitigating circumstances, such as social factors and the prisoner's personal circumstances, the context of the offence etc., **still need to be standardized to some extent**. The Petitioner is aware of the "Mercy Petition" process that is available in *India* to deal with similar situations. Such process permits a prisoner to submit an appeal to the Governor or the President, wherein the *Ministry of Home Affairs* makes recommendations to the President regarding such petitions. The progress of the review of the mercy petition is publicly available for viewing, and details as to mercy petitions can even be followed by the prisoner on the official web-page of the President. The Petitioner is aware that the Indian Supreme Court has subjected the President's decisions on Mercy Petitions to judicial review in numerous cases.

*Annexed herewith marked **P7(a)** is a copy of the relevant [official webpage](#) of the President's Secretariat which indicates the progress of consideration of mercy petitions. Further, for the convenience of Your Lordships' Court, annexed herewith respectively marked **P7(b)** and*

*P7(c) are judgments of the Indian Supreme Court namely, [Maru Ram v Union of India](#), and [Epuru Sudhakar v Govt. Of A.P](#) which are pleaded as part and parcel hereof*

### **VIOLATION OF FUNDAMENTAL RIGHTS**

26. The Petitioner is advised to state that Article 35 of the Constitution, *only* confers immunity on the President in respect of civil or criminal proceedings, and the exercise of Your Lordships Court's jurisdiction under Article 126 is unfettered in *this* regard [subject to Article 33(2)(g)], except in so far as, it is only open to the Petitioner to move Your Lordships' Court against the *Hon. The Attorney General*.
27. The Petitioner states that the granting of Pardon, stipulated in Article 34 of the Constitution is subject to Fundamental Rights Jurisdiction of Your Lordships' Court and can only be exercised fairly, lawfully and bearing in mind that such an exercise would benefit the society at large. The President's power to grant Pardon cannot be arbitrarily used and should not be exercised for collateral purposes.
28. The Petitioner states that in light of the circumstances herein morefully enumerated, the actions and inactions of any one or more of the Respondents to *ad-hoc* pardon individuals is unreasonable, arbitrary, irrational, unlawful, *ultra vires* and constitutes an **infringement** of the fundamental rights of the Petitioner guaranteed under Article 12(1) of the Constitution. The Petitioner further states;
- a) any purported decision made under Article 34 of the Constitution to pardon the 2<sup>nd</sup> Respondent is arbitrary, capricious, irrational contrary to the principles of *Natural Justice*, made for collateral purposes and violative of the Petitioner's fundamental rights;
  - b) Any purported decision to grant a pardon is contrary to the *Rule of Law* and in the absence of a transparent and accountable mechanism for granting such pardons, in the circumstances is tantamount to Contempt of Court;
  - c) There is no unfettered discretion vested in any authority, and the actions impugned herein disclose unfettered exercise of discretion;
  - d) A *carte blanche* pardon in any event appears to be a disproportionate response especially in light of the carefully analysed evidence of both the *High Court of Colombo* and Your Lordships' Court, especially when more proportionate responses are available under the Constitution;
  - e) The actions of the State to *ex facie* pardon an individual who has been found guilty of a heinous crime on the one hand, but to purportedly carry out the

death penalty for one specified category of individuals [i.e., those convicted for drug related offences] whilst denying them access to clemency, is arbitrary, capricious, irrational and/or *ultra vires* the powers of any one or more of the Respondents, and contrary to international human rights norms;

- f) The need to urgently release the 2<sup>nd</sup> Respondent in the midst of a pandemic brought about by COVID-19 is *ex facie* arbitrary inasmuch as, no formalised method was set in place to deal with prisoners and prison overcrowding during such pandemic. The arbitrary selection of specific individuals *sans* identifiable, disclosed criteria is arbitrary, capricious and *ultra vires* the powers of the Respondents.

29. The Petitioner states that actions of any one or more of the Respondents in purporting to grant a Presidential Pardon to the 2<sup>nd</sup> Respondent is contrary to the objectives of the *Assistance to and Protection of Victims of Crime and Witnesses Act, No. 4 of 2015* and runs counter to victims' right to access, disclosure, compensation and reparations. Such is contrary to Article 13(4) of the Constitution as read with Article 27(12). The Petitioner states that such purported Presidential Pardon would also run counter to the *Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power* and *The International Covenant on Civil and Political Rights*.

*A copy of the aforesaid Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power as appears on the official [OHCHR website](#) is annexed herewith marked **P8** which is pleaded as part and parcel hereof*

30. The Petitioner further states that the actions of the 2<sup>nd</sup> Respondent adversely affect the Victim-Survivor's right to freely without fear, advocate for reconciliation and justice, particularly, as the conviction of the 2<sup>nd</sup> Respondent is one of the rare instances where errant military officers have been prosecuted. The Petitioner states that a Presidential Pardon is in effect a granting of immunity to the actions of such Respondent and would be a *carte blanche* for such Respondent and others act with impunity. Such would have a **chilling effect** on the Petitioner's (and the Victim-Survivor's) right to advocate for justice and would be an infringement of Article 10 and Article 14(1)(a) of the Constitution.

31. The Petitioner is aware that the *Assistance to Protection of Victims of Crimes and Witnesses Act, No. 4 of 2015*, in particular **Section 3(q)**, require special notifications of the proposed Pardon. The said section is recreated below verbatim for

convenience of Your Lordships' Court. The Petitioner is unaware of such notification.

**"3(q)** in the event of any person in authority considering the grant of a pardon or remission of sentence imposed on any person convicted of having committed an offence, to receive notice thereof and submit through the Authority to the person granting such pardon or remission, the manner in which the offence committed had impacted on his life including his body, state of mind, employment, profession or occupation, income, quality of life, property and any other aspects concerning his life."

*The Petitioner respectfully seeks an appropriate Order from Your Lordships' Court directing any one or more of the Respondents and in particular the 1B Respondent and/or 5<sup>th</sup> Respondent Secretary and/or 6<sup>th</sup> Respondent to submit such notification to Your Lordships' Court.*

32. The Petitioner further states that the actions of the State undermine the *Rule of Law* inasmuch as;

- a) The questioning pertaining to granting of pardon should ordinarily be resolved by the application of the law and not by exercise of absolute, perceived unfettered discretion;
- b) The laws in place should apply *equally* to all subject to the extent that any objective distinguishable criteria would justify any differentiation;
- c) Officials of *all levels* must exercise the powers conferred on them in good faith, fairly, for the *purpose* for which those powers were conferred;
- d) Such officials should not exercise such powers unreasonably for collateral purposes, exceeding the limits of such powers;
- e) The law should provide for adequate protection of fundamental human rights, and that includes *not only* fair trial rights of a defendant but *also* of a victim-survivor and the general public at large. In the particular context of the instant application, the *Mirusuvil* massacre concerned internally displaced Tamil citizens, murdered by *errant* military personnel and is one of the *few* instances where perpetrators have been held accountable. Reversing such judicial decisions gravely affects fundamental human rights and the *Rule of Law*. The Petitioner further states that granting such pardon, in effect, justifies the hate speech rhetoric surrounding the incarceration of the 2<sup>nd</sup> Respondent which appeared to target those calling for justice, and



particularly targeted the minority community to which the victims' belonged;

*Annexed herewith marked **P9** is a copy of a study 'Saving Sunil' published by the Centre for Policy Alternatives which indicates hate speech used on social media platforms targeting and stereotyping minorities as terrorists, thus justifying their executions. Such report is available [online] at <https://www.cpalanka.org/wp-content/uploads/2015/10/SS-Final-RW-SH-formatted.pdf> which is pleaded as part and parcel hereof*

- f) The 2<sup>nd</sup> Respondent had availed himself to adjudicative procedures provided by the State that provided for a fair trial, and for the executive to overturn within the course of a year, judicial proceedings that analysed and deliberated carefully on evidence between 2002-2019 also gravely impacts on the *Rule of Law* and respect for judicial proceedings.
33. The Petitioner additionally states that the actions complained of hereinbefore morefully is also contrary to Sri Lanka's international commitments including *Article 2* of the *ICCPR* which requires the State to ensure an effective remedy for those whose rights have been violated.
34. The Petitioner states that unless the *interim relief* prayed for through this application are granted forthwith, grave and irreparable loss, harm, damage and prejudice to the fundamental rights of the Petitioner and citizens of Sri Lanka would be caused, and the instant application would be rendered nugatory. Therefore, the Petitioner seeks an *interim order* staying the issuance of any special presidential pardons until the final determination of this application. The Petitioner specifically states that she seeks no order to stay the granting of any general pardons.
35. The Petitioner respectfully seeks the indulgence of Your Lordships' Court, considering the limited material readily available in the public domain and the severe time restraints including the national emergency situation in place due to the COVID-19 pandemic where day to day machinery of the State has ground to a halt, to reserve the right to, amend pleadings, add any person/persons as parties to this application in the event of further material revealing their complicity of the actions complained in the preceding paragraphs. Further the Petitioner reserves the right to tender any further evidence or affidavits and documents as necessary substantiating the averments contained above, and the entire documents referred to above wherein only relevant pages have been submitted.

36. The Petitioner is advised to state and therefore states that the aforesaid actions of the Respondents amount to *executive and/or administrative* action within the meaning of *Articles 17 and 126* of the Constitution. The Petitioner specifically states that none of the asseverations contained hereinbefore come under *Article 33(2)(g)* of the Constitution. *Article 35* of the Constitution, *only* confers immunity on the President in respect of civil or criminal proceedings, and the exercise of Your Lordships Court's jurisdiction under *Article 126* is unfettered in *this* regard.

37. The Petitioner states that the jurisdiction of Your Lordships' Court has not previously been invoked in respect of matters pleaded herein.

**WHEREFORE THE PETITIONER RESPECTFULLY PRAYS THAT  
YOUR LORDSHIPS' COURT BE PLEASED TO:**

- (a) Grant the Petitioner *leave to proceed* with this application in the first instance;
  - (b) Direct any one or more of the Respondents and in particular, the 1A and/or 1B Respondent, to submit to Your Lordships' Court, the decision and all antecedent documentation relevant to granting of Presidential Pardon to the 2<sup>nd</sup> Respondent;
  - (c) An appropriate Order of Your Lordships' Court;
    - i. Directing the Commander of the Sri Lanka Army to serve notice of the instant application on the 2<sup>nd</sup> Respondent;
- OR in the alternative to the above*
- ii. Directing any one or more of the Respondents to furnish the address of the 2<sup>nd</sup> Respondent to Your Lordships' Court.
  - (d) Direct and issue an appropriate *interim order* staying the issuance of any special presidential pardons until the final determination of this application;
  - (e) Declare that the actions and/or inactions of any one or more of the Respondents have violated the fundamental rights of the Petitioner as enshrined in *Article 12(1)* as read with *Article 10* and *Article 14(1)(a)* of the Constitution;

- (f) Declare that granting of Pardon of the 2<sup>nd</sup> Respondent is unconstitutional and contrary to *Article 12(1)* of the Constitution;
- (g) Declare that the 2<sup>nd</sup> Respondent is not entitled to a Presidential Pardon under *Article 34(1)(a)* of the Constitution;
- (h) Declare null and void and no force in Law and/or quash the decision to pardon the 2<sup>nd</sup> Respondent by the President of the Democratic Socialist Republic of Sri Lanka on or about 26-03-2020 in respect of the conviction and sentence in respect of case bearing number SC(TAB) 1/2016 which partially affirmed the decision in HC1092/2002;

*OR in the alternative to the above*

- (i) Declare null and void and of no force in Law the decision to pardon the 2<sup>nd</sup> Respondent submitted to Your Lordships' Court pursuant to prayer (b) above;
- (j) Declare that the secrecy and lack of accountability coupled with the lack of disclosed published guidelines pertaining to granting of pardons is violative of *Article 12(1)* of the Constitution;
- (k) Declare that the arbitrary selection of prisoners to grant pardons, and the failure to grant those other condemned prisoners the right/opportunity to seek clemency is contrary to *Article 12(1)* and *Article 13(4)* of the Constitution;
- (l) An appropriate Order, directing the 4<sup>th</sup> Respondent Minister, (and/or officer serving under such Respondent in the relevant Ministry) to appoint in a transparent manner, an independent panel of persons, with relevant expertise and experience, to review the evaluation system that assesses eligibility of convicted persons for early release, including granting of pardons;
- (m) Direct any one or more of the Respondents to submit to Your Lordships Court;
- i. the petition for release (if any) submitted by the 2<sup>nd</sup> Respondent pursuant to *Rule 235* of the Prison Rules;
  - ii. The report(s), caused to be made to the President, by the Hon. Judges who tried the case pertaining to the 2<sup>nd</sup> Respondent as required by the *proviso* to *Article 34(1)* of the Constitution;

- iii. the advice of the Hon. Attorney General, pursuant to the *proviso* to *Article 34(1)* of the Constitution in respect of the 2<sup>nd</sup> Respondent who was sentenced to death, and the documentation that was forwarded to the 4<sup>th</sup> Respondent Minister;
- iv. the recommendation of the 4<sup>th</sup> Respondent Minister, pursuant to the *proviso* to *Article 34(1)* of the Constitution in respect of the 2<sup>nd</sup> Respondent who was sentenced to death as submitted to the President along with any other documentation so submitted;
- v. Any reports compiled in regard to the consideration of imposing the death penalty on the condemned prisoners to be executed;
- vi. The notification submitted to the victim-survivor, as required by the *Assistance to Protection of Victims of Crimes and Witnesses Act, No. 4 of 2015*, in particular *Section 3(q)* thereof;
- vii. A true copy of the Gazette, Proclamation or document containing the decision for and/or grant of the pardon in respect of the 2<sup>nd</sup> Respondent

**(n)** Make a direction calling for the following court documents;

- i. Direct the *Registrar* of the *High Court of Colombo* to submit the entire case record bearing Case No. **HC1092/2002**;
- ii. Direct *Registrar* of the *Supreme Court* to submit the entire case record of case bearing No. **SC(TAB) 1/2016** at the hearing of this application

**(o)** Direct the 5<sup>th</sup> Respondent Secretary and/or any other Respondent to submit to Your Lordships Court;

- i. the file containing the correspondence, recommendation and decisions pertaining to granting of Pardon to the 2<sup>nd</sup> Respondent;
- ii. Any requests received by the President and/or the Presidential Secretariat to grant a Presidential Pardon to 2<sup>nd</sup> Respondent;

- iii. Any reports compiled in regard to the consideration of granting of Presidential Pardon to the 2<sup>nd</sup> Respondent
- (p) Direct the 6<sup>th</sup> Respondent to take necessary actions and act in terms of the *Assistance to Protection of Victims of Crimes and Witnesses Act, No. 4 of 2015*, in respect to granting of Pardon to the 2<sup>nd</sup> Respondent and submit a report to Your Lordships' Court forthwith;
- (q) Grant exemplary costs; and
- (r) Make such further and other just and equitable orders as to Your Lordships' Court shall seem fit, in the circumstances of this application, under and in terms of *Article 126(4)* of the Constitution of the Republic;
- (s) Grant such further and other relief as to Your Lordships' Court shall seem meet.



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Documents Annexed To The Petition

Documents marked P1 to P9



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