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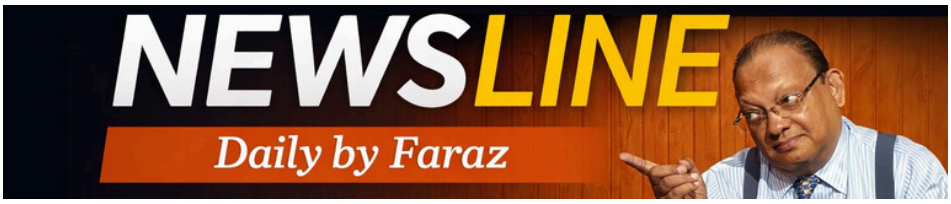
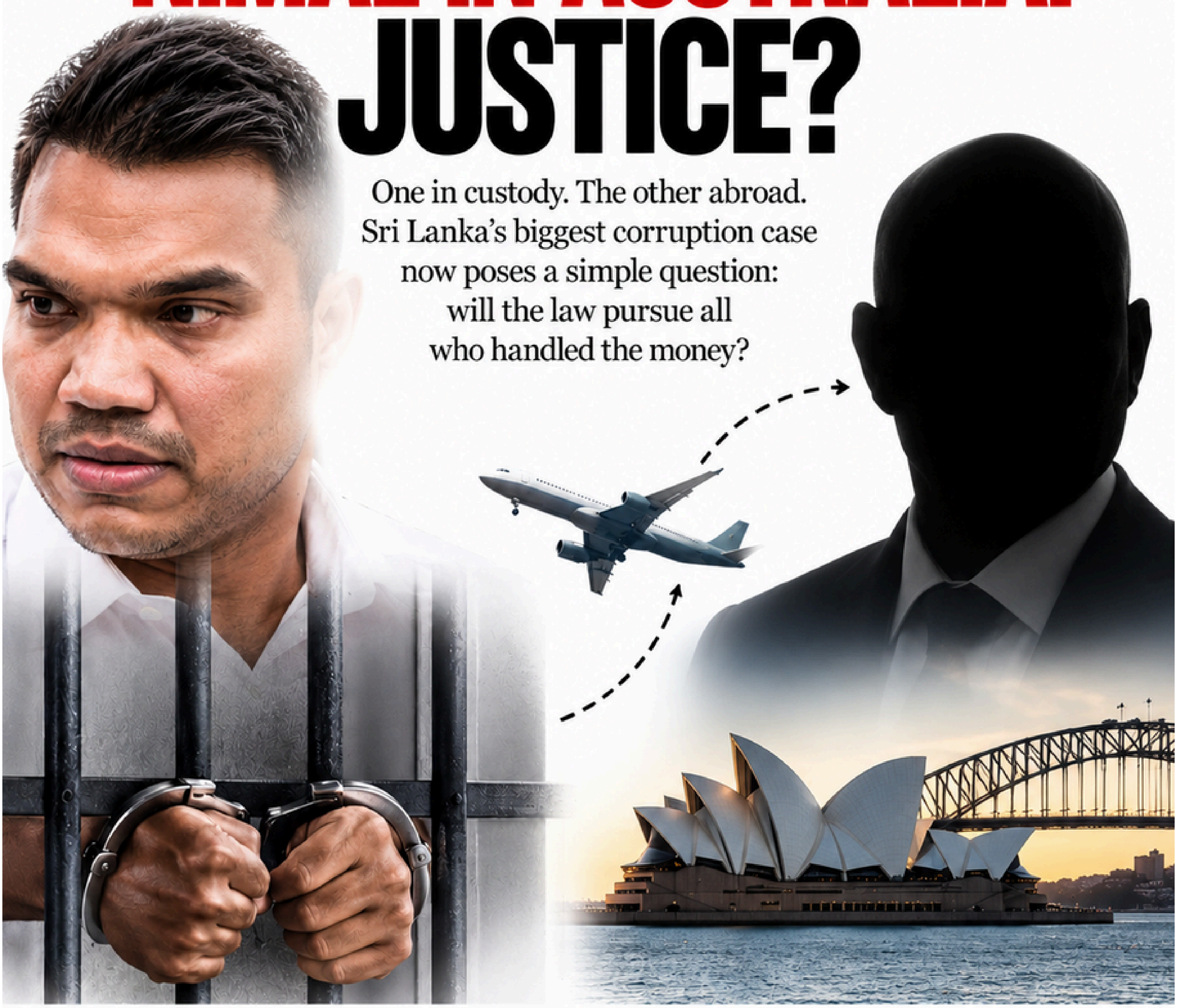



"Questioning The Answers"

# NAMAL IN REMAND, NIMAL IN AUSTRALIA. JUSTICE?

One in custody. The other abroad. Sri Lanka's biggest corruption case now poses a simple question: will the law pursue all who handled the money?



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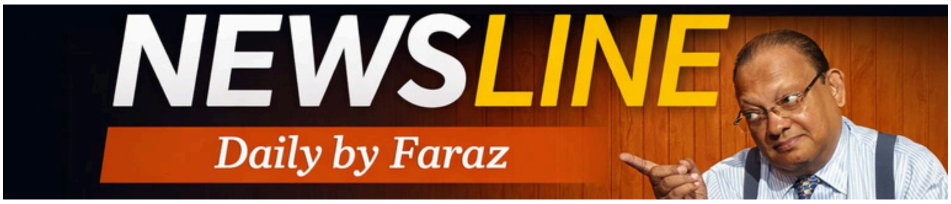


"Questioning The Answers"

# NAMAL IN REMAND, NIMAL IN AUSTRALIA

### THE AFFIDAVIT BEHIND THE RS 100 MILLION AIRBUS CASE

**NEWSLINE LEAD**

Namal Rajapaksa spent Friday night in remand custody after the Colombo Chief Magistrate ordered that the opposition MP be remanded until September 18 in an investigation arising from the long-running SriLankan Airlines Airbus affair.

But behind the arrest lies a potentially more important story.

The Commission to Investigate Allegations of Bribery or Corruption told court that its investigation included an affidavit from businessman Nimal Perera alleging that he handed Rajapaksa Rs 100 million linked to funds received in connection with the Airbus transaction.

Rajapaksa denies wrongdoing.

The allegation now raises questions extending considerably beyond the political spectacle of a former President's son being taken into custody. They concern the money trail, the evidential status of the man said to have handed over the money and, ultimately, whether the evidence can withstand the scrutiny required of a criminal prosecution.

According to CIABOC's account, €1,454,651.24 in alleged bribe money was received into an account maintained at Standard Chartered Bank in Singapore in the name of BIZ Solutions Inc.

Investigators allege that US$800,000 from those funds was subsequently transferred into an OCBC Bank account in Singapore held by Sabre Vision Holdings Ltd, described as a company belonging to a Sri Lankan businessman.

CIABOC's case is that the businessman subsequently handed Namal Rajapaksa a total equivalent to Rs 100 million on several occasions during 2014 and 2015.

The Commission says its investigation is not based solely upon the businessman's account. It has referred to statements obtained from Airbus officials in France together with documentary material and other information collected during the investigation.

Those details matter because an allegation, however serious, remains an allegation until proved.

The court's decision to remand Rajapaksa is not a finding that he accepted a bribe. It is not a conviction and must not be presented as one. He retains the presumption of innocence and the prosecution will ultimately have to establish its case according to law.

There is, however, another part of this story which deserves equally close scrutiny.

His name is Nimal Perera.

# NIMAL IN AUSTRALIA, NAMAL IN REMAND

### WHAT CHANGED BETWEEN JULY AND SEPTEMBER?

**NEWSLINE SPECIAL REPORT**

Less than two months before Namal Rajapaksa was remanded, Nimal Perera occupied a markedly different position in the Airbus investigation.

When the matter came before Colombo Chief Magistrate Asanga S. Bodaragama on July 14, an attorney appearing for Perera sought permission to make submissions on his behalf.

The Magistrate observed that the prosecution had not identified Perera as a suspect and considered submissions on his behalf unnecessary at that stage.

That was July 14.

On September 4, an affidavit attributed to Perera had become part of the evidential foundation placed before court in an investigation that resulted in Namal Rajapaksa being arrested and remanded.

What happened between those two dates deserves examination.

Perera's connection to the investigation was already significant. CIABOC had informed court that he was associated with the bank account into which part of the money allegedly originating from the Airbus transaction had been transferred.

He was also reported to be resident in Australia.

On July 21, it was reported that a special team comprising officers from the Criminal Investigation Department and the Bribery Commission had travelled to Australia in connection with the Airbus investigation.

The stated purpose was to locate suspects and witnesses connected to the alleged payment of approximately US$2 million arising from the aircraft transaction.

Perera was specifically relevant because investigators had previously told court that he was living in Australia and was said to be connected to the account into which money from the Airbus transaction had allegedly travelled.

That makes the chronology important.

On July 14, the court was told he had not been named as a suspect.

Investigators subsequently travelled to Australia.

By September 4, CIABOC was relying upon evidence attributed to Perera alleging that Rs 100 million had been handed to Namal Rajapaksa.

There is nothing inherently improper about that sequence. Investigations develop.

Witnesses provide evidence. New documents emerge and people who initially attract investigative attention may ultimately become witnesses rather than accused persons.

But where the evidence of one individual contributes to the incarceration of another, transparency over how that evidence was obtained and corroborated becomes particularly important.

NewsLine therefore believes several questions deserve answers.

Was Perera interviewed in Australia? When was his affidavit obtained? Was it made before or after the Sri Lankan investigative team travelled there? What was his legal status when it was provided? Was any undertaking, immunity, concession or other arrangement offered or discussed?

Most importantly, what independent evidence corroborates the alleged payment of Rs 100 million?

That last question may ultimately prove more important than all the others.

CIABOC has indicated that its evidence extends beyond Perera's account and includes material obtained from Airbus officials and documentary evidence. If those documents independently connect the alleged Airbus money to the alleged Rs 100 million payment, the prosecution case becomes substantially more consequential.

If they establish only the earlier movement of money while the alleged final payment depends principally upon one person's account, the evidential picture becomes different.

Those are matters for investigation and, ultimately, for a court.

Namal Rajapaksa's political identity should neither protect him nor condemn him. If investigators possess evidence that he accepted corrupt money, that evidence should be prosecuted without fear or favour.

Equally, the extraordinary power of the State to arrest and incarcerate a citizen demands that evidence be tested with the same rigour regardless of the surname of the person standing in the dock.

There is now an allegation of Rs 100 million.
There is an affidavit.

There is a businessman in Australia.

And there is a Member of Parliament in remand custody.

The task ahead is not to decide which political camp to believe.
It is to establish what can actually be proved.

*Be that as it may.*

The key chronology is independently supported: the July 14 court proceedings recorded that Perera had not then been named a suspect; a joint investigative team subsequently travelled to Australia; and today's court reporting says his affidavit alleges the Rs 100 million payment.

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# JOHNSTON ARRESTED - AND BAILED HOURS LATER

**Court finds insufficient grounds to keep former Minister in custody over alleged Rs 7.97 million procurement loss**

**NEWSLINE REPORT**

Former Minister Johnston Fernando was arrested by the Bribery Commission yesterday over an alleged procurement irregularity involving chairs purchased for the Mahinda Rajapaksa Auditorium in Polgolla - and was back out on bail later the same day.

Fernando and businessman Hemantha Lalith de Silva, owner of Design Point (Pvt) Ltd, were arrested by the Commission to Investigate Allegations of Bribery or Corruption and produced before Colombo Chief Magistrate Asanga S. Bodaragama.

CIABOC alleges that the procurement process for chairs for the auditorium was improperly handled by purchasing them from Design Point rather than the bidder which had submitted the lowest compliant quotation.

The Commission alleges that the decision caused a loss of Rs 7,973,114.50 to the Central Engineering Consultancy Bureau while providing an undue benefit to an outside party.

Fernando was arrested on allegations of corruption while de Silva is accused of aiding and abetting the alleged offence.

When the two men were produced before court, CIABOC sought their remand, telling the Magistrate that the investigation remained incomplete.

Lawyers appearing for the suspects opposed the application.

They argued that their clients had cooperated fully with investigators and that there were insufficient grounds under the Bail Act to justify keeping them in custody.

The Magistrate agreed.

Fernando and de Silva were each released on two personal bail bonds of Rs 2.5 million and travel bans were imposed upon them. The case is due to be called again on November 17.

The decision came on an extraordinary day for Sri Lanka's anti-corruption machinery.

While Fernando walked out of court on bail, fellow opposition politician Namal Rajapaksa was ordered into remand custody until September 18 in the considerably larger SriLankan Airlines-Airbus investigation.

The two outcomes should not automatically be compared as though bail were some form of political scorecard.

Different investigations involve different evidence, different allegations and different considerations under the law.

The question before a Magistrate considering remand is not whether an accused is popular, powerful or politically inconvenient, but whether sufficient legal grounds exist to deprive that person of liberty pending further proceedings.

That distinction matters particularly at a time when a succession of former Ministers and political figures are appearing before investigators and courts.

Arrest is not conviction.

Bail is not acquittal.

And remand is not punishment.

Those distinctions may be less exciting than the politics surrounding the people involved, but they are precisely what separates a justice system from a political theatre.

*Be that as it may.*

# 22A: THE ARGUMENTS ARE OVER - NOW COMES THE ANSWER

**Five judges have heard 67 challenges. The Supreme Court's determination now goes to Parliament - as international legal attention turns to the bench itself**

**NEWSLINE REPORT**

The lawyers have spoken, the petitions have been heard and the written-submission deadline has expired.
Sri Lanka now waits for the Supreme Court.

The Court has concluded its hearing of the extraordinary 67 petitions challenging the proposed 22nd Amendment to the Constitution, legislation which seeks to extend the retirement age of judges of the Supreme Court and Court of Appeal by two years.

The cases were heard by a five-member bench headed by Chief Justice Preethi Padman Surasena together with Justices Achala Wengappuli, Arjuna Obeyesekere, Sampath B. Abayakoon and Gihan Kulatunga.

At the beginning of proceedings, several senior President's Counsel asked that the constitutional challenges be heard by a full bench of the Supreme Court.

That application was refused.

The Chief Justice said the discretion over the composition and number of judges sitting on a Supreme Court bench rested with the Chief Justice under Article 132(3) of the Constitution.

The hearings proceeded before the five judges.
Now that decision itself has attracted international legal attention.

Steven Thiru, President of the Commonwealth Lawyers' Association, who attended the proceedings as an observer, has publicly raised questions about why a larger or full bench was not constituted given the constitutional importance of the case and its implications for judicial independence.

His intervention should not be exaggerated. Nor should it be dismissed.

The number of judges hearing a case does not determine whether the eventual judgment is correct. The Constitution provides the legal framework governing the constitution of Supreme Court benches and the Court has already ruled upon the application seeking a full bench.

But 22A is unusual for a reason that has existed from the beginning.

The judges are being asked to determine the constitutionality of legislation which potentially affects the tenure of judges themselves.

That makes public confidence in the process almost as important as the eventual legal answer.

The controversy is no longer confined to lawyers either. Forty professional organisations and trade unions have joined the Bar Association of Sri Lanka in opposing the proposed amendment, while opposition parties and activists demonstrated in Colombo on Thursday against the Government's proposal.

The Government's position is that increasing judicial retirement ages and expanding the Superior Courts will improve efficiency and help address delays.

Its opponents argue that changing the retirement age in a manner capable of benefiting judges already holding office creates a fundamentally different constitutional problem.

That is the question NewsLine has repeatedly examined: whether Parliament may prospectively alter the retirement age applying to future judicial appointments, and whether extending the tenure of judges already appointed under an existing constitutional retirement age crosses a constitutional boundary requiring the approval of the People.

The Supreme Court has now heard those arguments.

Its determination will be communicated to the Speaker and subsequently announced to Parliament in accordance with the constitutional process.

Until then, speculation about how the five judges will decide serves little purpose.

What matters now is something larger.

Sixty-seven petitioners came before the country's highest court asking it to determine the constitutional limits of Parliament's power over judicial tenure.

The Government defended its legislation.
The Bar made its arguments.

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**22A...**

The Court heard them.

Now Sri Lanka waits for five judges to answer a question which reaches directly into the relationship between Parliament, the Judiciary and the sovereignty of the People.

Whatever that answer is, it will travel considerably further than the retirement date of any individual judge.

*Be that as it may.*

*The Johnston details - including the alleged **Rs 7,973,114.50 loss**, CIABOC's request for remand, the Magistrate's finding that sufficient grounds to refuse bail had not been shown, Rs 2.5 million bail bonds and the November 17 next date - are confirmed in today's court reporting. The 22A hearing involved 67 petitions before the five-member bench, while Commonwealth Lawyers' Association President Steven Thiru has now publicly raised concerns over the refusal to constitute a larger bench.*

## EDITORIAL

# NAMAL IN REMAND, NIMAL IN AUSTRALIA. JUSTICE?

There is something quite extraordinary about the picture confronting Sri Lanka this morning. Namal Rajapaksa, Member of Parliament and son of former President Mahinda Rajapaksa, is in remand custody until September 18, while businessman Nimal Perera, whose evidence includes the allegation that he handed Rajapaksa approximately Rs 100 million, remains in Australia. Somewhere between the two lies the rather more important matter of justice.

The allegation against Namal Rajapaksa is serious. The Commission to Investigate Allegations of Bribery or Corruption says money originating from the notorious SriLankan Airlines-Airbus transaction travelled through accounts in Singapore before US$800,000 reached a company associated with Perera, who subsequently allegedly converted money into Sri Lankan rupees and handed approximately Rs 100 million to Rajapaksa.

If admissible evidence establishes that allegation, it should be prosecuted without fear or favour. The name Rajapaksa cannot be a shield against the law, but neither can it be a substitute for evidence, particularly in a country where arrest is too easily mistaken for conviction and remand can acquire the appearance of punishment before trial.

Namal Rajapaksa is not guilty because he spent Friday night in remand. He is an accused person entitled to the presumption of innocence, and that distinction matters regardless of whether one admires, dislikes or is thoroughly indifferent to the Rajapaksas.

Then there is Nimal Perera, whose position deserves equally careful examination, not because NewsLine accuses him of wrongdoing but because his evidence has now assumed considerable importance in proceedings which have deprived another citizen of his liberty.

As recently as July 14, when a lawyer sought to make representations on Perera's behalf in the Airbus investigation, the Colombo Chief Magistrate observed that the prosecution had not informed court that Perera had been identified as a suspect.

Investigators subsequently travelled to Australia. We now know from the submissions made on Friday that investigators met Perera there and recorded a statement from him, while the prosecution says he also provided an affidavit alleging that the US$800,000 received by his company was converted into rupees and approximately Rs 100 million handed to Namal Rajapaksa. Perera reportedly declined to return to Sri Lanka, citing threats to his life.

None of that makes his evidence false, but neither does an affidavit make an allegation true simply because somebody has sworn to it.

That is why the independent corroborating evidence becomes critical: the banking records, the conversion of the money, the manner in which Rs 100 million was allegedly delivered, the dates and circumstances of those payments and any contemporaneous documentary or witness evidence capable of connecting Rajapaksa to the funds.

The prosecution says there is more. It told court that Airbus has cooperated with the investigation, that senior Airbus officials visited Sri Lanka on three occasions and provided four statements, and that investigators obtained additional information concerning alleged connections between Airbus and Rajapaksa.

If that evidence independently completes the money trail, then let it speak in court.

This prosecution must not become a simple contest between the word of Namal Rajapaksa and the word of Nimal Perera. The administration of criminal justice requires something considerably stronger, particularly when the State has exercised its formidable power to deprive a citizen of his liberty before trial.

There is also a perfectly legitimate question about Perera's own status in this investigation.

If investigators regard him as a witness rather than a suspect, the evidential basis for that distinction should ultimately withstand scrutiny, particularly given the allegation that money originating from the Airbus transaction entered a company associated with him before the alleged payment to Rajapaksa.

The public is therefore entitled to know whether any immunity, undertaking or concession was offered or discussed, whether Perera's legal status changed after investigators travelled to Australia and what evidence determined that status.

These are questions, not accusations, and asking them is not an attempt to rescue Namal Rajapaksa from investigation; it is precisely the scrutiny that a prosecution of this magnitude deserves.

Rajapaksa himself has questioned the timing of his arrest, pointing to the Government's second-anniversary rally and an SLPP rally scheduled for September 12. That is his political argument and he is entitled to make it, but it should neither establish his innocence nor relieve the prosecution of its obligation to demonstrate that its actions were dictated by evidence rather than the political calendar.

Sri Lanka has spent decades demanding accountability from the powerful. We should not suddenly become nervous about accountability because the person being investigated possesses a famous surname, but accountability cannot simply mean putting famous people into prison vans and producing photographs for the evening news.

Real accountability means following the money wherever it travelled, examining everybody who handled it and testing witnesses with precisely the same seriousness with which suspects are investigated. It means protecting suspects from political prosecution while simultaneously protecting investigators from political interference, because equality before the law becomes meaningless the moment either side receives special treatment.

If Namal Rajapaksa took corrupt money, the State must prove it. If Nimal Perera handled money derived from corruption, investigators must establish precisely what occurred and determine his position according to the same law. If others participated, the trail must continue to them as well, irrespective of their surname, political connections, wealth or present country of residence.

Yesterday one man was sent into remand in Colombo while another remained in Australia. The administration of justice cannot afford to reside comfortably with either man.

It must reside in the evidence.

Be that as it may.

# THE ANTI-CORRUPTION LAW IS NOW ON TRIAL TOO

**Supreme Court concludes hearing 15 challenges to Government amendments as petitioners warn proposed changes could weaken safeguards, judicial oversight and the public's right to information**

**NEWSLINE REPORT**

On the very day Sri Lanka was absorbed by the arrest and remand of Namal Rajapaksa in one of the country's biggest corruption investigations, another important anti-corruption battle was unfolding rather more quietly inside the Supreme Court.

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## THE ANTI-CORRUPTION...

The Court yesterday concluded the hearing of 15 petitions challenging the constitutionality of the Government's proposed Anti-Corruption (Amendment) Bill. After two days of arguments, the three-member bench announced that its confidential determination would be communicated to the Speaker and the President, with parties given until Monday to complete written submissions.

The petitions were heard by Justices Shiran Gooneratne, Mahinda Samayawardhena and Sampath Wijeratne. Petitioners include Transparency International Sri Lanka, former Minister Professor G.L. Peiris and the Media Law Forum, among others.

Their objections go considerably further than technical complaints about legislative drafting. Petitioners have argued that provisions of the Bill threaten fundamental rights and judicial powers, with some asking the Supreme Court to determine that the proposed law requires not merely a special majority in Parliament but approval by the People at a referendum.

Transparency International Sri Lanka has raised particularly serious concerns. It argues that amendments could weaken the asset declaration regime, restrict meaningful access to information and remove an important element of judicial oversight where the anti-corruption authorities decide not to prosecute an accomplice who provides information.

That last issue has acquired an interesting relevance.

Sri Lanka is presently watching a major corruption investigation in which the evidence of one individual concerning the alleged movement of money has become important to proceedings against another.

The Namal Rajapaksa case and the constitutional challenge to the Anti-Corruption Amendment Bill are separate legal matters and should not be artificially conflated, but both remind us why the rules governing witnesses, accomplices, prosecutors and independent oversight matter.

A country serious about fighting corruption requires investigators capable of following money into bank accounts, companies and jurisdictions around the world. It also requires mechanisms permitting people with knowledge of corrupt transactions to provide evidence capable of exposing those ultimately responsible.

But considerable power requires considerable safeguards. A decision to prosecute can change a person's life. So can a decision not to prosecute somebody else. If an accomplice is spared prosecution in return for disclosure, the process by which that decision is made must command confidence both inside the courtroom and outside it.

That is ultimately why the constitutional challenge matters.

Sri Lanka desperately needs an effective anti-corruption law. It needs a strong and genuinely independent CIABOC capable of investigating presidents, ministers, officials, businessmen and anybody else against whom credible evidence exists.

What it does not need is an anti-corruption regime so powerful that accountability over the investigators themselves becomes weaker.

The Supreme Court must now decide where that constitutional balance lies.

At almost precisely the moment the State is demonstrating how powerful its anti-corruption machinery can be, the country's highest court is being asked to decide how powerful that machinery should become.

That is a coincidence worth watching.

*Be that as it may.*

## POLICE WORKING WITH DRUG DEALERS? THEN INVESTIGATE THEM

**President warns compromised officers to change their conduct or leave the service as Government promises major investment in policing**

**NEWSLINE REPORT**

President Anura Kumara Dissanayake has delivered an unusually stark warning from the very top of the State: a small number of Sri Lankan police officers are allegedly maintaining connections with drug traffickers and organised criminal networks.

Addressing the 160th anniversary of the Sri Lanka Police at the Field Force Headquarters in Thimbirigasyaya, the President said officers who had been intimidated, influenced or bought over by criminal networks must change their conduct or leave the service.

It was undoubtedly a powerful warning. It also raises a rather obvious question.

If there is credible evidence that serving police officers are working with narcotics traffickers or organised criminal gangs, leaving the Police should surely not be the end of the matter.

The President himself made clear that disciplinary authorities should act following proper investigations, inquiries and evidence. That distinction is important because suspicion is not proof, and no police officer should be condemned merely on allegation.

But where evidence does exist, resignation cannot become an escape hatch.

A police officer assisting a drug trafficker is not simply a bad employee. Depending upon what has occurred, that officer may be participating in the very criminality he or she has sworn to prevent, while possessing powers, information and access unavailable to an ordinary member of the public.

That makes corruption within law enforcement particularly dangerous.

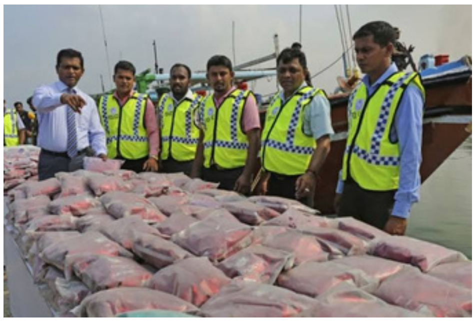
The scale of the Government's campaign against narcotics demonstrates why. The President said Police had seized 5,255 kilograms of heroin, 9,966 kilograms of crystal methamphetamine, 44,684 kilograms of Kerala cannabis and some 16.2 million narcotic tablets and capsules during the past two years.

He also said 74 armed criminals hiding overseas had been brought back to Sri Lanka with the assistance of intelligence services and foreign governments, with efforts continuing to return others.

Those are substantial numbers and demonstrate an enforcement machinery operating across borders.

But every compromised police officer potentially gives the people being pursued an extraordinary advantage over the people pursuing them.

The Government is simultaneously promising significant improvements to the Police service. Plans include recruiting 10,000 additional personnel, introducing a proper promotion system, paying a risk allowance, providing hundreds of motorcycles and vehicles, improving accommodation and infrastructure and introducing a new Police uniform around the middle of next year.



Those investments are welcome if they produce a more professional police service.

But the most important uniform is the integrity of the person wearing it.

Sri Lanka's Police officers perform difficult and sometimes dangerous work, and it would be grossly unfair to tarnish an entire service because of allegations against a minority.

Indeed, that is precisely why the minority alleged to be working with criminals must be identified through proper investigation and dealt with according to law.

The President has now publicly acknowledged the problem.

The next stage cannot merely be a warning.

If there is evidence that policemen are working for drug dealers, investigate them, prosecute them where the evidence warrants it and let the courts decide.

Taking off the uniform should never be enough to take away criminal responsibility.

*Be that as it may.*

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