

**In the Supreme Court of the**  
**Democratic Socialist Republic of Sri Lanka**

In the matter of an application made under and in terms of Articles 17 and 126 of the Constitution of the Democratic Socialist Republic of Sri Lanka.

No: **SC FR**

**/2019**

**Rushdie Habeeb**

Attorney - at - Law  
37, Belmont Street,  
Colombo 12

on behalf of

**Dr Shafi Shihabdeen**

6/1, Weerasinghe Mawatha, Kandy Road  
Kurunegala

and currently detained at the Criminal  
Investigation  
Department, Police Headquarters,  
Colombo 01

**Petitioner**

Vs

1. **Inspector Pushpalal**  
Officer in Charge (Crime  
Division)  
Kurunegala Police Station  
Kurunegala
2. **Officer in Charge**  
Kurunegala Police Station  
Kurunegala
3. **DIG Kithsiri Jayalath**  
DIG's office  
Kurunegala
4. **SSP Shani Abeyasekera**  
Director - CID  
Police Headquarters  
Colombo 01
5. **SDIG Chandana  
Wickremaratne**

Acting Inspector - General of  
Police  
Police Headquarters- Colombo 01

6. **General S H S Kottegoda (rtd)**  
Secretary - Ministry of Defence  
15/5, Baladaksha Mawatha,  
Colombo 03
7. **The Honourable Attorney -  
General**  
Attorney - General's Department  
Colombo 01

**Respondents**

On this 24th day of June 2019,

**TO: HIS LORDSHIP THE HONOURABLE CHIEF JUSTICE AND TO THEIR  
LORDSHIPS AND LADYSHIPS 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 Razmara Abdeen practicing under the name and style **ABDEEN ASSOCIATES** and his assistants Mrs. Manjula Pasquel, Mrs. Mohamed Ameen Fathima Rizniya, Ms. Fathima Salma Azeez and Miss. B.Sivachankare, Miss Chamitry Kaluhennadige and Mrs. Zainab Inayathullah his registered Attorney - at - Law Mr Razmara Abdeen states as follows:

1. The Petitioner is an Attorney - at - Law having his office at the above address and makes this application under Article 126(2) of the Constitution on behalf of Dr Seigu Shihabdeen Mohamed Shafi of 6/1, Weerasinghe Mawatha, Kandy Road, Kurunegala who is also known as Dr Shafi Shihabdeen and who is currently detained at the Criminal Investigation Department, Police Headquarters, Colombo 01.

The Petitioner annexes hereto marked as '**PIA**' a true copy of his national identity card and marked as '**PIB**' a true copy of his Bar Association Identity Card and pleads the same as being part and parcel hereof.

2. The Petitioner states that Dr Shafi Shihabdeen, is a citizen of the Democratic Socialist Republic of Sri Lanka and is the holder of the national identity card bearing no: 772600135V and is permanently resident at the above address.

The Petitioner annexes hereto marked as ‘**P2**’ a true copy of Dr Shihabdeen’s national identity card and pleads the same as being part and parcel hereof.

3. Dr Shihabdeen is 42 years of age, married and is a father of three children aged 15, 13 and 10 and engaged in his lawful occupation as a Medical Professional attached to the Teaching Hospital, Kurunegala as a Senior House Officer (SHO) until the incidents more fully averred to herein below. Dr Shihabdeen’s spouse, Dr M N F Imara is also a Medical Officer attached to the Teaching Hospital, Kurunegala in the Nephrology Unit.

4. In addition to his employment as a doctor in the government service Dr Shihabdeen engages in private practice at Goldmed Diagnostics and Laboratories (Pvt) Ltd located at 237, Colombo Road, Kurunegala. Goldmed Diagnostics and Laboratories (Pvt) Ltd is a business run by his father and an Indian national and the said company is an approved provider of Medical Certificates to the Gulf Cooperation Council [GCC].

The Petitioner annexes hereto marked as ‘**P3A**’ a true copy of the certificate of incorporation of Goldmed Diagnostics and Laboratories (Pvt) Ltd, marked as ‘**P3B**’ a true copy of the articles of association of Goldmed Diagnostics and Laboratories (Pvt) Ltd and marked as ‘**P4**’ a true copy of the GCC certification of registration of Goldmed Diagnostics and Laboratories (Pvt) Ltd and pleads the same as being part and parcel hereof.

5. The Petitioner makes this application in respect of the illegal arrest and illegal detention of Dr Shihabdeen by the Respondents which constitute executive and/or administrative action contemplated by Articles 17 and 126 of the Constitution which are hereinafter more fully enumerated below.

6. The Petitioner states that;
- i. The 1st Respondent is the Officer in Charge of the Crimes Division of the Kurunegala Police;
  - ii. The 2nd Respondent is the Officer in Charge of the Kurunegala Police Station;
  - iii. The 3rd Respondent is the Deputy Inspector General of Police - Kurunegala District;
  - iv. The 4th Respondent is the Director of the Criminal Investigation Department of the Sri Lanka Police;
  - v. The 5th Respondent is the Acting Inspector General of Police;
  - vi. The 6th Respondent is the Secretary Ministry of Defence;
  - vii. the 7th Respondent is the Honourable Attorney - General of the Republic of Sri Lanka who has been made a party to these proceedings as required by the Rules of Your Lordships' Court and as the Minister of Defence is His Excellency the President, Maithripala Sirisena.
7. The Petitioner reserves his right to add such and other parties, pleadings and documents as may be necessary for the purposes of this application.

**Dr Shafi Shihabdeen**

8. The Petitioner states that Dr Shihabdeen is from the village of Kalawewa and received his primary education at Kalawewa Central College where he completed his Ordinary Level Examinations and thereafter gained admission to Zahira College, Gampola for his Advanced Level Examinations. He was a student in the Biological science stream and gained entry to the Medical Faculty

of the said University of Sri Jayawardena Pura having obtained the necessary results in his first attempt at the GCE Advanced Level examination in 1995.

9. Thereafter in 2004, Dr Shihabdeen passed out of the Medical Faculty of Sri Jayawardena Pura having obtained an MBBS degree.

The Petitioner annexes hereto marked as 'P5' a true copy of Dr Shihabdeen's degree certificate and pleads the same as being part and parcel hereof.

10. Having received confirmation as a Medical Officer from the Sri Lanka Medical Council on August 10th, 2005, Dr Shihabdeen has served as a House Officer, Medical Officer and Senior House Officer in the Government Medical Service. During this period he has worked at the Teaching Hospital Kurunegala, District Hospital, Galewela and the Base Hospital, Dambulla.

11. Dr Shihabdeen also contested as a candidate of the United National Party at the General Elections of 2015 and secured 54,000 preferential votes and was placed 8th in the list of candidates on the basis of preferential votes received but was not elected as a Member of Parliament as the United National Party had obtained only 7 seats in the Kurunegala District.

12. After failing to secure a seat in Parliament Dr Shihabdeen returned to the government service and based on an appeal made by him he was appointed in August 2016 as a Medical Officer, Gynaecology and Obstetrics, Base Hospital, Dambulla and thereafter in February 2017 was transferred to the Teaching Hospital, Kurunegala as a Senior House Officer, Gynaecology and Obstetrics. He was serving there until the events that form the subject matter of this application occurred.

13. The Petitioner states that Dr Shihabdeen and three other persons, M. Sajith, M Rausdeen and Ishak Rahman [hereinafter sometimes referred to as partners] in their individual capacity purchased the land at no: No.16, Puttalam Road, and 40 and 42, Bodhiraja Mawatha, Kurunegala by deed of transfer bearing no.

4220 on December 15th, 2015 attested by Mrs Fathima M Ansar, Attorney - at - Law and Notary Public of Kurunegala.

The Petitioner annexes hereto marked as 'P6' a true copy of the said deed of transfer and pleads the same as being part and parcel hereof.

14. The Petitioner states that of the purchase consideration of Rupees One Hundred and Thirty Million (Rs 130,000,000.00) Rupees Sixty Million (Rs 60,000,000.00) was paid by Dr Shihabdeen and his partners jointly and the balance consideration was paid having obtained a financial facility from Amana Bank PLC.
15. The Petitioner states that to the best of his knowledge and belief that the purchase of the afore stated land and premises caused jealousy and the perception that Dr Shihabdeen had amassed wealth and that could have contributed to his illegal arrest and illegal detention which forms the subject matter of this application.
16. The Petitioner states that Dr Shihabdeen's contribution towards the purchase consideration was paid by monies earned from his savings from his salary, earnings from his private practice and other declared income sources.

The Petitioner annexes hereto the income tax returns of Dr Shihabdeen for the years 2015/2016 marked as 'P7' and pleads the same as being part and parcel hereof.

### **MC Kurunegala B 1398/19**

17. On May 22nd, 2019 the 1st Respondent reported facts before the Learned Magistrate of Kurunegala in case no: B 1398/19 stating *inter alia* that;
  - i. the 3rd Respondent had received 'intelligence information' that a Muslim doctor serving in the Teaching Hospital, Kurunegala was

assisting Muslim extremists groups having links with ISIS terrorists and by a direction dated May 12th, 2019 had instructed that an investigation be conducted and to take steps according to law against the said doctor if there is evidence of such a link;

- ii. thereafter the 1st Respondent had conducted 'investigations' and had received 'intelligence information' that the un - identified doctor was causing harm to the fallopian tubes of Sinhalese women when performing caesarian operations and thereby reducing the functionality of the said organs and which in turn results in those women becoming infertile;
- iii. The said doctor was also receiving a large amount of funds from foreign NGO's and that he was utilising these funds to purchase properties in Kurunegala and was carrying on business activities in these premises.

18. Thereupon the 1st Respondent sought orders to obtain accounts statements from two bank accounts belonging to the Dr Shihabdeen although his name was not disclosed in the said B - report.

The Petitioner annexes hereto marked as '**P8**' a true copy of the said certified copy of the entire case record as at June 6th, 2019 in MC Kurunegala B Report 1398/19 and marks the B Report dated May 22nd, 2019 as '**P8A**' and pleads the same as being part and parcel hereof.

19. The Petitioner states that the statements that 'investigations' were being conducted or have been conducted is totally false.
20. Thereafter on May 23rd, 2019 a second B Report was filed where the Dr Shihabdeen was named as the suspect and the 1st Respondent obtained a travel ban preventing Dr Shihabdeen from leaving the country.

The Petitioner marks the said B - Report as 'P8B' which is part of the entire case record as at June 6th, 2019 in MC Kurunegala B Report 1398/19 which has been marked above as 'P8' and pleads the same as being part and parcel hereof.

21. The Petitioner states at the outset the said allegations are false and that the arrest and detention of Dr Shihabdeen is an illegal abuse of power by the 1st to 3rd Respondents.
22. The Petitioner states that Dr. Shihabdeen has never been a member of , involved with, connected to or assisted any terrorist group and in particular the National Thowheedh Jamaath or any group or person linked with ISIS.
23. In the B Report dated May 30th, 2019, it has been reported to Court that 'witness' statements recorded by the Kurunegala Police during their investigations had disclosed that Dr Shihabdeen had squeezed the fallopian tubes of mothers during caesarian and normal deliveries and caused them to stop functioning. The Petitioner states that it is impossible to access the fallopian tubes during normal deliveries.

The Petitioner marks the said B - Report as 'P8C' which is part of the entire case record as at June 6th, 2019 in MC Kurunegala B Report 1398/19 which has been marked above as 'P8' and pleads the same as being part and parcel hereof.

**False allegation of terrorism and sterilisation:**

24. The Petitioner states that after the Easter Sunday Attacks and before May 23rd, 2019, Dr Shihabdeen's house and Goldmed Diagnostics and Laboratories (Pvt) Ltd have been searched by the Police on three separate occasions and no allegations of criminal and/or terrorist activity was made out or put forward.
25. The Petitioner states that;



- i. Towards the end of April Police officers from the Kurunegala Police Station visited Dr Shihabdeen's residence and as Dr Shihabdeen and his wife Dr M N F Imara were not at home they had questioned their daughter about visitors to the house and left the premises;
- ii. In or around May 4th, 2019 another set of officers from the Kurunegala Police visited the environs of Dr Shihabdeen's house and visited the annex to the said house of Dr Shihabdeen, which had been given out on rent and questioned his spouse Dr Imara with regard to the identity of the tenants and about those who visited the tenants. Dr Imara had supplied all information requested to the best of her knowledge and belief;
- iii. Thereafter on May 6th, 2019, the Scene of Crime officers [SOCO] arrived at the Goldmed Diagnostics and Laboratories (Pvt) Ltd premises and made a thorough search of the premises using sniffer dogs. Again Dr Shihabdeen was questioned only with regard to his assets and income and he showed his books and documents in his possession and co - operated with the police officers. There upon the Police proceeded without making any arrest.

26. The Petitioner categorically states that the allegation that Dr Shihabdeen had surreptitiously performed sterilisations on Sinhalese women whilst doing caesarian operations is baseless, frivolous and unsupported by any clinical evidence and has been made out maliciously to tarnish his image and cause disrepute to him professionally and personally. The Petitioner states further that;

- i. A caesarian is done in the operating theatre in the presence of at least 06 other persons being - 01 house officer, 01 Medical Officer anaesthetist, 01 running nurse, 01 nurse assisting the Senior House Officer [SHO], 01 paediatric house officer and 01 mid wife. Often this number is more than 06 with the addition of another nurse and other technicians to control and adjust the lights etc.

- ii. Whilst the caesarian is being performed, the others in the room are watching the actions of the SHO attentively as they need to respond to his requests and to any unexpected emergency with utmost speed as the life of the mother and the child are involved. The allegation of surreptitiousness is absurd in these circumstances.
- iii. Doing a tubal ligation [standard LRT procedure] would require an additional 10 to 20 minutes extra time in addition to the time taken to perform the caesarian which in itself would raise an alarm and have been discovered;
- iv. Damaging the fallopian canal/tubes through ‘clamping’ would not be possible as that would require two extra clamps in addition to the forceps, clamps and equipment issued for a caesarian and which extra clamps have to be specifically requested from the hospital and issued by the nurse and which again would raise an alarm and suspicion;
- v. There are 02 clamps issued with the caesarian pack but these clamps are kept with the nurse assisting the SHO and handed to be used only after the baby is delivered to cut the umbilical cord. If the SHO had requested the clamps earlier that in itself would have raised an alarm and a complaint would have been lodged long before;
- vi. Caesarian operations are done by making a transverse cut at the bottom of the abdomen and the point where the baby’s head is engaged with the pelvic cavity and the baby is taken out head first and when there is a baby in the uterus, the fallopian tubes are pushed further up the abdomen and have to be examined specially as they are not visible ordinarily;
- vii. In order for clamping to be done, both the fallopian tubes ought to be made visible and which could be done by a process known as ‘exteriorising’ the uterus which in practical terms is taking the uterus

out of the abdomen, which again is virtually impossible to do surreptitiously without anyone knowing or seeing;

- viii. If there has been any damage to the fallopian tubes by pinching it with the fingers, then the damaged tubes would have caused serious complications such as acute bleeding and infection in the mother within 10 days of delivery which would in itself have alerted the hospital of any wrong doing;
- ix. The fallopian tubes are thick muscular slippery organs and pinching or crushing them with the hand whilst wearing surgical gloves would be very difficult and would require crushing it continuously for around 10 to 15 minutes and there is no evidence in medical literature that such a procedure is possible or has been done or that it would cause infertility;
- x. Adhesions formation after caesarian would cause some level of sub - fertility in patients.

27. There are no such post - operative complaints recorded against Dr Shihabdeen. In fact media reports on the investigation carried out by Criminal Investigation Department states that 69 nurses have stated that Dr Shihabdeen had not performed any such sterilisations as alleged.

The Petitioner annexes hereto marked as 'P9' a true copy of the said news article and pleads the same as being part and parcel hereof.

28. Furthermore caesarians are performed with the authorisation by a Consultant, Obstetrics and Gynaecology and under his/her supervision and for which operations the Consultant is responsible.

29. Professor Hemantha Senanayake, Head of the Department of Obstetrics and Gynaecology at the Faculty of Medicine, University of Colombo and former President of the College of Obstetrics and Gynaecology speaking to the

newspaper *Daily Mirror* stated that the ‘sterilisation story’ is highly unlikely ‘because usually, in the presence of other medical officers, it isn’t an easy task to carry out thousands of wrong C - section deliveries and that the fallopian tubes are not usually seen at caesarian sections’.

The Petitioner annexes hereto a true copy of the said news paper article marked as ‘**P10**’ and pleads the same as being part and parcel hereof.

30. The Petitioner states that another senior SHO Dr Gamini Wimalaratne who serves at the Kurunegala Teaching Hospital in a post made on his Facebook page/profile has also refuted the allegations against Dr Shihabdeen on the basis that such an illegal sterilisation could not have been done secretly whilst in the presence of the nurses.

The Petitioner annexes hereto marked as ‘**P11**’ a print out of the said Facebook post and pleads the same as being part and parcel hereof.

31. The Petitioner states that Dr Shihabdeen has performed his duties under the guidance of the following Consultants in Obstetrics and Gynaecology;

- i. Dr. Upali Jayawardena
- ii. Dr. Rohantha Periyapperuma,
- iii. Dr. Gunasinghe,
- iv. Dr. S. B. Ekanayake,
- v. Dr. Peshala Dangalla,
- vi. Dr. Pathinisekara.
- vii. Dr. Sumith Warnasooriya.
- viii. Dr. Susantha Amarasinghe.
- ix. Dr. Lenadora.

32. The aforementioned Consultants have not raised any questions or made any complaints whatsoever against Dr Shihabdeen with regard to the performance of his duties.

33. The Petitioner categorically states Dr Shihabdeen has discharged his duties with due diligence and care at all times. Dr Shihabdeen has an unblemished record of 14 years service as a medical officer in the Government Medical Service. This is evidenced by the letter issued by Dr Upali Jayawardena who was a Consultant, Obstetrics and Gynaecology at the Teaching Hospital, Kurunegala under whose immediate supervision Dr Shihabdeen performed several caesarean operations.

The Petitioner annexes hereto marked as 'P12' a true copy of the letter issued Dr Upali Jayawardena and pleads the same as being part and parcel hereof.

34. The Petitioner states that after these frivolous allegations were made several patients on whom Dr Shihabdeen had performed caesarean sections had come forward and addressed letters stating *inter alia* that he had exercised due diligence and care when performing caesarean sections on them and they had not suffered any such infertility or complication as alleged as a result of any sterilisation being performed without their consent.

35. The Petitioner state further that another Rathnayake who was a house officer at Kurunegala Teaching Hospital in 2018 and who had been involved in 200 caesarians with Dr. Shihabdeen has also rejected the allegations against Dr. Shihabdeen.

**The Divaina of May 23rd, 2019 and an attempt to frame Dr Shihabdeen:**

36. Despite the factual reality that doing one illegal tubal crushing is a virtual impossibility, the *Divaina* of May 23rd, 2019 published a front page headline story stating that 4000 Sinhala Buddhist mothers had been sterilised by their fallopian tubes being 'tied' by a doctor who is a member of the National Thowheed Jamaath and stated that the Police had 'evidence' and that a special

police team had been deployed to arrest the doctor and that wide investigations had been launched by the Police.

The Petitioner annexes hereto a true copy of the said news paper article marked as 'P15' and pleads the same as being part and parcel hereof.

37. The Petitioner submits that the said news article referred to information received from 'police sources' and was given front page headline publicity to set the stage and justify the illegal arrest and illegal detention of Dr Shihabdeen without any legal basis whatsoever.
38. The front page headline story in *Divaina* created disquiet and anxiety in the country with people demanding the arrest and prosecution of the doctor. They went to the extent of demanding that steps be taken to punish the doctor involved by imposing the death penalty.
39. After the story was published an academic from the Rajarata University shared a post on May 23rd, 2019 on social media stating falsely that it was possible to damage the fallopian tubes by the process of clamping whilst performing a caesarian operation. Later in the day around 5.30 pm on May 23rd, 2019 he shared a further post stating that Dr Shihabdeen had performed 8000 caesarian operations. The insinuation was obvious. Thereafter the several persons began openly accusing Dr Shihabdeen on social media as being the doctor who performed 4000 sterilisations as referred to in the *Divaina* article which article was published on 'Police sources'.

The Petitioner annexes hereto marked 'P16A' and 'P16B' print outs of the said posts and pleads the same as being part and parcel hereof.

40. The Petitioner states further that the *Divaina* news story was discussed in Parliament by the leader of the JVP, Anura Kumara Disanayake MP and the Honourable Speaker stated that the Inspector General of Police had confirmed to him the fact that there was no such investigation. The Police spokesperson

ASP Ruwan Gunasekera thereafter on May 23, 2019 stated that ‘a doctor was being investigated for his income’ and nothing further.

The Petitioner annexes hereto marked as ‘P17’ a true copy of the relevant pages of the Hansard of Parliament, Volume 271, no: 9 of Thursday, May 23rd, 2019 and marked as ‘P18’ a compact disk of the recording of the news broadcast of the statement of the Police media spokesperson and pleads the same as being part and parcel hereof.

**The arrest:**

41. The Petitioner states that on May 24th, 2019 Dr Shihabdeen and his wife, Dr Imara proceeded to the Kurunegela Teaching Hospital to perform their respective shifts. As Dr Shihabdeen was identified on social media as the doctor who had purported performed the alleged illegal sterilisation of 4000 Sinhala Buddhist women, threats were made on social media against him and his family and they feared for their life and property. There were rumours that Dr Shihabdeen would be arrested by the Police within the coming days for the alleged sterilisations.
42. As the Petitioner was in Kurunegala with his junior, Mr Rizwan Uwais, Attorney - at - Law appearing in a matter before the Kurunegala Magistrate’s Court, on the request of a member of the Kurunegala bar, the Petitioner met Dr Shihabdeen for a consultation around 4.30 pm on May 24th, 2019. Dr Shihabdeen was concerned about the threats made to him and his family and decided to make a complaint to the Criminal Investigation Department with regard to the threats being made on Facebook and agreed to meet the Petitioner again in Colombo on Saturday, May 25th, 2019.
43. Later fearing for the safety of her family Dr Imara telephoned, her cousin Mohamed Parsan to come to their house and he arrived at Dr Shihabdeen’s house at around 7.30 pm. Dr Shihabdeen left for the mosque with his son, close to around 8.00 pm in a three wheeler belong to one N M Farhan who had come there at that time on Mohamed Parsan’s request. Dr Shihabdeen’s friend

Mohamed Sajith also arrived at Dr Shihabdeen's house at around 8.30 pm as was his usual practice to go with Dr Shihabdeen to the mosque but Dr Shihabdeen had left home by that time. Mohamed Sajith stayed back discussing the tense situation in Kurunegala and the threats against Dr Shafi Shihabeen. Dr Imara's brother Riyaz Ahsan was also at home at that time.

44. Around 8.35 pm two Police officers in civvies unknown to Dr. Shihabdeen arrived at his residence. The Petitioner states that;

- i. When the said Police officers arrived at Dr Shihabdeen's residence as he was at the mosque the Police officers requested from Mohamed Parsan who opened the gate that Dr Shihabdeen be asked to return home forthwith. Mohamed Parsan then contacted N M Farhan and shortly thereafter Dr Shihabdeen arrived home in N M Farhan's three wheeler. Dr Shihabdeen appeared to identify the police officers from the previous search at his office and they began a cordial conversation and Dr Shihabdeen began discussing with the said officers about the false allegations and threats that had been made against him and his family. He had informed them that he wished to make a complaint about these matters;
- ii. The said officers had indicated that making a complaint would be a good idea and requested that he should come to the Police station and make the complaint and stated that they would accompany him to the Kurunegala Police station;
- iii. He proceeded to the Police station in his friend's vehicle being driven by his friend Mohamed Sajith with the two Police officers also in the vehicle. Dr Shihabdeen's brother - in - law Riyaz Ahsan and N M Farhan followed in Dr Shihabdeen's vehicle;
- iv. Near the Kandy Reach hotel a Police jeep was parked and the said jeep then followed the two vehicles;



- v. However when they came near the Police station the two Police officers requested them to keep driving and shortly after they passed the Kurunegala Police Station, the Police officers requested the driver to slow down the vehicle;
- vi. Thereafter the said Police jeep overtook the vehicle in which Dr Shihabdeen was traveling in and stopped in front. Thereafter the 1st Respondent stepped out of the jeep and asked Dr Shihabdeen to get into the Police jeep;
- vii. Dr Shihabdeen was then taken to the Police station and kept there and brought back home at around 11.00 pm;
- viii. This time a team of officers arrived, some in civil clothing and others in uniform carrying weapons with Dr Shihabdeen;
- ix. When Mohamed Parsan opened the gate, they indicated that they needed to search Dr Shihabdeen's residence and took his mobile phone and asked him to sit outside in the three wheeler of N M Farhan which was parked in the garden of Dr Shihabdeen's;
- x. Shortly thereafter another team arrived with sniffer dogs and thoroughly searched the residence;
- xi. The Police dismantled the CCTV DVR and also prohibited any person in the house from using their mobile phones whilst the search was going on;
- xii. The whole search operation lasted approximately two hours and during the search a Police officer was receiving calls from someone who seemed to be a superior officer and the conversations were overheard by Muhammed Parsan as the said officer would come out of the house to answer the calls. During those calls the said officer had

responded by stating that there was 'still nothing' referring to there being no evidence to arrest Dr Shihabdeen.

45. Around 1. 00 am on May 25th, 2019 the Police requested Dr Shihabdeen to have dinner and although he was reluctant, he had consumed his meal. Thereafter the Police recorded a statement from Dr Imara with regard to the manner in which the search was done and asked her if she had anything else to state and thereupon her complaint was recorded relating to the allegations against her husband and the threats made to their family.
46. Then around 1. 30 am the Police instructed Dr Shihabdeen to come to the Police station to record his statement along with them and at which point Dr Shihabdeen requested that he be permitted to come in the morning. However the Police officers had insisted that he should come with them to the Police station. No reasons were given.
47. The Police officers also removed from his residence the passports of Dr Shihabdeen, his wife Dr Imara, their children and that of Dr Shihabdeen's father in law, accounts books, computer CPU's, tabs and laptops belonging to Dr Shihabdeen and his wife and a briefcase containing documents with regard to the lands purchased by Dr Shihabdeen. No arrest note was issued or acknowledgement given for the items taken.
48. The Petitioner states that consequent to his unlawful his arrest the Police invited the public to make complaints with regard to the allegation of sterilisation by Dr Shihabdeen. This request received wide publicity.

**Violations of the Dr Shihabdeen's Fundamental Rights:**

49. The Petitioner states that Dr Shihabdeen's Fundamental Rights guaranteed under Article 12(1), 12(2), 13(1), 13 (2) and 14(1)(g) have been violated by the illegal arrest and illegal detention purportedly under a detention order as stated in the Report filed in MC Kurunegela B 1398/19 dated May 27th, 2019.

50. The Petitioner states that Dr Shihabdeen has not been issued with a copy of the detention order which is said to have been issued and has requested for the same.

The Petitioner annexes hereto marked as 'P19' a true copy of the letter of request and pleads the same as being part and parcel hereof.

51. The Petitioner states that;
- i. There was no basis on which one could form a reasonable suspicion justifying the arrest of Dr Shihabdeen with regard to any offence and in particular with regard to any offence or unlawful activity defined and made punishable under the Prevention of Terrorism (Temporary Provisions) Act No: 48 of 1979 as amended;
  - ii. Information purported to have been received with regard to Dr Shihabdeen was neither credible nor reasonable which could justify the arrest of Dr Shihabdeen with regard to any offence and in particular with regard to any offence or unlawful activity defined and made punishable under the Prevention of Terrorism (Temporary Provisions) Act No: 48 of 1979 as amended;
  - iii. The 1st to 3rd Respondents acted and continue to act with malice, for an ulterior purpose and in gross abuse of their power;
  - iv. No reasons were given for the arrest and no reasons exist for the arrest of Dr Shihabdeen;
  - v. There are no reasons or basis for Dr Shihabdeen's continued detention;
  - vi. There was no reason for the Minister or any Respondent to believe or suspect that Dr Shihabdeen has committed, connected or concerned with any unlawful activity under the Prevention of Terrorism (Temporary Provisions) Act No: 48 of 1979 as amended requiring his

detention under an order under section 9(1) of the Prevention of Terrorism (Temporary Provisions) Act No: 48 of 1979 as amended which is said to have been issued;

vii. Dr. Shihabdeen's right to be presumed innocent has been vitiated by inviting the public to prefer complaints consequent to Dr Shihabdeen's unlawful arrest.

viii. Dr. Shihabdeen's right to engage in his lawful occupation has been violated.

52. The Petitioner states that Respondents have acted maliciously, arbitrarily and illegally in arresting and detaining Dr. Shihabdeen. Dr. Shihabdeen's arrest, detention and continued detention are illegal, ultra vires, unreasonable, disproportionate and an abuse of power.

53. The Petitioner states that he has not previously invoked the jurisdiction of Your Lordships' Court in respect of the subject matter of this application.

54. The Petitioner annexes hereto his affidavit and the affidavit of Dr Shihabdeen's wife Dr M N F Imara marked as 'A', the affidavit of Mr Mohamed Sajith marked as 'B' and the affidavit of Mr Mohamed Parsan marked as 'C' and pleads the same as being part and parcel hereof.

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

a. Grant leave to proceed to the Petitioner to proceed with this application and issue notices on the Respondents;

b. Grant and issue an interim order directing the Respondents to disclose the application for a detention order against Dr. Shafi Shihabdeen obtained under section 9(1) of the Prevention of Terrorism (Temporary Provisions) Act No: 48 of 1979 as amended;

- c. Grant and issue an interim order suspending and/or staying the operation of the detention order issued on Dr. Shafi Shihabdeen purportedly acting under under section 9(1) of the Prevention of Terrorism (Temporary Provisions) Act No: 48 of 1979 as amended;
- d. Grant and issue an interim order for the release of Dr. Shafi Shihabdeen from custody upon such conditions and as may be deemed appropriate;
- e. Declare that the Respondents have violated the Dr Shafi Shihabdeen's Fundamental Rights guaranteed Article 12(1) of the Constitution;
- f. Declare that the Respondents have violated the Dr Shafi Shihabdeen's Fundamental Rights guaranteed Article 12(2) of the Constitution;
- g. Declare that the Respondents have violated the Dr Shafi Shihabdeen's Fundamental Rights guaranteed Article 13(1) of the Constitution;
- h. Declare that the Respondents have violated the Dr Shafi Shihabdeen's Fundamental Rights guaranteed Article 13(2) of the Constitution;
- i. Declare that the Respondents have violated the Dr Shafi Shihabdeen's Fundamental Rights guaranteed Article 14(1)(g) of the Constitution;
- j. Grant and issue an order quashing the detention order issued on Dr Shafi Shihabdeen purportedly acting under under section 9(1) of the Prevention of Terrorism (Temporary Provisions) Act No: 48 of 1979 as amended;
- k. Grant Costs;
- l. Grant such and other further relief as shall seem meet to Your Lordships' Court.

**Attorney at Law for the Petitioner**

