

Sri Lanka's top court to hear challenge to candidate's arrest

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The Sri Lankan Supreme Court yesterday overruled objections by government lawyers and decided to hear a fundamental rights case challenging the arrest of General Sarath Fonseka. Fonseka, who resigned as the country's top general last November, was defeated by President Mahinda Rajapakse in the January 26 presidential election.

The case is proceeding in a highly charged political situation. Fonseka was forcibly arrested on Monday night by military police on the orders of army commander, General Jagath Jayasuriya, and is being held at the Navy Headquarters complex in Colombo. His detention is part of a wider government crackdown that has included the arrest of his supporters and aides.

Before yesterday's hearing, hundreds of police, including heavily-armed commandos, surrounded the court complex to intimidate supporters of the opposition parties—the United National Party (UNP) and Janatha Vimukthi Peramuna (JVP). All vehicles were checked and pedestrians were stopped and questioned.

Government spokesmen have made various unsubstantiated allegations against Fonseka, including that he conspired with the opposition to overthrow the government in a coup. In an interview with Singapore's *Straits Times* on Thursday, Defence Secretary Gotabhaya Rajapakse, who is the president's brother, declared Fonseka was "definitely planning a coup". In effect, the defence secretary declared Fonseka's guilt well before his planned court-martial has been convened.

The government and the army are yet to provide any evidence. The defence secretary claimed: "In his very last stages as army commander he [Fonseka] began bringing his people into Colombo and his regiment, positioning his senior regiment people all over. All these things were looking like a

military coup."

However, Fonseka was not arrested at that time. Instead, he was shunted into the post of Chief of Defence Staff last June—that is, more than seven months ago. He has been arrested now only because the government regards him as a political threat and can use his detention to intimidate the opposition. Just a day after Fonseka's arrest, President Rajapakse prorogued parliament and called general elections for April 8.

The fundamental rights case to secure Fonseka's release was filed by his wife, Anoma, against Defence Secretary Rajapakse, Army Commander Jayasuriya, the attorney general and the head of military police. The petition alleges multiple violations of Fonseka's fundamental constitutional rights, including freedom of speech, freedom from arbitrary arrest and freedom from discrimination on grounds of political opinion.

Fonseka's lawyer Shibly Aziz told the court that the general's arrest had been carried out in an arbitrary manner. He said Fonseka had not been served with a charge sheet at the time of his arrest and five days later the charges had still not been set out.

The attorney general's representative, S. Rajaratnam, claimed that Fonseka had been informed of the charges at the time of his arrest. But the defence lawyers interjected, saying "it's a lie" and declaring that the general had been dragged out like a dog. Aziz said he had filed affidavits from four opposition politicians who were present in Fonseka's office at the time.

Aziz also challenged the use of the military police and trial by court-martial, arguing that the Army Act does not apply to a former commander. The defence lawyer branded the arrest and detention as "unlawful," saying Fonseka could be charged only under civil law.

Government lawyer Rajaratnam attempted to have the petition dismissed on technical grounds, saying it had not been properly drawn up. He argued that Anoma Fonseka could not file the petition on behalf of her husband, even though he was in military custody. The Supreme Court bench of three judges—Chief Justice Ashoka de Silva, Shirani Thilakawardena and Chandra Ekanayake—rejected the argument. The next hearing will take place on February 23.

UNP deputy leader Karu Jayasuriya and JVP leader Somawansa Amarasinghe claimed that the court decision was a victory. Increasingly, however, the entire state apparatus, including the courts, have become politicised amid sharpening infighting in ruling circles between the government and opposition camps. The Supreme Court is now the focus of these acute political tensions.

Acute tactical differences in the Colombo political establishment erupted after the military's defeat of the separatist Liberation Tigers of Tamil Eelam (LTTE) last May. While it backed the war and supports the government's pro-market economic restructuring measures, the opposition has objected to Rajapakse's anti-democratic methods and has been critical of his anti-Western stance. The bitterness of the disputes reflects deep-going social tensions being generated by the island's economic crisis.

The UNP and JVP have organised a number of protests to demand Fonseka's release, but have been confronted with violent attacks by police and pro-government thugs. Protests in Colombo, the Colombo suburb of Maharagama and the southern cities of Galle and Matara over the past three days have been broken up by the police using tear gas, water cannon and baton charges. At each of these places, armed thugs, protected by the police, have attacked protestors.

On Thursday, police brought eight people, who had been arrested during protests in Colombo on Wednesday, before a magistrate's court. Defence lawyers explained that the police had arrested their clients, who were participating in a demonstration, but failed to arrest the armed thugs who were attacking them. The magistrate reprimanded the police and ordered the attackers arrested.

The nervousness in business circles over the deteriorating political situation was expressed in a sharp fall of 2.1 percent on the Colombo share market over the four days since Fonseka's arrest. On Friday, the All-Share Prices Index fell

by 14.87 points or 0.4 percent to 3,710, its lowest level since February 5. The index is still up 9.6 percent so far this year, following a 125 percent rally in 2009, as speculative capital flooded into the country on the expectation of an economic expansion following the end of the war.

President Rajapakse met with UNP leader Ranil Wickremesinghe yesterday to discuss the political crisis over Fonseka's arrest. Wickremesinghe called for Fonseka's release but was turned down by the president who cynically insisted that "the rule of law must prevail".

The government is preparing for further arrests. Defence spokesman Keheliya Rambukwella told the media on Tuesday that the military and police were investigating the involvement of service personnel and civilians in Fonseka's conspiracy. On the same day, the island's police chief, Mahinda Balasuriya, gazetted the establishment of four detention camps in different military complexes to house detained military personnel.

On Thursday retired Major General Sunil de Silva and former navy commandant Nihal Chandrasiri sought anticipatory bail from a Colombo magistrate, claiming they were about to be arrested for supporting Fonseka. On the same day, cabinet spokesman Anura Priyadarshana Yapa announced that JVP general secretary Tilwin Silva might be called as a witness in Fonseka's court-martial. According to Yapa, Fonseka had illegally sought advice from Silva while the general was still a serving officer.

Far from backing away from its political witch-hunt, the Rajapakse regime is widening its police-state measures in the lead up to the April 8 general elections. Its publicly stated aim is to establish a two-thirds parliamentary majority, which would allow it to alter the constitution. These measures are in preparation for an all-out offensive on the social position of the working class and the suppression of any political opposition.



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