

Sri Lanka: Supreme Court refuses to release Fonseka

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Sri Lanka's Supreme Court yesterday turned down a request for an interim order to release defeated opposition candidate General Sarath Fonseka, who was detained by military police on February 8. The hearing involved a fundamental rights petition brought by Fonseka's wife, Anoma, challenging the legality of the arrest.

The court ruling has a significant political impact. Fonseka, who lost the January 26 presidential election to President Mahinda Rajapakse, is preparing to stand in parliamentary elections called for April 8. He will now be effectively muzzled for the duration of the campaign, as the next hearing to consider the petition has been set for April 26.

An initial hearing on February 12 ruled that the petition could proceed. A three-judge bench headed by Sri Lankan Chief Justice Asoka de Silva overruled objections by the attorney general's lawyers. Yesterday's hearing was presided over by a different three-judge bench headed by Shiranee Bandaranayake who was sworn in as acting chief justice on Sunday. De Silva, according to the state-owned *Daily News*, is making an overseas visit.

The court proceedings yesterday were visibly tense. Fonseka's lawyer, Shibly Azis, complained that he had only received copies of objections to the petition from the attorney general the previous day and wanted time to prepare a submission. He was given 10 minutes to review the affidavits, but the court insisted that the hearing was confined to providing interim relief, not taking submissions.

At the first hearing, a relatively junior lawyer

appeared for the attorney general. However at yesterday's proceedings, Attorney General Mohan Peiris was present, appearing for the first respondent, Army Commander Jagath Jayasuriya. Other respondents included Defence Secretary Gotabhaya Rajapakse, who is the president's brother, and several high-ranking military officers.

Azis argued that Fonseka's detention had been illegal, saying that as a retired military officer he could not be arrested under military law. He pointed out that more than two weeks after Fonseka's arrest, no charges had been filed. Azis reiterated his appeal for interim relief pending a final court decision: for Fonseka to be released with or without conditions; for his safety and well-being to be guaranteed; and for access to be granted to his lawyers and family members.

The attorney general objected to any release prior to a final ruling. He sidestepped the issue of charges, saying that a "summary of evidence" was being recorded and would be completed within three weeks or so. Only then would the army commander decide whether to proceed with charges and a court-martial.

The court accepted the attorney general's argument, even though the charges would not be laid until at least a month after the arrest. In the meantime, government spokesmen and the state-owned media have continued to blacken Fonseka's name, accusing him of plotting to overthrow the government and murder the Rajapakse brothers. Azis noted that his client had refused to participate in the military legal proceedings and considered it a mock trial.

Attorney General Peiris made some minor

concessions. He gave an undertaking to the court that Fonseka could be visited by his doctor, his lawyers and immediate family members. In the case of lawyers, they had to be identified to the attorney general's department. Peiris also agreed to allow lawyers to obtain Fonseka's signature for nominations papers to contest the April 8 general election. Fonseka is to stand under the newly formed coalition known as the Democratic National Alliance.

Underscoring the political significance of the case, a representative of the International Commission of Jurists (ICJ), Australian counsel Billy Purves, was present to observe proceedings yesterday. He told the press: "The ICJ is interested in this matter and wanted to observe that the proceedings are free and fair."

US Assistant Secretary of State for South and Central Asia Robert Blake told the BBC this week that Washington was not satisfied with the way in which the Rajapakse government was handling Fonseka's arrest. "So far I think it has been less than we might have hoped for, but we have certainly encouraged the government of Sri Lanka to ensure that he is charged promptly."

Blake's comments highlight the way in which the intense infighting between the government and opposition is bound up with rivalry between the major powers. The Obama administration is concerned that Rajapakse tilted too far toward China in his renewed war against the Liberation Tigers of Tamil Eelam (LTTE). Beijing sold the Sri Lanka arms and provided financial aid and political support—receiving economic and strategic concessions in return.

The US is cautiously expressing its dissatisfaction over the arrest, not because it is concerned about democratic rights. Rather Washington views the issue as a means of pressuring the Rajapakse regime and undermining China's influence. It may also view Fonseka as more amenable to US interests. In the course of his election campaign, the general was critical of Rajapakse for undermining the confidence of the "international community" in Sri Lanka.

The fierce factional brawling in the Colombo political

establishment is politicising the state apparatus, including the judiciary, military and police. Following the presidential election, the security forces detained a number of Fonseka supporters, including retired military officers. The government also carried out a purge in the top ranks of the military and police—either transferring or retiring officers regarded as loyal to the general.

Rajapakse's determination to keep Fonseka incarcerated until after the April 8 parliamentary elections is an indication of just how fragile his grip on power is. The ruling coalition has stated that it is seeking a two-thirds majority in parliament to enable it to change the constitution. Despite the fact that Rajapakse has wide powers as an executive president, he is seeking to consolidate his already autocratic rule.

The main target of the government's anti-democratic methods is not the opposition parties, which have no fundamental differences with the government, but the working class. The war, which ended with the LTTE's defeat last May, left the country heavily indebted. Rajapakse was compelled to seek a \$2.6 billion loan from the International Monetary Fund (IMF) last year to stave off a financial crisis.

Following the election, the government will be forced to implement the IMF's austerity measures and make deep inroads into public spending and the living standards of working people. Rajapakse is anxious to weaken the opposition and strengthen his own position in order to prepare to crack down on the popular opposition that will inevitably erupt.



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