



WEB COPY



HCP.No.1239 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.08.2024

CORAM :

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

AND

THE HONOURABLE MR. JUSTICE R.SAKTHIVEL

H.C.P.No.1239 of 2024

Suganya

... Petitioner

Vs.

1. The Additional Secretary To Government Of India,
Ministry Of Consumer Affairs Food And Public Distribution,
Department Of Consumer Affairs,
Room No.270 Krishi Bhavan,
New Delhi-110 001.

2. The Principal Secretary to The Government,
Food And Consumer Protection Department,
II nd Floor Namakkal Kavingnar Maaligai,
Secretariat, Chennai - 600 009.

3. The Commissioner Of Police,
Commissioners Office,
Salem City, Salem.

4. The Superintend Of Prison,
Central Prison Salem,
Salem District.



HCP.No.1239 of 2024

5. The Inspector Of Police,
Civil Supplies CID,
Salem Unit,
Salem District.

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India to issue a Writ of Habeas Corpus, calling for the entire records leading to the detention of detainee namely Surya S/o. Mani Hindu aged about 39 years vide detention order dated 13.05.2024 on the file of the 3rd respondent herein made in the proceedings in C.M.P.No.2/Black Marketing /Salem City/2024 and quash the same and consequently direct the respondents herein to produce the body of the detainee before this Hon'ble Court and thereafter set him at Liberty from Central Prison, Salem.

For Petitioner : M/s.M.Divyalakshmi

For Respondents : Mr.E.Raj Thilak
Additional Public Prosecutor

ORDER

(Order of the Court was made by S.M.SUBRAMANIAM, J.)

The order of detention passed by the 3rd respondent herein made in the proceedings in C.M.P.No.2/Black Marketing /Salem City/2024 dated 13.05.2024, is sought to be quashed in the present Habeas Corpus Petition.



HCP.No.1239 of 2024

WEB COPY

2. Heard the learned counsel for the petitioner and the learned Additional Public Prosecutor appearing for the respondents.

3. The order of detention sought to be assailed and the fact as narrated would reveal that, there is a delay of 13 days in considering the representation. The delay in considering the representation and the period during which the detinue was under detention would be construed as violation of the Constitutional mandatory under Article 22 of Constitution of India and thus, the ground of delay in considering the representation became fatal in the case of preventive detention.

4. It is trite law that the representation should be very expeditiously considered and disposed of with a sense of urgency and without avoidable delay. Any unexplained delay in the disposal of the representation would be a breach of the constitutional imperative and it would render the continued detention impermissible and illegal. From the records produced, we find that no acceptable explanation has been offered for the inordinate delay.



HCP.No.1239 of 2024

Therefore, we have to hold that the delay has vitiated further detention of the detenu.

5. In the judgment of the Hon'ble Supreme Court in ***Rajammal vs State Of Tamil Nadu And Another***¹, it has been held as follows:

"It is a constitutional obligation of the Government to consider the representation forwarded by the detenu without any delay. Though no period is prescribed by Article 22 of the Constitution for the decision to be taken on the representation, the words "as soon as may be " in clause (5) of Article 22 convey the message that the representation should be considered and disposed of at the earliest."

6.As per the dictum laid down by the Supreme Court in above cited ***Rajammal's case***, number of days of delay is immaterial and what is to be considered is whether the delay caused has been properly explained by the authorities concerned. But, here the inordinate delay has not been properly explained at all.

¹ (1999) 1 SCC 417



HCP.No.1239 of 2024

WEB COPY

7. Further, in a recent decision in *Ummu Sabeena vs. State of Kerala*², the Hon'ble Supreme Court has held that the history of personal liberty, as is well known, is a history of insistence on procedural safeguards. The expression 'as soon as may be', in Article 22(5) of the Constitution of India clearly shows the concern of the makers of the Constitution that the representation, made on behalf of the detenu, should be considered and disposed of with a sense of urgency and without any avoidable delay.

8. In the light of the above discussion, we have no hesitation in quashing the order of detention on the ground of delay on the part of the Government in disposing of the representation of the petitioner.

9. Accordingly, the detention order passed by the 3rd respondent herein made in the proceedings in C.M.P.No.2/Black Marketing /Salem City/2024 dated 13.05.2024, is hereby set aside and the Habeas Corpus Petition is **allowed**. The detenu viz., Surya S/o.mani Hindu, aged 39 years

² 2011 STPL (Web) 999 SC



HCP.No.1239 of 2024

who is presently under going detention in the Central Prison, Salem, is directed to be set at liberty forthwith unless he is required in connection with any other case.

[S.M.S., J.] [R.S.V., J.]

19.08.2024

Index : Yes/No
Speaking Order : Yes/No

Sha



HCP.No.1239 of 2024

WEB COPY

To

1. The Additional Secretary To Government Of India,
Ministry Of Consumer Affairs Food And Public Distribution,
Department Of Consumer Affairs,
Room No.270 Krishi Bhavan,
New Delhi-110 001.

2. The Principal Secretary to The Government,
Food And Consumer Protection Department,
II nd Floor Namakkal Kavingnar Maaligai,
Secretariat, Chennai - 600 009.

3. The Commissioner Of Police,
Commissioners Office,
Salem City, Salem.

4. The Superintend Of Prison,
Central Prison Salem,
Salem District.

5. The Inspector Of Police,
Civil Supplies CID,
Salem Unit,
Salem District.

6. The Public Prosecutor,
High Court, Madras.



WEB COPY



HCP.No.1239 of 2024

S.M.SUBRAMANIAM, J.
AND
R.SAKTHIVEL, J.

Sha

H.C.P.No.1239 of 2024

19.08.2024