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HCP.No.3276 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.01.2025

CORAM :

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

AND

THE HONOURABLE MR. JUSTICE M.JOTHIRAMAN

H.C.P.No.3276 of 2024

N.Shanmugavel

... Petitioner/Brother of the detenu

Vs.

1.State.rep by Secretary to Government,
Home, Prohibition and Excise Department,
Government of Tamil Nadu,
Fort St.George,
Chennai – 600 009.

2.The Commissioner of Police,
Salem City,
Salem.

3.The Superintendent of Prison,
Central Prison,
Salem,
Salem.

4.The Inspector of Police,



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Fairlands Police Station,
Salem.

... Respondents

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PRAYER: Petition filed under Article 226 of the Constitution of India to issue a Writ of Habeas Corpus, calling for the records of the 2nd respondent herein in CMP.No.96/Drug Offender / Salem City 2024 dated 02.12.2024 set aside the same and direct the respondents to produce the Thirumoorthy son of Nagaraj aged 31 years who is now detained in Central Prison, Salem before this Honble court and set him at liberty

For Petitioner : Mr.S.Prabhu

For Respondents : Mr.R.Muniyapparaj
Additional Public Prosecutor

ORDER

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

The order of detention passed by the second respondent in CMP.No.96/Drug Offender/Salem City 2024 dated 02.12.2024 is sought to be quashed in the present Habeas Corpus Petition.



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2. The ground taken in the present petition is that the detenu was arrested on 23.10.2024 and the impugned order of detention has been issued on 02.12.2024 after a lapse of more than one month.

3. In this regard, the Hon'ble Supreme Court of India in the case of '**Sushanta Kumar Banik Vs. State of Tripura**', reported in '**2022 LiveLaw (SC) 813**' held as follows:

“20. It is manifestly clear from a conspectus of the above decisions of this Court, that the underlying principle is that if there is unreasonable delay between the date of the order of detention & actual arrest of the detenu and in the same manner from the date of the proposal and passing of the order of detention, such delay unless satisfactorily explained throws a considerable doubt on the genuineness of the requisite subjective satisfaction of the detaining authority in passing the detention order and consequently render the detention order bad and invalid because the “live and proximate link” between the grounds of detention and the purpose of detention is snapped in arresting the detenu. A question whether the delay is



unreasonable and stands unexplained depends on the facts and circumstances of each case.”

3.1. In the case of ***T.A. Abdul Rahaman Vs. State of Kerala and Ors.*** reported in ***(1989) 4 SCC 741***, the Apex Court held as follows:

10. The conspectus of the above decisions can be summarised thus : The question whether the prejudicial activities of a person necessitating to pass an order of detention is proximate to the time when the order is made or the live-link between the prejudicial activities and the purpose of detention is snapped depends on the facts and circumstances of each case. No hard and fast rule can be precisely formulated that would be applicable under all circumstances and no exhaustive guidelines can be laid down in that behalf. It follows that the test of proximity is not a rigid or mechanical test by merely counting number of months between the offending acts and the order of detention. However, when there is undue and long delay between the prejudicial activities and the passing of detention order, the



Court has to scrutinise whether the detaining authority has satisfactorily examined such a delay and afforded a tenable and reasonable explanation as to why such a delay has occasioned, when called upon to answer and further the Court has to investigate whether the causal connection has been broken in the circumstances of each case.

11. Similarly when there is unsatisfactory and unexplained delay between the date of order of detention and the date of securing the arrest of the detenu, such a delay would throw considerable doubt on the genuineness of the subjective satisfaction of the detaining authority leading to a legitimate inference that the detaining authority was not really and genuinely satisfied as regards the necessity for detaining the detenu with a view to preventing him from acting in a prejudicial manner.

4. The fact about the long delay would be sufficient to drop an inference that the detaining authority has failed to apply their mind for the purpose of issuing the impugned order under Act 14 of 1982.



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5. Accordingly, the impugned order of detention passed by the 2nd respondent in CMP.No.96/Drug Offender / Salem City 2024 dated 02.12.2024 is quashed and the Habeas Corpus Petition stands **allowed**. The detenue, namely, Thirumoorthy, S/o.Nagaraj, aged about 31 years, now confined in Central Prison, Salem, is directed to be set at liberty forthwith unless he is otherwise required in connection with any other case.

[S.M.S., J.]

[M.J.R., J.]

24.01.2025

Index : Yes/No
Speaking Order : Yes/No
Neutral Citation : Yes/No

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To

1. The Secretary to Government,
Home, Prohibition and Excise Department,
Government of Tamil Nadu,
Fort St. George,
Chennai – 600 009.

2. The Commissioner of Police,
Salem City,
Salem.

3. The Superintendent of Prison,
Central Prison,
Salem,
Salem.

4. The Inspector of Police,
Fairlands Police Station,
Salem.

5. The Joint Secretary to Government,
Public (Law & Order)
Fort St. George, Chennai.

6. The Additional Public Prosecutor,
Madras High Court.



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S.M.SUBRAMANIAM, J.
AND
M.JOTHIRAMAN, J.

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