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W.P.No.5661 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.06.2023

Coram

THE HONOURABLE MR.JUSTICE **M.SUNDAR**
and
THE HONOURABLE MR.JUSTICE **R.SAKTHIVEL**

W.P.No.5661 of 2023

Sareenbose

.. Petitioner

VS

The State rep. By its

1.The Deputy Inspector General of Prison,
Chennai Range, Egmore, Chennai – 8.

2.The Superintendent,
Central Prison, Puzhal-I, Chennai – 66.

.. Respondents

Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of mandamus directing the respondents to grant ordinary leave for 40 days without escort for Abdul Azeez, S/o.Mohammed Gouth, aged about 44 years, Life Convict No.1960 confined at Central Prison, Puzhal – I, Chennai.

For Petitioner : Dr.S.Manoharan

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



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ORDER

[Order of the Court was made by M.SUNDAR, J.]

This order will now dispose of captioned writ petition.

2. The proceedings/orders made in the previous listings on 28.02.2023, 07.03.2023, 14.03.2023, 20.03.2023, 30.03.2023, 26.04.2023, 09.06.2023 and 16.06.2023 read as follows:

'28.02.2023

Captioned Writ Petition has been filed by the sister of a life convict seeking a mandamus qua 40 days leave without escort.

2. The ground on which the prayer for leave is predicated is indisposition of the lifer.

3. Dr.S.Manoharan, learned counsel for petitioner submits that the convict prisoner has served nearly 25 years of sentence and he is entitled to ordinary leave under Rule 20 of the Tamil Nadu Suspension of Sentence Rules, 1982. It is also submitted that a representation dated 08.02.2023 seeking leave has been sent but that has not evoked any reply.

4. Issue notice.

5. Mr.R.Muniyapparaj, learned Additional Public Prosecutor accepts notice for both the respondents and requests for a short accommodation to get instructions and revert to this Court.

6. List one week hence. List on 07.03.2023.'

'07.03.2023

Read this in conjunction with and in continuation of earlier proceedings made in the previous listing on 28.02.2023.



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2. Learned Additional Public Prosecutor on instructions submits that the second respondent has since rejected the leave application which is subject matter of captioned writ petition. Intriguing phenomenon is, the rejection is on 28.02.2023 when the matter was last listed before us. Therefore, let the second respondent remain present before us in the next listing with the entire file pertaining to leave application which is the subject matter of captioned writ petition.

3. List one week hence. List on 14.03.2023.'

'14.03.2023

Captioned writ petition has been filed by sister of 'Thiru.Abdul Azeez, son of Mohammed Gouth. aged 44 years, Life Convict Prisoner No.1960, now lodged in Central Prison, Puzhal I' [hereinafter 'convict prisoner' for the sake of convenience and clarity].

2. It is the case of the petitioner that the convict prisoner has served nearly 25 years of sentence and is therefore entitled to ordinary leave under Rule 22 of the 'Tamil Nadu Suspension of Sentence Rules, 1982' [hereinafter 'said Rules' for the sake of convenience and clarity].

3. It is the further case of the petitioner that a 'representation dated 08.02.2023' [hereinafter 'said representation' for the sake of convenience] was given seeking 40 days leave without escort primarily citing ill-health of the convict prisoner. It is submitted that convict prisoner is suffering from severe stomach ache due to hernia and the doctors have opined that he has to be operated upon at the earliest. Complaining of inaction qua said representation, captioned writ petition was filed in this Court on 20.02.2023 and the same was listed for hearing before this Bench (first listing) on 07.03.2023. On 07.03.2023, this Bench was informed that said representation has since been disposed of (rejected) by the second respondent in and by proceedings dated 28.02.2023. As this appears to be an attempt to diffuse the captioned



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matter, the following proceedings were made in the 07.03.2023 listing:

'Read this in conjunction with and in continuation of earlier proceedings made in the previous listing on 28.02.2023.

2. Learned Additional Public Prosecutor on instructions submits that the second respondent has since rejected the leave application which is subject matter of captioned writ petition. Intriguing phenomenon is, the rejection is on 28.02.2023 when the matter was last listed before us. Therefore, let the second respondent remain present before us in the next listing with the entire file pertaining to leave application which is the subject matter of captioned writ petition.

3. List one week hence. List on 14.03.2023.'

4. Pursuant to aforementioned earlier proceedings made in the previous listing, the second respondent is present before us. On instructions, learned Prosecutor submits that said representation was sent by the Deputy Inspector of General to the second respondent under a cover of a letter dated 13.02.2023 and this was received by the second respondent on 23.02.2023. To be noted, this is borne out of records qua the file which is placed before us. Acting on this, aforementioned 28.02.2023 proceedings bearing reference No.1960/j/F.2-2023' [hereinafter 'impugned proceedings' for the sake of convenience] was made is learned counsel's say and a scanned reproduction of the impugned proceedings is as follows:



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5. We find from the trajectory the matter has taken that the second respondent has disposed of the representation consuming only four clear days. There is no disputation that this is not the norm and therefore it appears to be an attempt to diffuse, derail and neutralize the captioned writ petition. Learned Prosecutor placed before us G.O.Ms.No.205 dated 25.04.2022 and drew our attention to the amendment to Rule 24 and more particularly clause (5) thereof and submitted that disposal of such petitions should not exceed twenty eight days from the date of receipt of the petition. This buttresses



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the neutralizing attempt theory. However, learned Prosecutor expressed regret on behalf of the second respondent and therefore, we deem it appropriate to leave this matter to rest at that in this case making it clear that in days to come this Court may have to take a more serious view of such matters.

6. Reverting to the case on hand, we find that the impugned proceedings are terse. The impugned proceedings cannot be improved by way of a counter affidavit and the law is well settled in this regard. In other words, the impugned proceedings should stand or fall on the basis of the contents thereat. We find that the speaking portion (if at all one can say so) of the impugned proceedings is the second paragraph and that merely refers to Rule 21(h) of said Rules and refers to Heinous offence i.e., terrorist crimes.

7. 'Heinous offence' has not been defined in said Rules. However, we find that Section 2(33) of 'The Juvenile Justice (Care and Protection of Children) Act, 2015' [hereinafter 'JJ Act' for the sake of convenience] defines 'heinous offence' and the same reads as follows:

'2(33) "heinous offences" includes the offences for which the minimum punishment under the Indian Penal Code (45 of 1860) or any other law for the time being in force is imprisonment for seven years or more.'

We are conscious that the above definition is for the purposes of JJ Act. Whether it can be telescoped into said Rules is a moot question as we also notice that in 'The Code of Criminal Procedure, 1973 (2 of 1974)' [hereinafter 'Cr.P.C' for the sake of brevity and clarity], the term 'offence' alone has been defined vide Section 2(n).

8. Be that as it may, as already alluded to supra, the impugned proceedings is terse and it does not give any details about the conviction qua convict prisoner.

9. Learned counsel for petitioner sought for a short accommodation to place before us a tabulation giving details of cases, dates of conviction, offences for which the convict prisoner was convicted and the



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minimum and maximum sentences for such offences.

10. Let this tabulation be placed before us.

11. Considering the trajectory the matter has taken, as a one of matter, owing to the aforementioned neutralizing attempt theory, we make it clear that we would be testing the impugned proceedings in the ensuing listing though main writ petition is one for mandamus. It is therefore open to the respondents to file a suitable counter if so advised. Request for accommodation acceded to.

List on Monday. List on 20.03.2023.'

'20.03.2023

Read this in conjunction with and in continuation of earlier proceedings made in the previous listing on 14.03.2023.

2. Today Superintendent of Prison, Puzhal is present before us.

3. Re-notified. List on 30.03.2023.'

'30.03.2023

Read this in conjunction with and in continuation of earlier proceedings made in the previous listing on 20.03.2023.

2. Both sides submit that they are filing tabulation giving case particulars of the detenu. Let the same be placed before us.

3. As regards second respondent, who is present before us pursuant to our earlier orders, learned Additional Public Prosecutor on instructions expresses regret for the trajectory of the matter (i.e., representation being disposed of hurriedly when the writ petition was on board) and assures us that such episodes will not recur. This submission is recorded / accepted. Therefore, we dispense with the personal presence of second respondent in ensuing hearings.

4. List on 06.04.2023.'

'26.04.2023



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Read this in conjunction with and in continuation of earlier proceedings made in the previous listing.

2.Learned Prosecutor requests further time to file counter affidavit. Therefore, we are of the view that it is open to the petitioner to seek emergency leave and if the petitioner choose to do so, the same shall be considered as expeditiously as possible by the respondents and decide on its own merits and in accordance with law.

3.List immediately after Summer vacation. List on 02.06.2023.'

'09.06.2023

Read this in conjunction with and in continuation of earlier proceedings made in the previous listing on 26.04.2023.

2. Adverting to earlier proceedings, learned Prosecutor requested for further time to file counter affidavit and bring it on Board. Request acceded to.

3.List one week hence. In the interregnum, the second respondent shall ensure that adequate medical attention is given to the detenu.

List on 16.06.2023.'

'16.06.2023

Read this in conjunction with and in continuation of earlier proceedings made in the previous listing on 09.06.2023.

2.Today, Ms.K.Akshaya, learned counsel on record for the petitioner and Mr.E.Raj Thilak, learned State Additional Public Prosecutor for respondents are before us.

3.Adverting to the earlier proceedings, learned State Additional Public Prosecutor requests for some more time to file counter affidavit. Request acceded to.

4.List one week hence. List on 23.06.2023.'



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3. The aforementioned proceedings speak for themselves and the same shall now be read as an integral part and parcel of this order.

4. Today, Dr.S.Manoharan, learned counsel on record for petitioner and Mr.E.Raj Thilak, learned State Additional Public Prosecutor for both the respondents are before us. After hearing both sides and after perusing the records and the rival pleadings, we are inclined to grant twenty days ordinary leave without escort to the convict prisoner and the reasons are as follows:

4.1 That the convict prisoner is unwell and he requires medical attention is not subjected to disputation or contestation;

4.2 As regards the above point, medical report from the Civil Assistant Surgeon, Central Prison I, Puzhal, Chennai (medical report dated 15.06.2023) has been annexed to the counter affidavit of the State and the same also brings to light that medical attention is imperative for the convict prisoner;



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4.3 That the only ground on which the petitioner's (convict prisoner's sister) representation dated 08.02.2023 seeking ordinary leave for the convict prisoner is rejected vide '28.02.2023 proceedings made by second respondent' (hereinafter 'impugned order' for the sake of convenience and clarity) is Rule 21 (h) of 'The Tamil Nadu Suspension of Sentence Rules, 1982' (hereinafter 'said Rules' for the sake of convenience and clarity). Rule 21 is adumbration of non-eligibility for ordinary leave and sub-clause (h) thereat and more particularly h(1) talks about the terrorist crimes. In the case on hand, as regards the cases qua convict prisoner, only one case is under TADA in Crime No.2490 of 1994 on the file of Thilagar Thidal Police Station (TADA Case No.1 of 1997 on the file of Designated Court for TADA Cases, Tirunelveli) but the convict prisoner was acquitted in and by an order dated 27.04.2017 by Honourable Supreme Court of India in Crl. A. Nos.498 and 897 of 2012. To be noted, the term 'Terrorist Act' has been defined under Section 2(h)(1) of Terrorist and



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Disruptive Activities (Prevention) Act, 1987

(hereinafter 'TADA Act'). This has to be read with Section 3(1) of TADA Act. In any event, as the convict prisoner has been acquitted of lone TADA case against him, it is not necessary to delve more into that aspect of the matter. Another co-ordinate Honourable Division Bench in and by an order dated 24.10.2019 made in H.C.P. No.2023 of 2019 has granted 15 days leave to the convict prisoner with minimum escort and we are informed that the same has been availed and it passed off in uneventful manner. This order of co-ordinate Honourable Division Bench dated 24.10.2019 was authored by Honourable Mr. Justice M.M.Sundresh (sitting Judge of this Court heading a Division Bench i.e., as His Lordship then was) and a scanned reproduction of the order is as follows:



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H.C.P.No.1618 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 27.08.2019

CORAM

**The Honourable Mr Justice M.M.SUNDRESH
and
The Honourable Mr Justice M.NIRMAL KUMAR**

Habeas Corpus Petition/No.1618 of 2019

Saifunnisa

... Petitioner

-Versus-

The State Rep. by its

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

2.The Additional Director General of Prison,
C.M.D.A. Towers,
Egmore,
Chennai 600 008.

3.The Superintendent,
Central Prison,
Koval.

सत्यमेव जयते

... Respondent

Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Habeas Corpus, directing the respondents to grant ordinary leave for 30 days to the detainee - Mohammed Zubair @ Sheik Janu (Life Convict bearing Convict No.3243), aged about 49 years, Son of Sheik Mohideen, now, confined at Central Prison, Koval.

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<http://www.judis.nic.in>

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H.C.P.No.1618 of 2019

For Petitioner : Mr.Dr.S.Manoharan
For Respondents : Mr.C.Iyyappa Raj, APP for
RR1 to 3

ORDER

[Order of the court was made by Justice M.M.SUNDRESH]

The petitioner is the wife of the convict. Seeking ordinary leave for the convict on the ground of fertility treatment, the petitioner has come up with this petition.

2. Heard both sides.

3. Inasmuch as the reason assigned for leave is not in dispute and the convict has been under incarceration for 21 years, we are inclined to direct the respondents to grant leave to the convict for 30 days.

4. Accordingly, we direct the respondents to grant leave to the convict for 30 days commencing from 16.09.2019 subject to the usual conditions that can be imposed by the respondents, but, without escorts. The petitioner shall be released from the prison at 10.00 a.m. on 16.09.2019 and he shall return back to the prison at or before 05.00 p.m. on 17.10.2019. We make it clear that the day on which the convict is released from the prison and the day on which



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H.C.P.No.1618 of 2019

he is readmitted will have to be excluded. The convict shall report before the Inspector of Police, Ukkadam, daily at 10.00 a.m. during the leave period. This Habeas Corpus Petition is disposed of accordingly with the above directions.

The Registry is directed to list this matter on 21.10.2019 for reporting compliance.

Index : yes / no

Internet : yes / no

Speaking / Non Speaking Order
kmk

Note: Issue order copy on 06.09.2019.

[M.M.S.J.] [M.N.K.J.]
27.08.2019

To

- 1.The Secretary to Government of Tamil Nadu, Department of Home, Fort St. George, Chennai 600 009.
- 2.The Additional Director General of Prison, C.M.D.A. Towers, Egmore, Chennai 600 008.
- 3.The Superintendent, Central Prison, Kovai.
- 4.The Joint Secretary to Government, Public (Law and Order), Secretariat, Fort St. George, Chennai 600009.
- 5.The Public Prosecutor, High Court, Chennai.

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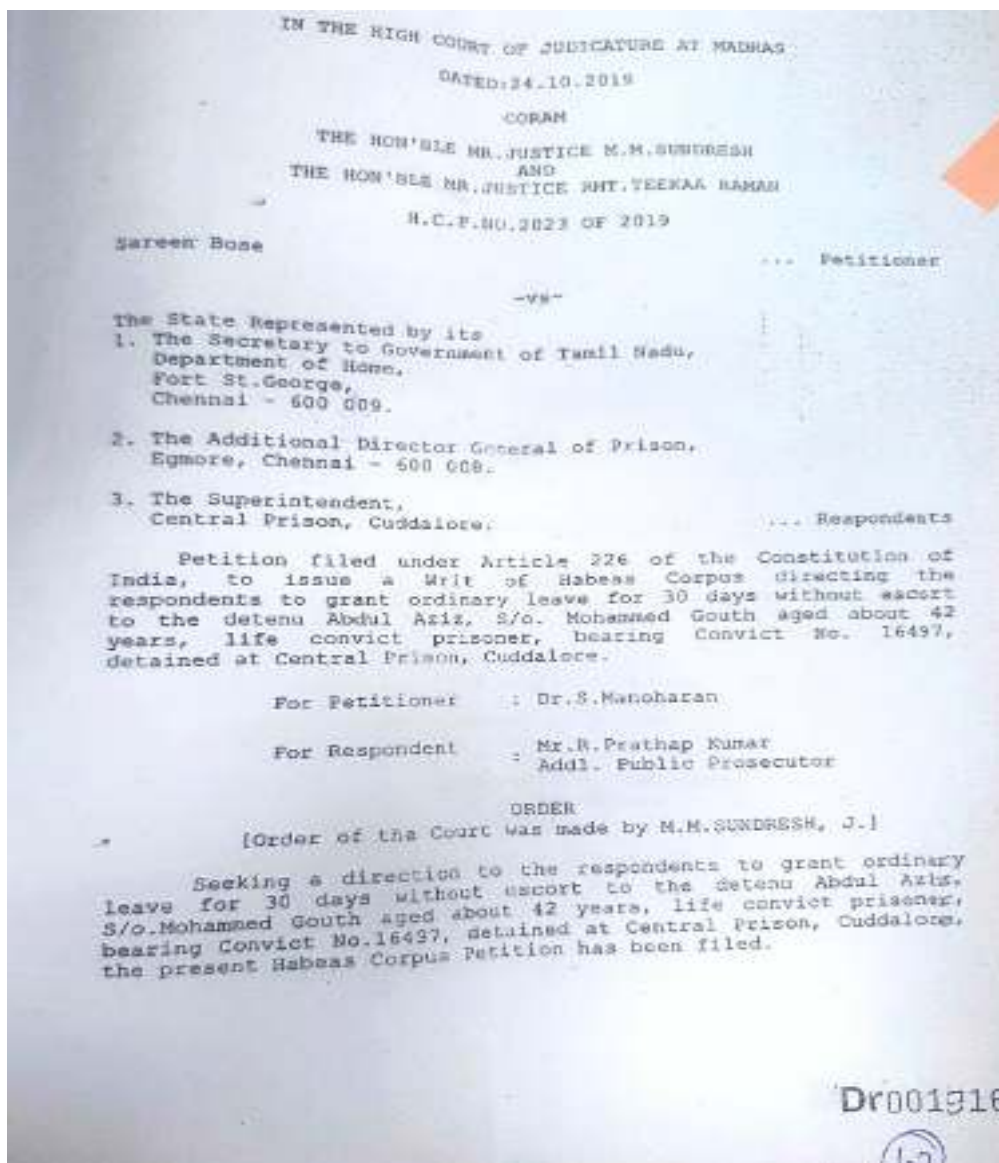


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4.4 Another Honourable co-ordinate Division Bench vide order authored by the same Honourable Judge, granted 30 days leave without escort to co-accused. A scanned reproduction of this order is as follows:





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2. The petitioner is the sister of the convict seeks ordinary leave for the purpose of taking steps for the marriage of the convict. Though in the affidavit filed by the respondents, an objection has been raised on the ground that the convict was convicted under Sections 4(a), 4(b) of Indian Explosive Substances Act, 1908, similar objections were rejected by this Court, placing reliance upon the Apex Court decision to the effect that after the period of sentence for the aforesaid offence gets over, the embargo cannot continue.

3. The convict has been under incarceration for about 18 years. On the earlier occasion, he was only given an emergency leave. The reason for seeking leave is also not in dispute.

4. Considering the above, we are inclined to grant 15 days leave to the convict with minimum escort subject to the usual conditions that can be imposed. The convict shall be released from the prison at 10.00 a.m. on 29.10.2019 and shall return back to the prison at 5.00 p.m. on 12.11.2019.

5. Accordingly, the Habeas Corpus Petition stands disposed of.

Post the matter 'for reporting compliance' on 13.11.2019.

Sd/-
Assistant Registrar (CS VIII)

//True Copy//


Sub Assistant Registrar

mmi/sam

To

1. The Secretary to Government of Tamil Nadu,
Department of Home, Fort St. George, Chennai - 600 009.

2. The Additional Director General of Prison,
Egmore, Chennai - 600 008.

3. The Superintendent, Central Prison, Cuddalore.

4. The Public Prosecutor, High Court, Madras.

5. The District Collector, Cuddalore.

+lcc to Dr.S.Manoharan, Advocate, S.R.No.89998

N.C.P.No.2023 of 2019

CP(CO)
CS/25/10/2019

Dr0019167





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4.5 We are informed that the above leave was availed by co-accused and the same also passed off without any untoward incident.

5. Though the main captioned writ petition is one for mandamus as the impugned order came to be made pending writ petition, considering the submission made in the proceedings on 30.03.2023 (extracted and reproduced supra), we tested the impugned order in the captioned writ petition itself with the consent of both sides. It is in this context that the captioned writ petition is being disposed of by this order.

6. To condense and to put in a nut-shell, we set aside the impugned order being order dated 28.02.2023 bearing reference No.1960/Tha.Ku.2/2023 made by second respondent for reasons adumbrated supra and we are granting 20 days ordinary leave from 28.06.2023 to 17.07.2023 to the convict prisoner Thiru.Abdul Azeez, S/o.Thiru.Mohammed Gouth, aged about 44 years, Life Convict No.1960, now lodged in Central Prison, Puzhal I, Chennai, without escort subject to the condition that the convict prisoner shall sign in the jurisdictional police station (we are informed that the jurisdictional police station is D3 Ice House Police Station,



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Chennai) everyday at half past ten in the morning. The convict prisoner shall surrender to the prison authority i.e., Central Prison, Puzhal - I, Chennai on 17.07.2023 in the evening before dusk i.e., by 05.30 p.m.;

7. Captioned writ petition is disposed of with the aforementioned directives.

8. Though the captioned writ petition stands disposed of by this order, list the matter under the cause list caption 'FOR REPORTING COMPLIANCE' on 19.07.2023.

(M.S.,J.) (R.S.V.,J.)
23.06.2023

Index : Yes/No
Neutral Citation : Yes/No
mmi

P.S: Registry to forthwith communicate this order to Jail authorities in Central Prison, Puzhal I, Chennai.

To

- 1.The Director General of Prisons,
Prison Department,
Gandhi Irwin Road, Egmore,
Chennai – 600 008.
- 2.The Superintendent of Prison,
Central Prison, Coimbatore.
- 3.The Superintendent of Prison,
Central Prison, Salem.



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4.The Inspector of Police,
D3 Ice House Police Station, Chennai.

5.The Public Prosecutor,
High Court, Madras.

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**M.SUNDAR, J.,
and
R.SAKTHIVEL, J.,**

mmi

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23.06.2023