



W.P(MD)No.28033 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

WEB COPY

DATED : 28.11.2023

CORAM :

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

W.P(MD)No.28033 of 2023

Annalakshmi

... Petitioner

vs.

The State represented by its,

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

2.The Deputy Inspector General of Prison,
Central Prison,
Trichy.

3.The Superintendent,
Central Prison,
Trichy.

... Respondents

Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Mandamus, directing the respondents to extend the ordinary leave granted in W.P.(MD)No.25263/2023 on the file of this Hon'ble court, without escort from 25.11.2023 to the detenu, Balraj, S/o. Karupaiyya, aged about 27 years, is a convict prisoner, bearing Convict No.23620 detained at central Prison, Trichy



W.P(MD)No.28033 of 2023

For Petitioner : Ms.K.Akshaya
For Respondents : Mr.S.Ravi,
Additional Public Prosecutor

ORDER

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

Captioned 'Writ Petition' ['WP' for the sake of brevity] has been filed in this Court on 22.11.2023.

2. Subject matter of captioned WP is ordinary leave [extension of ordinary leave] for Writ Petitioner's spouse, who is a convict prisoner ie., prison inmate.

3. One month ordinary leave without escort was granted to the prison inmate in and by an order dated 19.10.2023 vide W.P.(MD)No. 25293 of 2023 and a scanned reproduction of this order is as follows:



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W.P(MD)No.25293 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 19.10.2023

CORAM :

THE HONOURABLE MR.JUSTICE M.SUNDAR
and
THE HONOURABLE MR.JUSTICE R.SAKTHIVELU

W.P(MD)No.25293 of 2023

Annalakshmi ... Petitioner

VS.

1. The State rep. by its,
The Secretary to Government of India,
Home Department,
Fort St George,
Chennai – 600 009.

2. The Deputy Inspector General of Police,
Central Prison, Trichy.

3. The Superintendent,
Central Prison, Trichy. ... Respondents

Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus, to call for the records pertaining to the rejection order in No.18769/tha ku.4/2023, dated 25.09.2023 issued by the third respondent to grant leave for 2 months without escort to the detenu, Balraj S/o.Karupaiyya, aged about 27 years, is a convict prisoner, bearing Convict No.23620 detained at Central Prison, Trichy.



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W.P(MD)No.25293 of 2023

For Petitioner
For Respondents

Mr.S.Manoharan
Mr.A.Thiruvadi Kumar
Additional Public Prosecutor

ORDER

[Order of the Court was made by **MSUNDAR, J.**]

Captioned 'Writ Petition' (hereinafter 'WP' for the sake of brevity, convenience and clarity) has been filed in this Court on 16.10.2023 with a certiorarified mandamus prayer assailing an 'order dated 25.09.2023 bearing reference No.18769/thu ka.4/2023' made by the third respondent (hereinafter 'impugned order' for the sake of brevity, convenience and clarity). To be noted, the mandamus limb of the prayer seeks two months ordinary leave without escort for a prison inmate Thiru.Balraj S/o. Thiru.Karupaiyya, aged about 27 years (Convict No.23620 now detained in Central Prison, Trichy). It is also to be noted that prison inmate is writ petitioner's spouse.

2. Writ petitioner sent a representation dated 21.09.2023 seeking two months leave without escort for her spouse i.e., prison inmate on the ground that she is in an advanced stage of pregnancy and that the prison

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W.P(MD)No.25295 of 2023

Inmate has to make arrangements for the livelihood of his family owing to the economic situation and owing to petitioner struggling with her aged mother-in-law.

3. Dr.S.Manoharan, learned counsel for writ petitioner adverting to Rule 20 of 'The Tamil Nadu Suspension of Sentence Rules, 1982' [hereinafter 'said Rules' for the sake of convenience and clarity] submits that the grounds on which ordinary leave has been sought fit into Clauses (i) and (vii) of Rule 20 of said Rules but the writ petitioner's representation dated 21.09.2023 has been negatived by the third respondent in and by the impugned order by citing Rule 22 of said Rules and saying the two years imprisonment has not elapsed as the prison inmate has been sentenced for more than five years but less than fourteen years. To be precise, this is Rule 22(1)(b) of said Rules, which reads as follows:

'22. Eligibility for ordinary leave.- (1) No prisoner shall be granted ordinary leave unless he has been sentenced by a court in this State to imprisonment for a term or imprisonment for life for an offence against any law other than a law relating to a matter to which the executive power of the Union Government extends and he has completed-

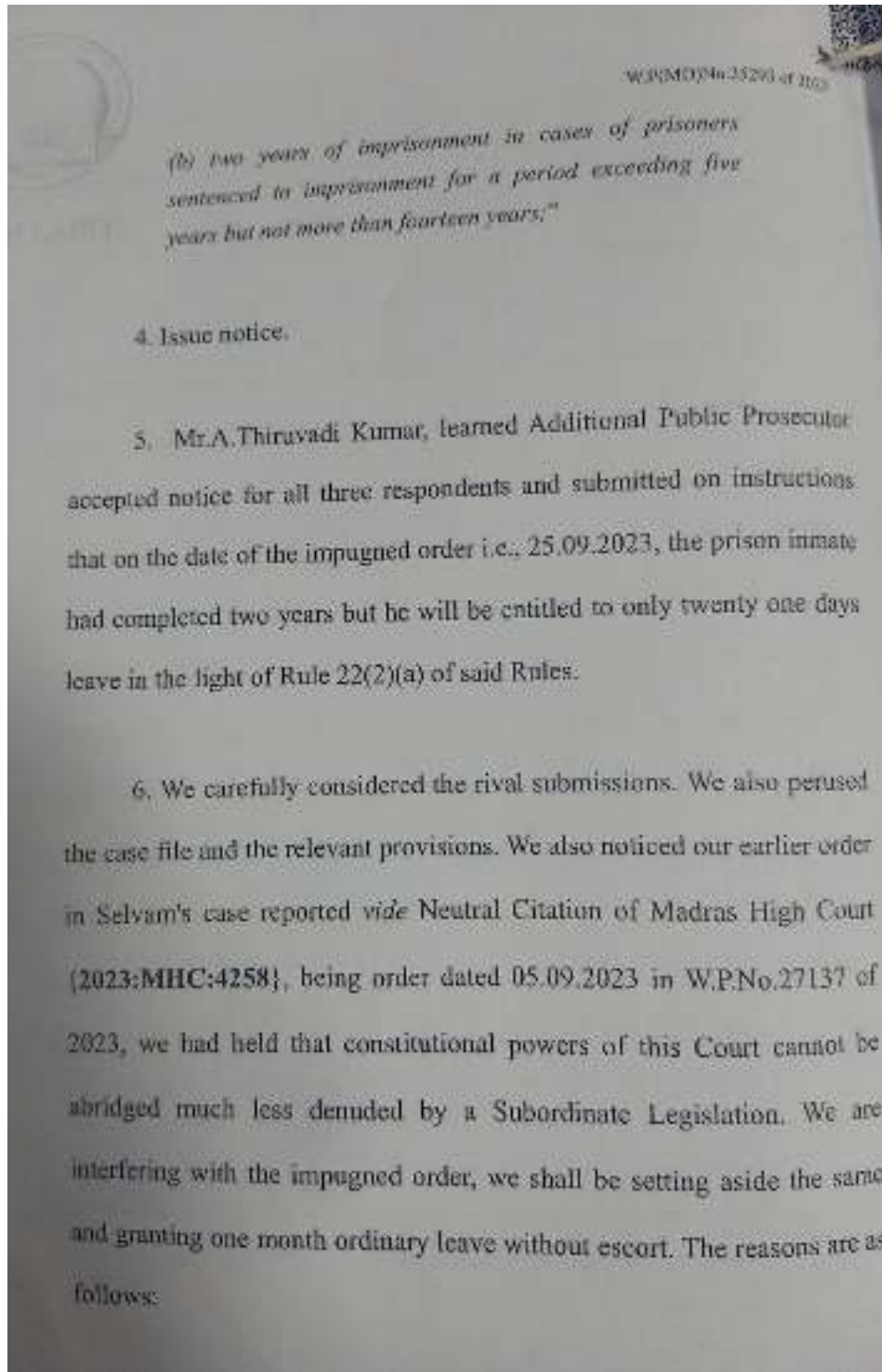
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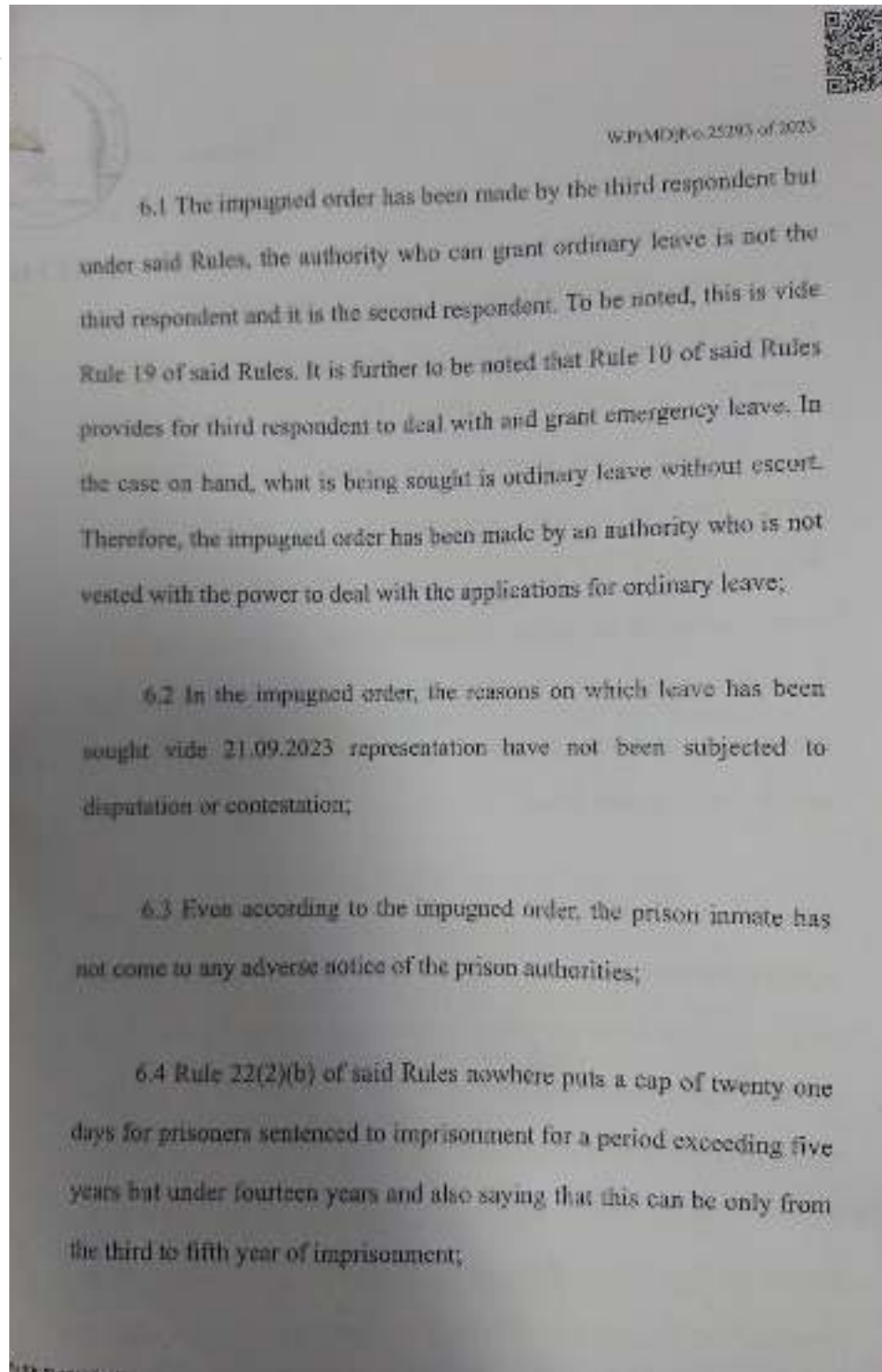




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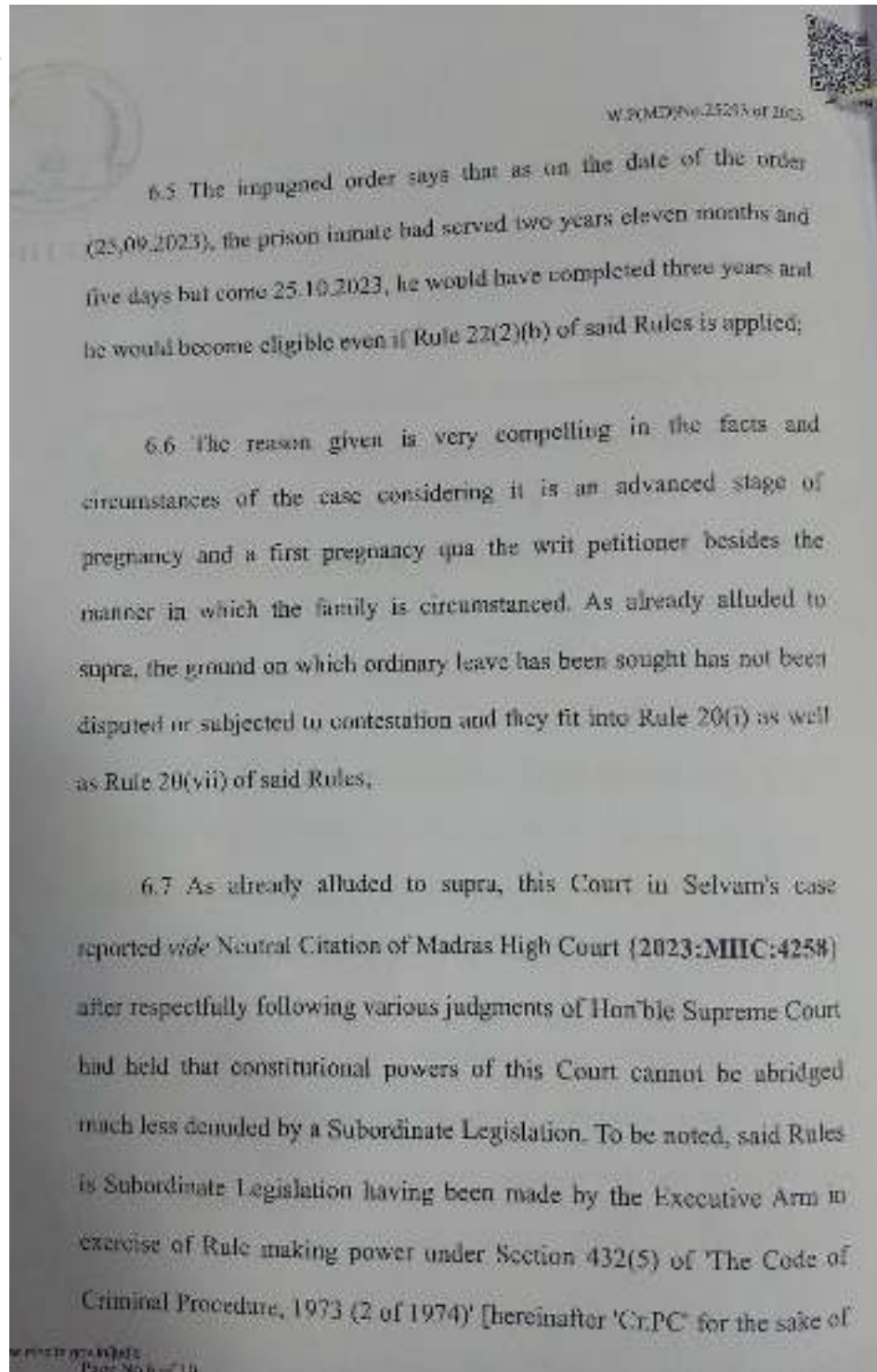




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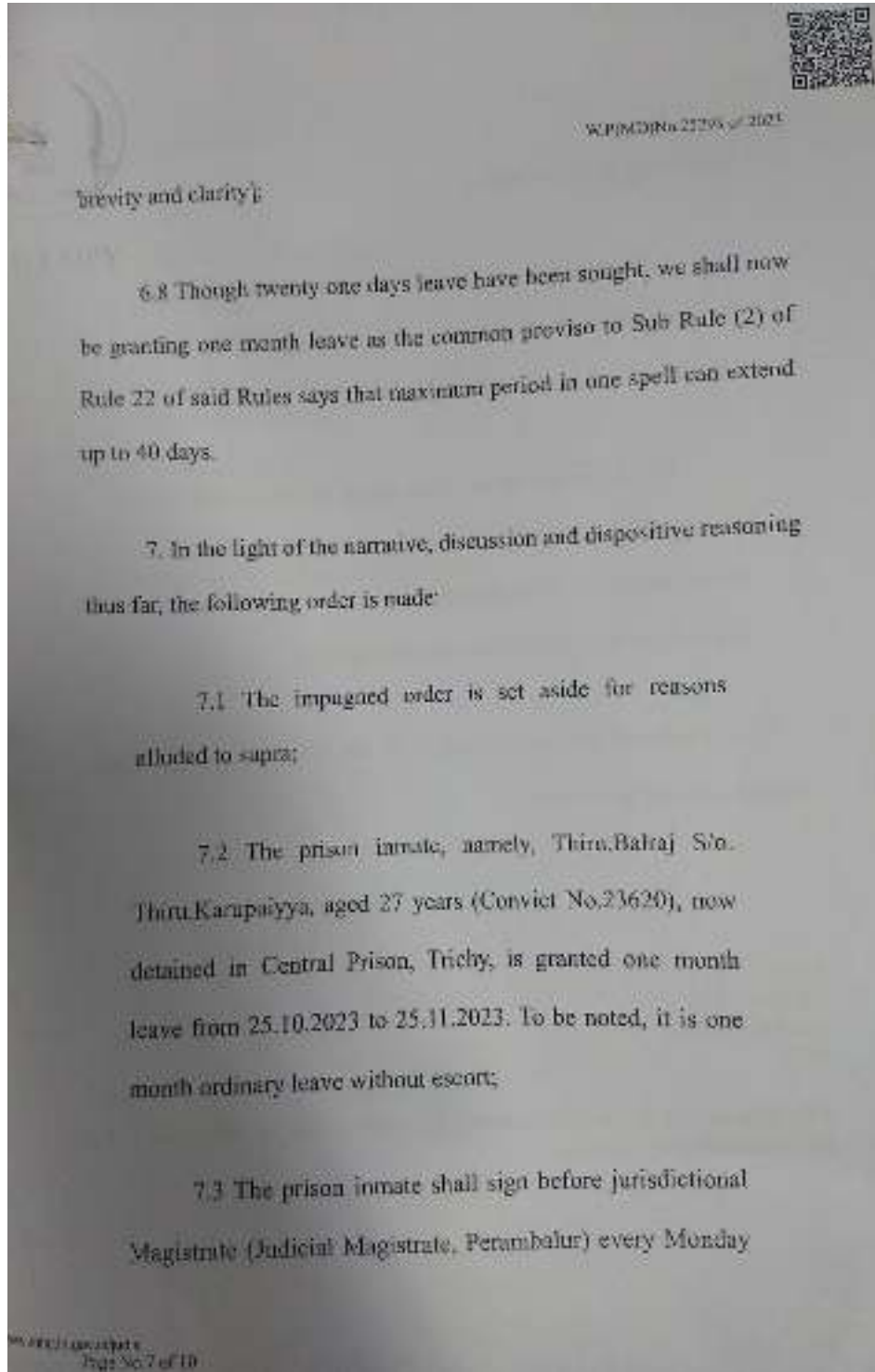




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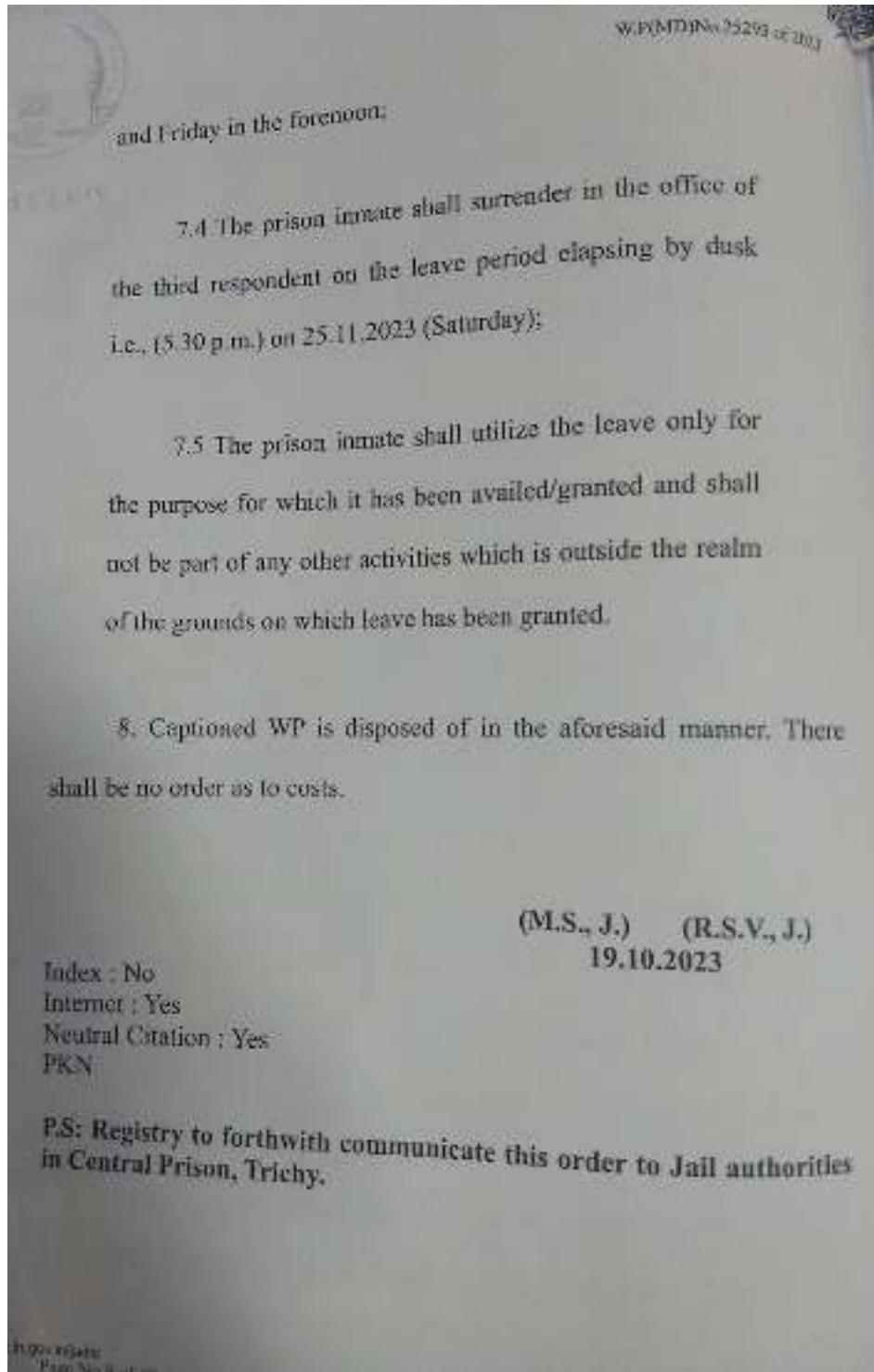




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4. The aforementioned order captures all essentials and therefore, we deem it appropriate not to delve into the same again in this second WP.

5. Ms.K.Akshaya, learned counsel, who joined in this hearing on a 'video conferencing' ['VC' for the sake of brevity] platform [to be noted, this is a hybrid hearing] adverting to the aforementioned earlier order dated 19.10.2023 submits that the expected date of delivery for Writ Petitioner [prison inmate's spouse] is 10.12.2023 and she has only her aged mother-in-law and no one else as a care giver. Learned counsel submits that it would be an immense help to the Writ Petitioner if the prison inmate is present at the time of delivery.

6. Issue notice.

7. Mr.S.Ravi, learned Additional Public Prosecutor accepted notice on behalf of all the three respondents.

8. Considering the narrow and limited scope of the captioned Writ Petition, main Writ Petition was taken up with the consent of both sides.



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9. Learned Additional Public Prosecutor submitted that Rule 22(3)

of said Rules is the impediment. To be noted, we are using short forms, short references and abbreviations used in the earlier order in this order also for the sake of convenience and clarity.

10. To be noted, Rule 22(3) of said Rules says that a prison inmate should complete 1 year of imprisonment between two spells of ordinary leave. In this regard, this Court has repeatedly held that said Rules being Subordinate Legislation made by the Executive Arm in exercise of its Rules making power under Section 432(5) of 'The Code of Criminal Procedure, 1973 (2 of 1974)' [hereinafter 'Cr.PC' for the sake of brevity and clarity] cannot abridge much less denude the constitutional powers of this Court. This Court has taken this view by respectfully following the Najeer principle laid down by Hon'ble Supreme Court in *Union of India Vs. K.A.Najeer* reported in (2021) 3 SCC 713.

11. In the light of the aforementioned dispositive reasoning, we have no difficulty in saying that Rule 22(3) of said Rules cannot be an impediment for acceding to the prayer of the Writ Petitioner.



12. Considering the unique facts and circumstances of the case and taking into account the trajectory the matter has taken and also considering that the prisoner ie., prison inmate has promptly surrendered on 25.11.2023 after the earlier spell of leave without any untoward or uneventful happening, we deem it appropriate to make the following order:

(i) Prison inmate, namely, Thiru.Balraj, son of Thiru.Karupaiyya, aged 27 years (Convict No.23620), now detained in Central Prison, Trichy is granted one week leave from 08.12.2023 [10.30 a.m.] to 15.12.2023 [5.30 p.m.];

(ii) Prison inmate shall surrender in the office of the third respondent on 16.12.2023 by dusk ie., by 5.30 p.m.;

(iii) other conditions already put in vide subparagraphs 7.3 and 7.5 of earlier order shall now operate for the instant one week ordinary leave without escort also. We make it clear that our earlier order dated 19.10.2023 in W.P. (MD)No.25293 of 2023, which has been scanned and reproduced supra shall now be read as an integral part and parcel of this final order.



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WEB COPY 13. Captioned Writ Petition is disposed of in the aforesaid manner.

There shall be no order as to costs.

(M.S., J.) (R.S.V., J.)
28.11.2023

Index : Yes/No
Neutral Citation : Yes/No

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Post Script:

***(i) Upload forthwith
(ii) All concerned to act on this order being uploaded in official website of this Court without insisting on certified copies. To be noted, this order when uploaded in official website of this Court will be watermarked and will also have a QR code.***



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To

- 1.The Secretary to Government of Tamil Nadu,
Home Department,
Fort St. George,
Chennai – 600 009.
- 2.The Deputy Inspector General of Prison,
Central Prison,
Trichy.
- 3.The Superintendent,
Central Prison,
Trichy.
- 4.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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W.P(MD)No.28033 of 2023

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

vsm

ORDER MADE IN
W.P(MD)No.28033 of 2023

DATED : 28.11.2023