



W.P(MD)No.28196 of 2023

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 30.11.2023

CORAM :

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

W.P(MD)No.28196 of 2023

Rajesh

... Petitioner

vs.

**1.The Principal Secretary to Government,
Home, Prohibition & Excise (Prison - IV)
Fort St. George,
Chennai - 600 009.**

**2.Inspector General of Prisons,
O/o. Prison Department Headquarters,
Whannels Road,
Egmore, Chennai - 600 008.**

**3.The Deputy Inspector General of Prisons,
Trichy Range,
Race Course Road,
Trichy - 620 023.**

**4.The Superintendent of Prisons,
Central Prison,
Trichy - 620 020.**

... Respondents

Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus, calling for the records pertaining to the impugned order passed by the 3rd respondent vide her proceedings in No. 106/MuVu/2023 dated 10.11.2023 and quash the same as illegal and also consequent direction may be issued to the respondents to grant 40 days ordinary leave to petitioner's brother Senthil S/o. Anbalagan Convict No. 20107 confined at



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Central Prison, Tiruchirappalli within stipulated time.

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For Petitioner : Mr.C.Karthikeyan
For Respondents : Mr.A.Thiruvadi Kumar,
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 27.11.2023.

2. Factual matrix in a nutshell is that petitioner's blood brother one Thiru.Senthil, son of Anbalagan (Prisoner No.20107) now lodged in Trichy Central Prison is serving life sentence having been convicted vide judgment and sentence dated 12.04.2005 in S.C.No.01 of 2004 on the file of learned Sessions Judge, Nagapattinam, which was confirmed in an appeal by this Court vide judgment dated 25.09.2007 in CrI.A.No.492 of 2005; that Writ Petitioner's brother 'Thiru.Senthil' shall be referred to as 'said prison inmate' for the sake of convenience and clarity; that a representation dated 31.10.2023 was sent by Writ Petitioner seeking 40 days ordinary leave for said prison inmate on the ground that wife of said prison inmate (Mrs.Philomina) has renal failure and the presence of said prison inmate is imperative to arrange medical treatment for her and also to take care of

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her; that this plea was rejected by the third respondent in and by an 'order signed on 10.11.2023 (as regards date, only month and year were given) bearing reference No. 106/Kc/2023' (hereinafter 'impugned order' for the sake of brevity, convenience and clarity); that impugned order has been made solely citing Rule 21(b) of 'The Tamil Nadu Suspension of Sentence Rules, 1982' ('said Rules' for brevity) which makes prisoner who was sentenced under Sections 392 to 402 of 'The Indian Penal Code (45 of 1860)' [hereinafter 'IPC' for the sake of convenience and clarity] is not eligible for ordinary leave; that it is to be noted that in the case on hand said prison inmate was convicted *inter alia* under Section 392 of IPC; that assailing the impugned order, captioned WP has been filed.

3. Issue Notice.

4. Mr.A.Thiruvadi Kumar, learned Additional Public Prosecutor accepted notice for all the respondents and submitted, on instructions, that the only impediment in granting 40 days ordinary leave to said prison inmate is aforementioned Rule 21(b) of said Rules as said prison inmate has been convicted *inter alia* qua Section 392 of IPC.



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5. This Court carefully considered the submissions on both sides. This Court also carefully perused the case file. This Court comes to the conclusion that the impugned order deserves to be interfered with and the plea of Writ Petitioner seeking 40 days ordinary leave without escort for his brother ie., said prison inmate deserves to be acceded to. The reasons are as follows:

a) as already alluded to supra, the only ground on which, the impugned order has been made is Rule 21(b) of said Rules. As regards Rule 21(b) of said Rules, this Court has already held that the same cannot be an impediment. This is vide Akram Khan's case (*Akram Khan Vs. The State Rep. by its The Deputy Inspector General of Prison and another*) in W.P.No.21242 of 2023, dated 19.07.2023 and a scanned reproduction of the same is as follows:



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W.P. No. 21242 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.07.2023

CORAM

THE HONOURABLE MR.JL STICE MSUNDAR
and
THE HONOURABLE MR.JL STICE R.SAKTHIVEL

W.P. No. 21242 of 2023

Mr.Akram Khan .. Petitioner

Vs.

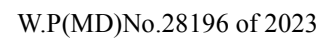
1. The State Rep. By its
The Deputy Inspector General of Prison
Office of Deputy Inspector General of Police
Chennai Range, Egmore - 600 008

2. The Superintendent of Prison
Central Prison at Puzhal I
Thiruvallur District - 600 066 .. Respondents

Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of mandamus to call for the records pertaining to the impugned order in No.8562/G.S.7 /2023 dated 06.07.2023 passed by the second respondent and quash the same and consequently direct the respondents to grant 21 days ordinary leave without escort to the petitioner, namely Mr.Akram Khan, son of Ayub Khan, who is confined in Central Prison, Puzhal I, Chennai.

For Petitioner : Mr.M.Mohamed Saifulla

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Mr. Raj Thilak
Additional Public Prosecutor

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

2. The writ petitioner is a convict prisoner now lodged in Central Prison Puzhal I, Chennai – 600 066 having been convicted and sentenced by XV Additional City Civil Court, Chennai vide S.C.No.613 of 2005.

a) arrange for treatment of his ailing mother;
b) make arrangement for his daughter's further education
(this Court is informed in the hearing that petitioner's daughter
has completed D.Pharm i.e., Diploma in Pharmacy and wants to
pursue higher studies) and

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c) maintenance and repair work in his dwelling house.

4. Aforementioned said representation has been negatived by the second respondent in and by an order dated 06.07.2023 bearing reference No.8562/த.கு.2/2023 [hereinafter 'impugned order' for the sake of brevity, convenience and clarity]. Captioned writ petition has been filed assailing the impugned order.

5. Mr.Mohamed Saifulla, learned counsel on record for the writ petitioner adverting to the impugned order submits that the only ground on which petitioner's said representation has been negatived is Rule 21(b) of 'Tamil Nadu Suspension of Sentence Rules, 1982' [hereinafter 'said Rules' for the sake of convenience and clarity]. To be noted, the impugned order refers only to Rule 21 but a perusal of paragraph 2 thereof makes it clear that reference is to clause (b) of Rule 21 of said Rules. Learned counsel submits that the conduct of the convict prisoner in the prison has been blemishless, he has gone on leave (emergency leave) in as many as seven earlier occasions and has returned without any untoward incident and therefore Rule 21(b) of said Rules really cannot be an impediment.

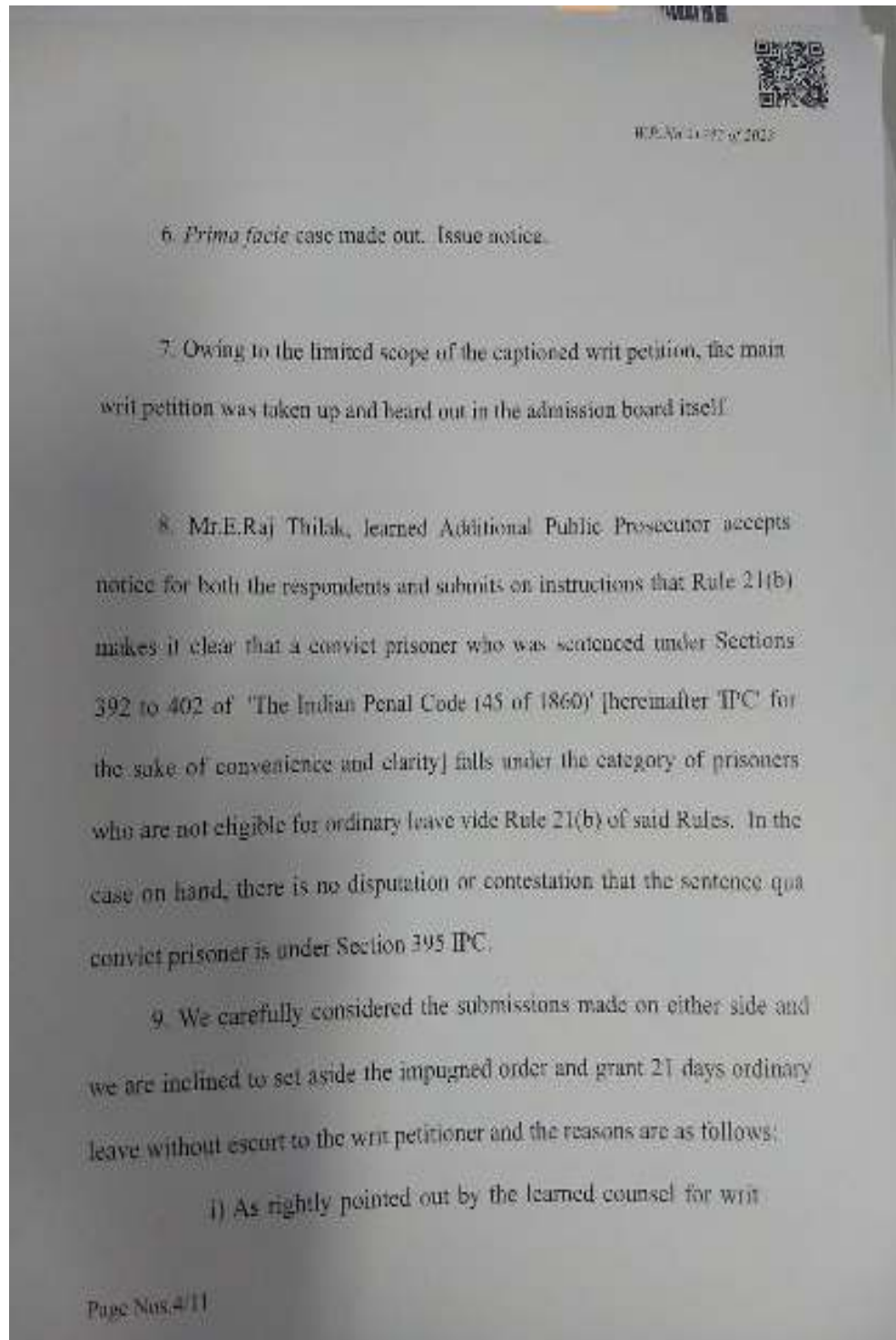
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W.P.No.22742 of 2023

petitioner, the writ petitioner has gone on leave on as many as seven earlier occasions, thrice with police escort and on four occasions without police escort and on all those occasions writ petitioner has returned and surrendered on expiry of the leave period and nothing untoward has happened. In this regard, a tabulation has been placed before us by the Prosecutor regarding earlier occasions of leave and a scanned reproduction of the same is as follows:

Table No. 1

Details of Writ Petitioner's previous leave periods granted

Details of Writ Petitioner's previous leave periods

S No	Leave Type	From	To	No of Days	Remarks
1	Emergency leave	20.04.2022	20.04.2022	1	With Police escort
2	Emergency leave	07.05.2022	07.05.2022	1	With Police escort
3	Emergency leave	20.05.2022	20.05.2022	1	With Police escort
4	Emergency leave	27.02.2022	26.02.2022	2	Without Police escort
5	Emergency leave	11.03.2022	10.03.2022	2	Without Police escort
6	Emergency leave	11.04.2022	20.04.2022	9	Without Police escort
7	Emergency leave	20.05.2022	20.05.2022	1	Without Police escort
Total				20 Days	

Superintendent of Prisons
Chennai Prison - 1, Rajahmundry

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REP. No. 21/42 of 2023

As would be evident from the tabulation placed before us, convict prisoner (out of seven earlier occasions) has gone on leave without police escort in the last four occasions, there has been no untoward incident and therefore, we are inclined to grant 21 days leave without escort this time albeit with a condition to report in jurisdictional police station daily;

ii) In response to our query as to whether there is any prison offence qua the writ petitioner, learned Prosecutor submits, on instructions, that there is no prison offence and the conduct of the convict prisoner in the prison has been blemishless;

iii) The objective behind Rule 21(b) of said Rules which was made more than 4 decades ago appears to be possibility of untoward incidents when the sentence is for offences such as robbery, causing hurt in committing robbery, decoity etc.;

iv) To put it in a nutshell, the offence of robbery and decoity have been put in one basket under Rule 21(b) of said Rules. In the case on hand, as the convict prisoner has gone on

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W.P.No. 21/202 of 2023

leave on as many as seven earlier occasions, has surrendered on expiry of leave and nothing untoward has happened when he was on leave, we find that this is a fit case to relax the rigour of Rule 21(b) of said Rules;

v) In continuation of the earlier reason, we make it clear that we are exercising constitutional power and therefore said Rules being a set of Rules made by the Executive in exercise of Rule /special orders making powers under Section 432(5) of 'The Code of Criminal Procedure, 1973 (2 of 1974)' [hereinafter 'Cr.P.C.' for the sake of brevity and clarity] will not be complete fetters qua this Constitutional Court, it is always open to this Court to relax such Rules in suitable cases and this is one such case;

vi) We also find that at least two of the three grounds on which ordinary leave has been sought are compelling and those are, making arrangements for medical treatment for his ailing mother and making arrangements for higher education of his daughter who has completed Diploma in Pharmacy;

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vii) This Court also notices that punishment for decottry under Section 395 of IPC can extend upto imprisonment for life or rigorous imprisonment for a term which may extend upto 10 years and there is no minimum sentence but the trial Court has awarded 5 years sentence (even in the five years sentence 135 days set off has been given) and we have taken this factor also into consideration;

viii) The writ petitioner remains incarcerated from 02.10.2021.

10. In the light of the narrative, discussion and dispositive reasoning set out supra, we make the following order:

i) Impugned order dated 06.07.2023 bearing reference No.8562/த.த.2/2023 made by the second respondent is set aside;

ii) The writ petitioner i.e., convict prisoner (Convict No.8562) now lodged in Central Prison, Puzhal, Chennai - 600 066 is given 21 days ordinary leave without escort from 24.07.2023 to 13.08.2023;

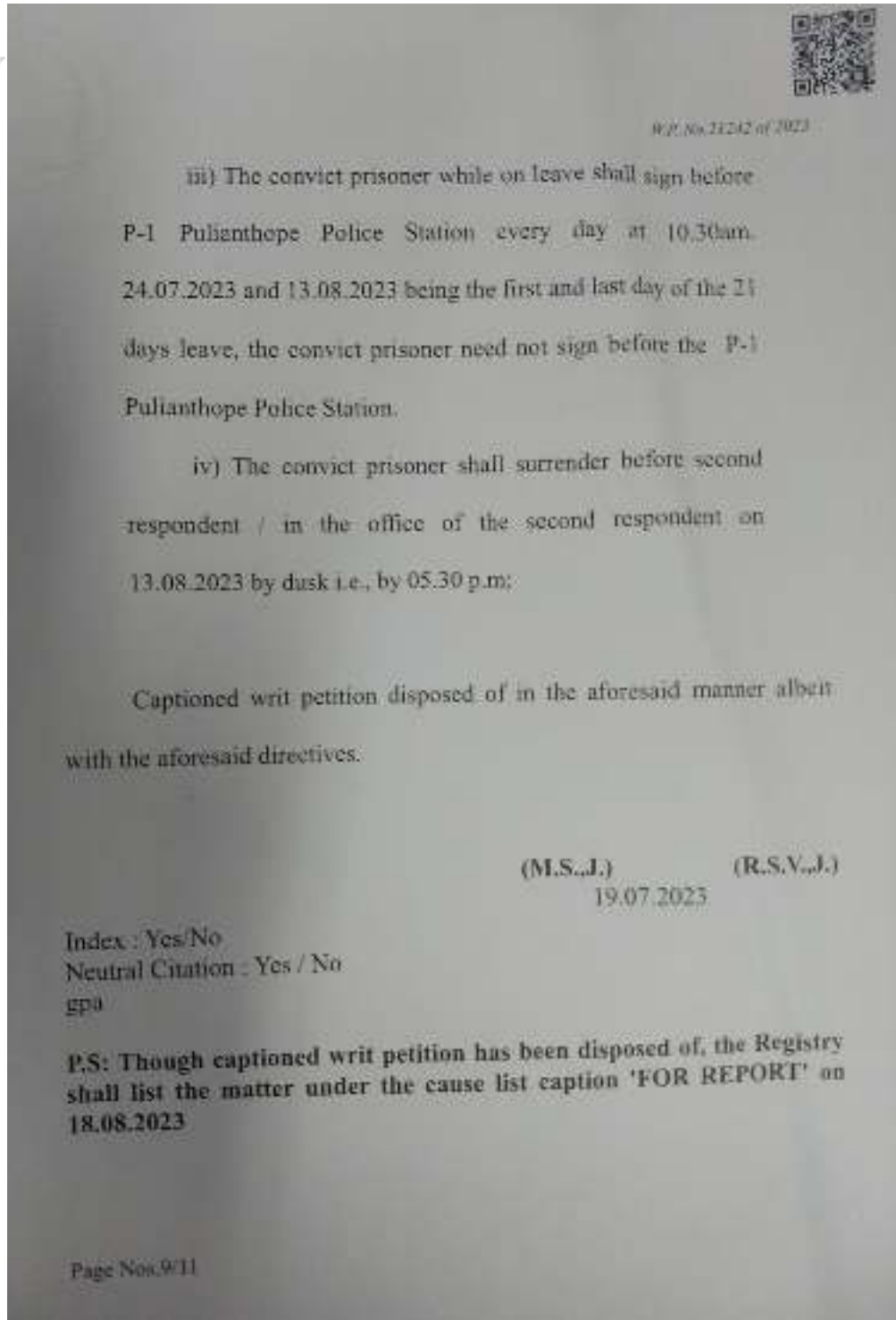
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b) if Rule 21(b) of said Rules does not come in the way owing to

Akram Khan principle, the entire substratum of the impugned order

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gets eroded and the impugned order becomes liable for being set aside in the legal drill on hand;

c) as regards *Akram Khan* principle, there is no dispute that the same has been given legal quietus and has not been carried in an appeal;

d) in the given case on hand, there is no dispute or contestation that the said prison inmate's wife has suffered renal failure and is undergoing treatment. The medical certificate is not subjected to any dispute or contestation;

e) said prison inmate has already gone on leave (ordinary leave) as many as 43 occasions without escort and on all occasions, the said prison inmate has returned and surrendered diligently and the leave periods have passed without any untoward incident.

f) said prison inmate remains incarcerated for 19 years 6 months and 20 days as of today;

g) said prison inmate is not involved in any prison offence;



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h) to put it differently, absent Rule 21(b) of said Rules impediment (which has been removed vide Akram Khan principle), the said prison inmate otherwise becomes eligible for 40 days ordinary leave.

6. In the light of the narrative, discussion and dispositive reasoning thus far, the following order is made:

(i) impugned order ie., order signed on 10.11.2023 (only month and year are given) bearing reference No.106/Kc/2023 made by the third respondent is set aside;

(ii) said prison inmate ie., Thiru.Senthil, son of Anbalagan (convict No.20107) now lodged in Central Prison, Tiruchirappalli is granted 40 days leave from 02.12.2023 (10.30 a.m.) to 10.01.2024 subject to the conditions which are adumbrated infra;

(iii) said prison inmate shall stay with his wife at Kovilputhu



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Street, Valivalam Post, Thirukkuvalai Taluk, Nagapattinam District;

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(iv) said prison inmate shall not partake in any activity which is not connected with the ground on which leave is granted;

(v) said prison inmate shall sign in the Court of the jurisdictional Magistrate (this Court is informed that jurisdictional Magistrate is Judicial Magistrate, Kilvelur) every Monday and Friday;

(vi) said prison inmate shall surrender in the office of the fourth respondent on 11.01.2024 Thursday by 5.30 p.m. ie., by dusk.

7. Captioned Writ Petition is disposed of in the aforesaid manner with the aforesaid directives. There shall be no order as to costs.

Sd/-

Assistant Registrar(AD-II)

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/12/2023

Sub Assistant Registrar(CS)



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To சென்னை

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- 1.The Principal Secretary to Government,
Home, Prohibition & Excise (Prison - IV)
Fort St. George,
Chennai - 600 009.
- 2.Inspector General of Prisons,
O/o. Prison Department Headquarters,
Whannels Road,
Egmore, Chennai - 600 008.
- 3.The Deputy Inspector General of Prisons,
Trichy Range,
Race Course Road,
Trichy - 620 023.
- 4.The Superintendent of Prisons,
Central Prison,
Trichy - 620 020.
- 5.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

Copy to

The Judicial Magistrate, Kilvelur

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DATED : 30.11.2023

KB(04.12.2023) 17P 7C