



WP(MD)No.30362 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 21.12.2023

CORAM:

THE HONOURABLE MR.JUSTICE M.SUNDAR

and

THE HONOURABLE MR.JUSTICE R.SAKTHIVEL

W.P.(MD)No.30362 of 2023

Patturani

: Petitioner

Vs.

1.The Deputy Inspector General of Prison,
O/o. The Deputy Inspector General of Prison,
Madurai Range,
Madurai Central Prison Campus,
New Jail Road, Madurai.

2.The Superintendent of Prison,
Central Prison,
Palayamkottai,
Tirunelveli District.

: Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, calling for the records pertaining to the order passed by the respondent No.1 in No.619/Vu.Tha.2/2023, dated



WP(MD)No.30362 of 2023

11.12.2023 and quash the same as illegal and consequently directing the respondents to grant ordinary leave for a period of twenty days to the petitioner's husband namely Sundar, son Mupputathi, C.P.No.619 who is confined at Central Prison, Palayamkottai, Tirunelveli.

For Petitioner : Mr.S.Nihar Ali

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 13.12.2023.

2. Factual matrix in a nutshell is that WP petitioner's spouse one Thiru.Sundar, son of Thiru.Mupputathi is a life convict (C.P.No.619) now lodged in Palayamkottai Central Prison, Tirunelveli District; that WP petitioner's spouse shall be referred to as 'said prison inmate' for the sake of convenience and clarity and with the intention of using better / refined glossary; that said prison inmate is very ill; that said prison inmate has got



WP(MD)No.30362 of 2023

serious renal ailments and he has been operated upon and a stent has been placed; that the said prison inmate required further medical attention (stent is to be removed); that said prison inmate after the last spell of a short leave surrendered on 11.12.2023; that when said prison inmate sought further leave, the same was negatived by an order made by the first respondent being 'order dated 11.12.2023 bearing reference No. 619/உ.த. 2/2023' (hereinafter 'impugned order' for the sake of brevity, convenience and clarity); that assailing the impugned order (certiorari limb) and seeking ordinary leave without escort (mandamus limb), captioned WP with a certiorarified mandamus prayer has been filed.

3. In the Admission Board hearing today, Mr.S.Nihar Ali, learned counsel on record for WP petitioner reiterating the aforementioned facts submitted that the ground on which further leave is sought is not disputed and it is only a technical plea turns on Rule 22(3) of 'the Tamil Nadu Suspension of Sentence Rules, 1982' (hereinafter 'said Rules for the sake of brevity).

4. Issue notice.



WP(MD)No.30362 of 2023

5. Mr.A.Thiruvadi Kumar, learned Additional Public Prosecutor accepted notice for both the respondents and submitted that Rule 22(3) of said Rules alone is the impediment as one year had not elapsed from the date on which said prison inmate last surrendered after the last spell of leave ie., after 11.12.2023.

6. Owing to the limited scope of the captioned WP and acute angle on which the entire matter turns, with the consent of both sides, main Writ Petition was taken up.

7. After hearing both sides and after giving our consideration to the submissions made on both sides, we find that this is a fit case to interfere, quash the impugned order and grant one month leave to the said prison inmate. The reasons ie., dispositive reasoning are as follows:

i) as rightly pointed out by Mr.S.Nihar Ali, learned counsel for WP petitioner, the impugned order does not enter upon disputation or contestation as regards the ground on which further leave has been sought ie., that the said prison



WP(MD)No.30362 of 2023

inmate is seriously ill, he has renal ailments and that he requires continued medical attention is not subjected to any disputation or contestation;

ii) the only point that has been mentioned in the impugned order is Rule 22(3) of said Rules which stipulates that there is a cooling period of one year. Rule 22(3) stipulates that one year should have elapsed after one spell of leave for a prison inmate for being considered for another spell. This Rule 22(3) came up for consideration in ***Baskar's case*** being W.P.No.27515 of 2023 and this Bench sitting in the principal seat made an order dated 20.09.2023, which is as follows:



WP(MD)No.30362 of 2023

WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.09.2023

CORAM

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

W.P.No.27515 of 2023

Baskar
S/o.Balasundaram

Vs.

Petitioner

1. The State rep. by its
The Home Secretary to Government
Prison Department, Secretariat,
Chennai-600 009.
2. The Deputy General of Prisons
Chennai Range, Gandhi Irwin Road
CMDA Building, Egmore - 600 008.
3. 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 writ of Certiorarified Mandamus to call for the records in relating to the impugned order in No.7614/tha.ku.2/2023 dated 18.08.2023 passed by the 3rd respondent, quash the same and consequently, direct the 3rd respondent

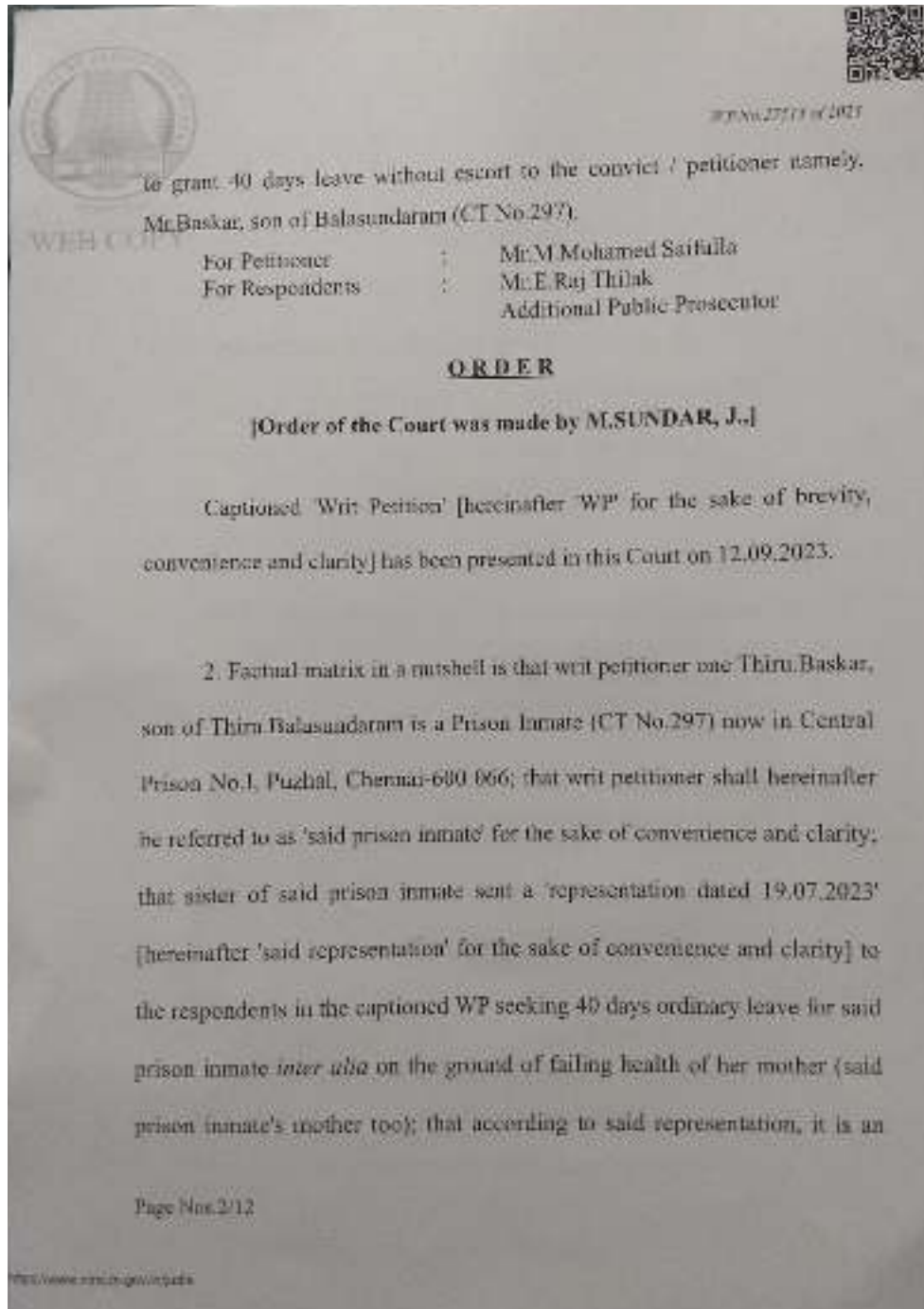
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WP(MD)No.30362 of 2023

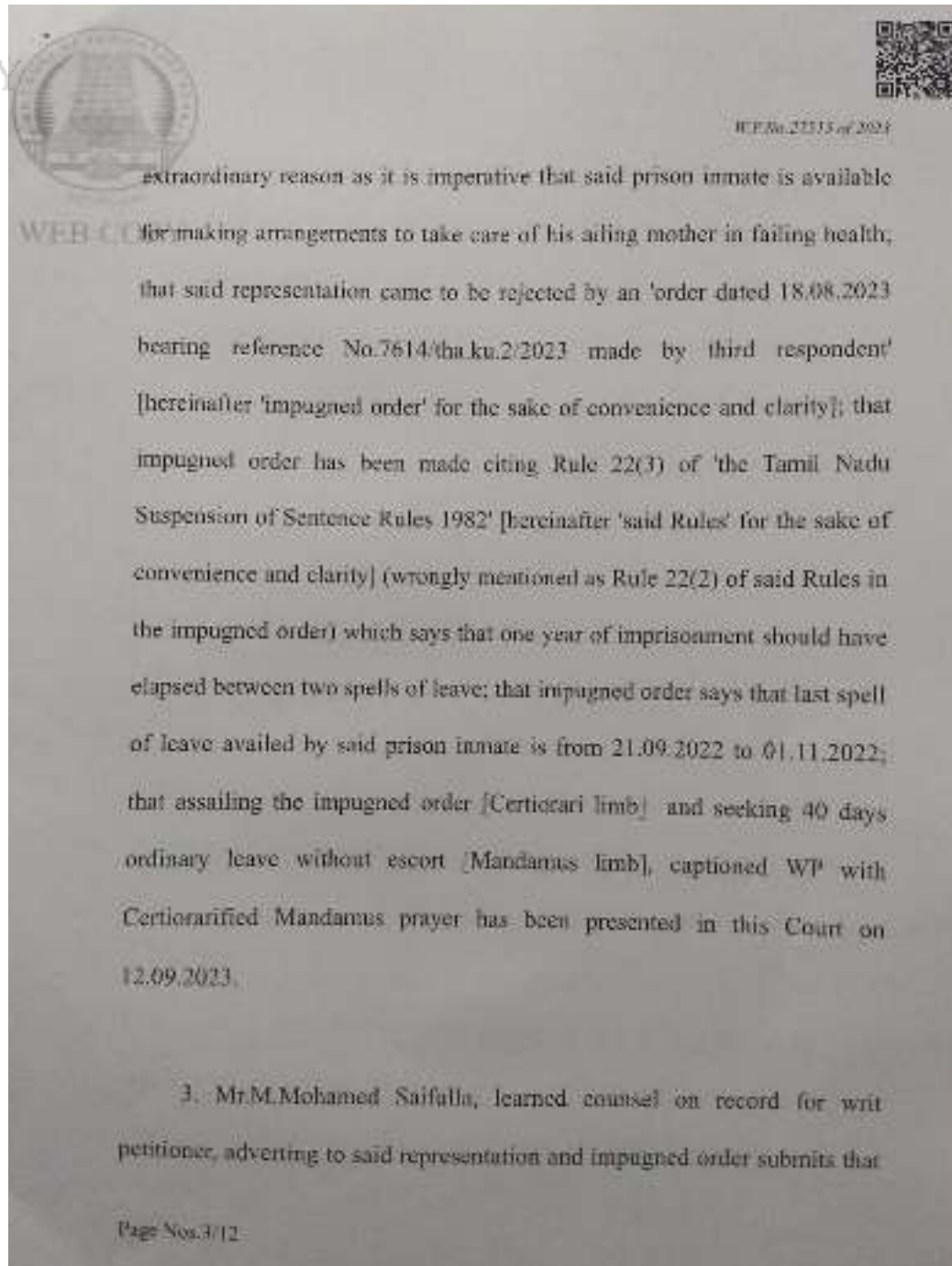




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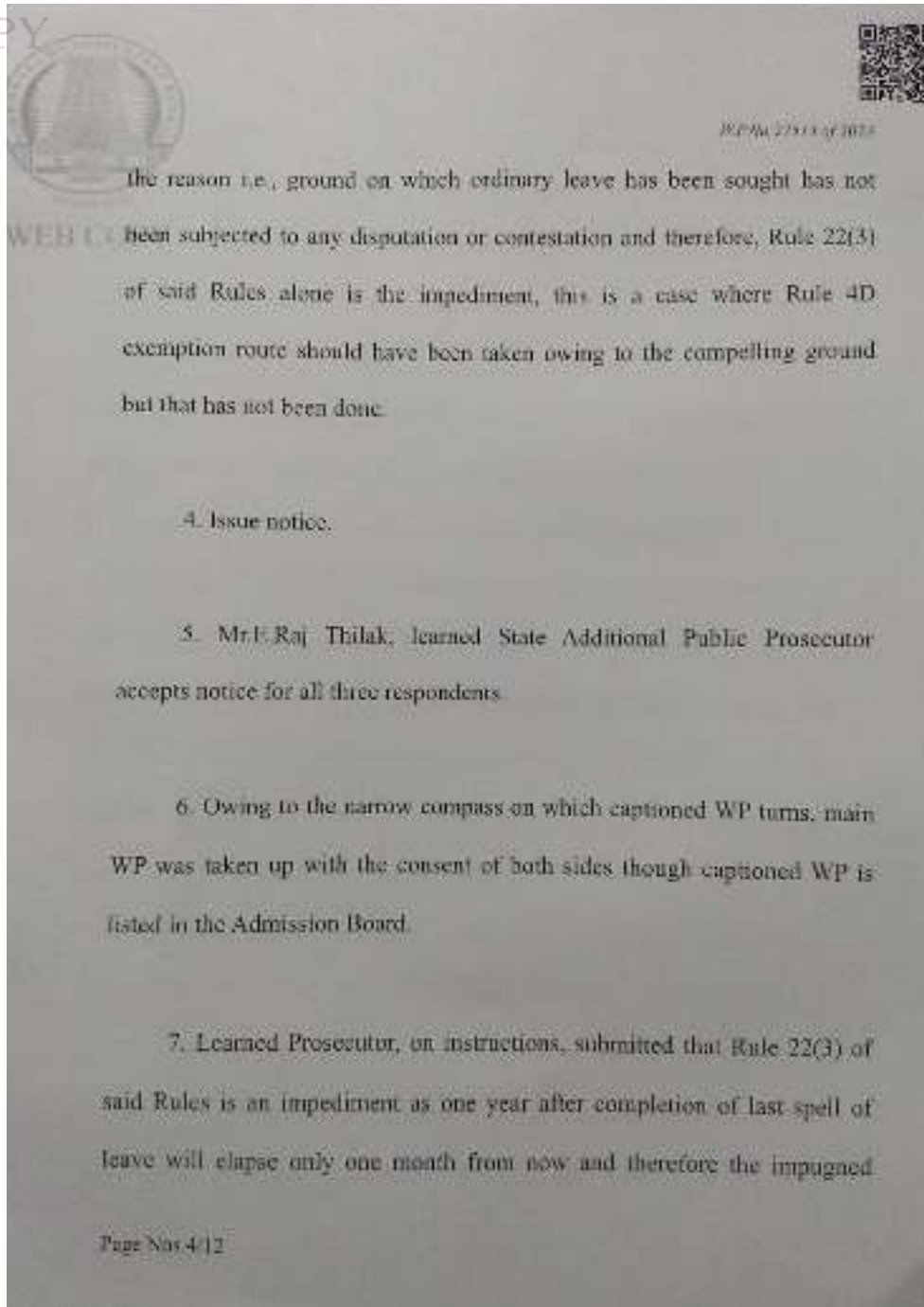
WP(MD)No.30362 of 2023





WP(MD)No.30362 of 2023

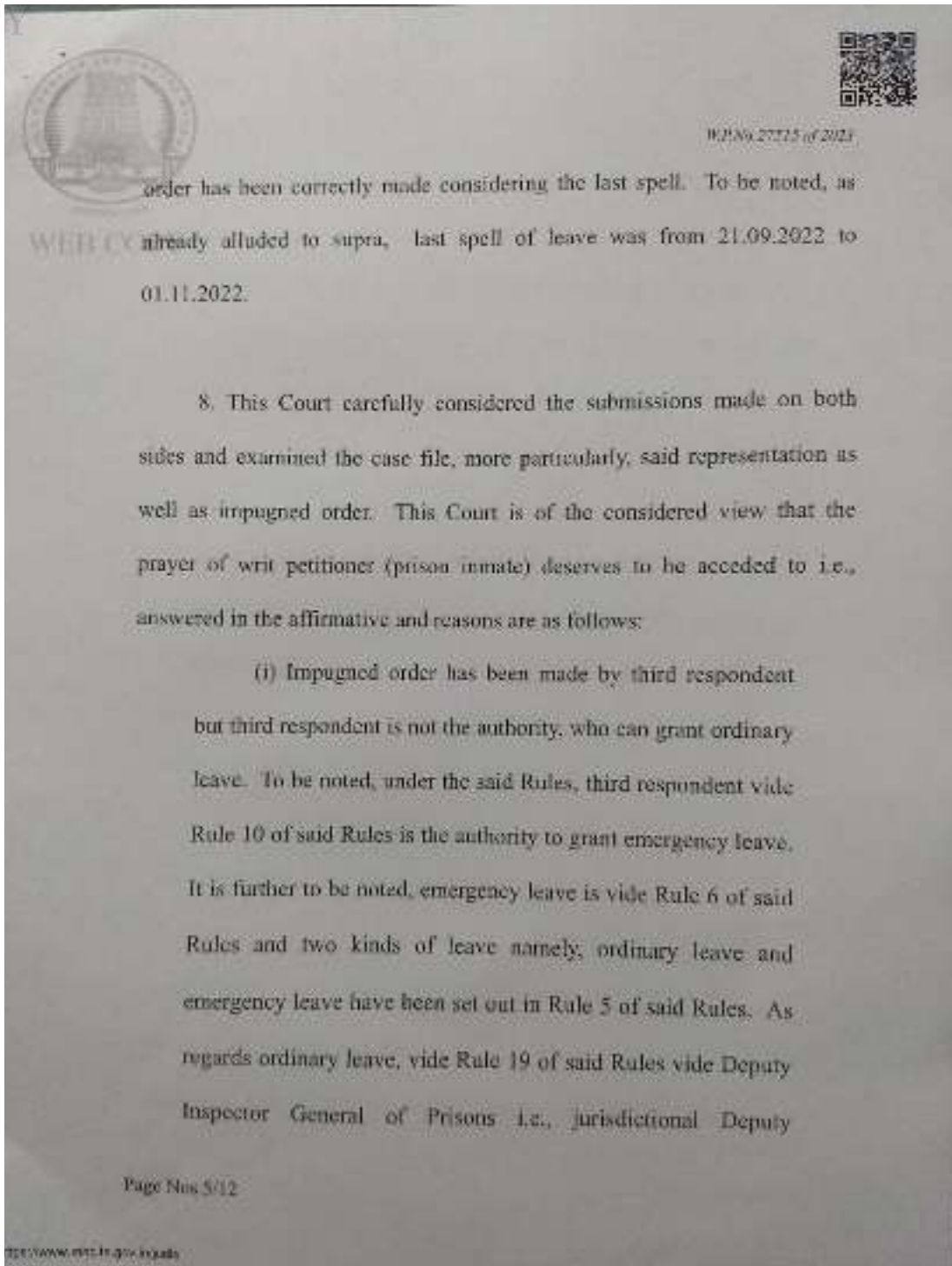
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WP(MD)No.30362 of 2023

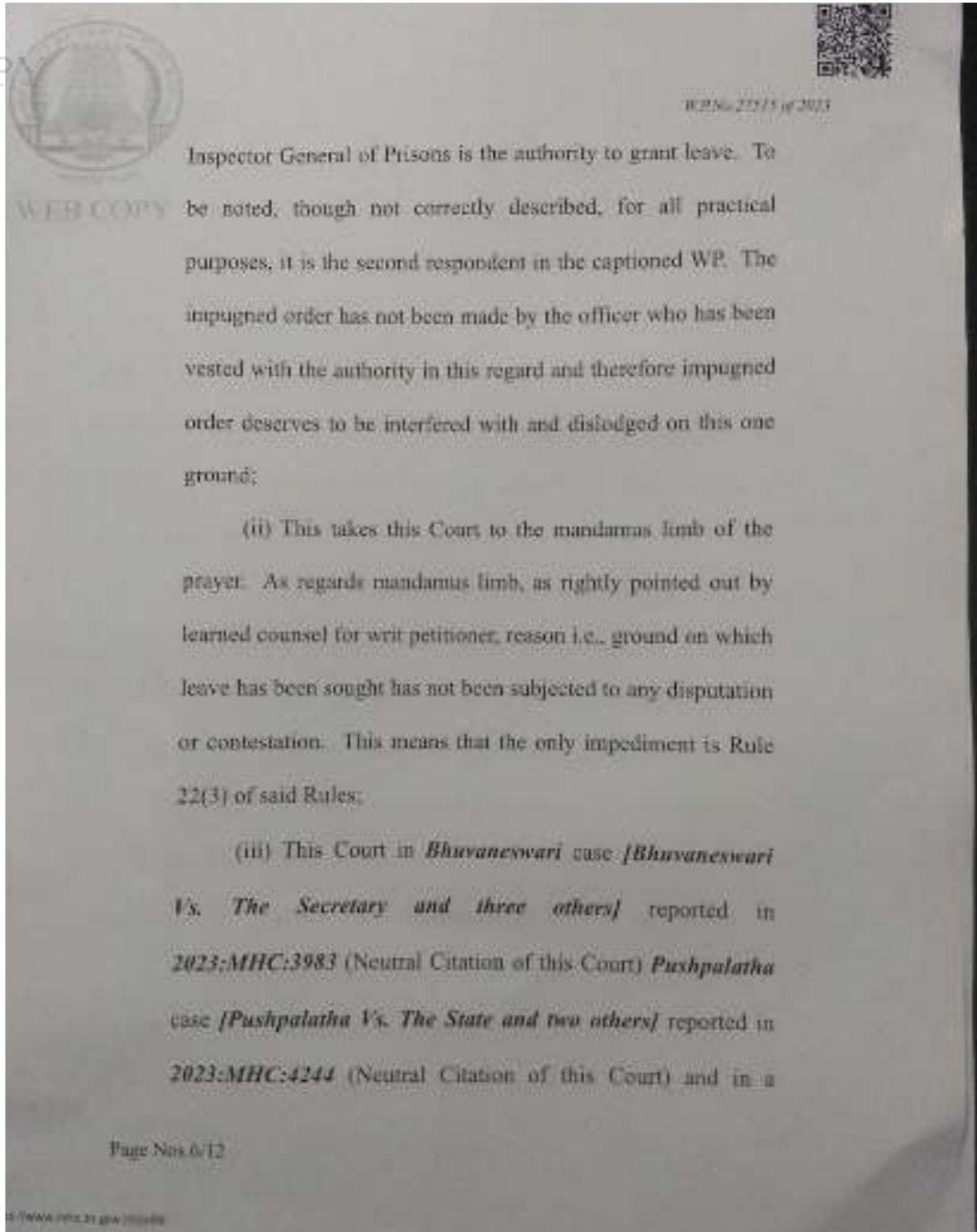
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WP(MD)No.30362 of 2023

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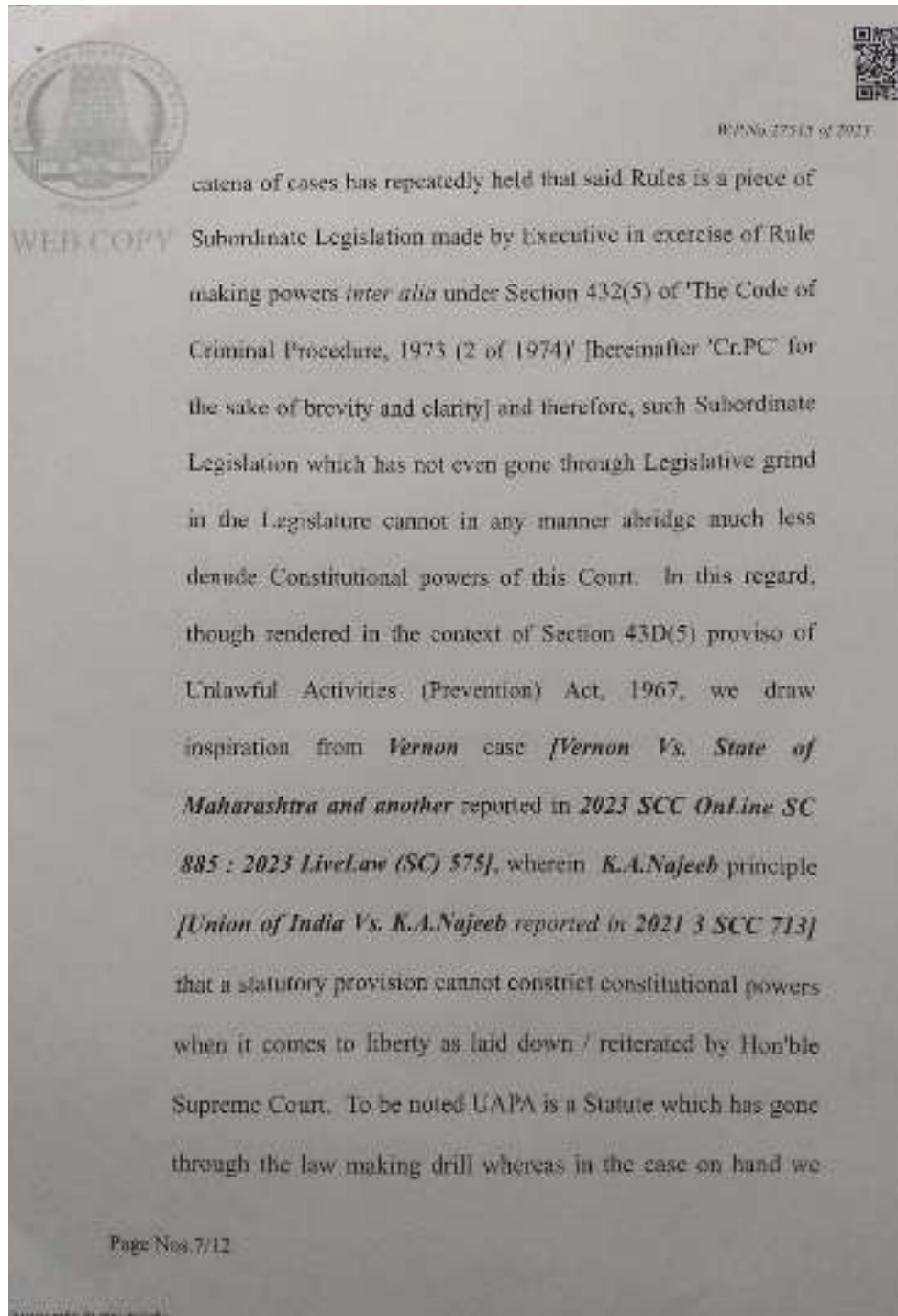




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WP(MD)No.30362 of 2023

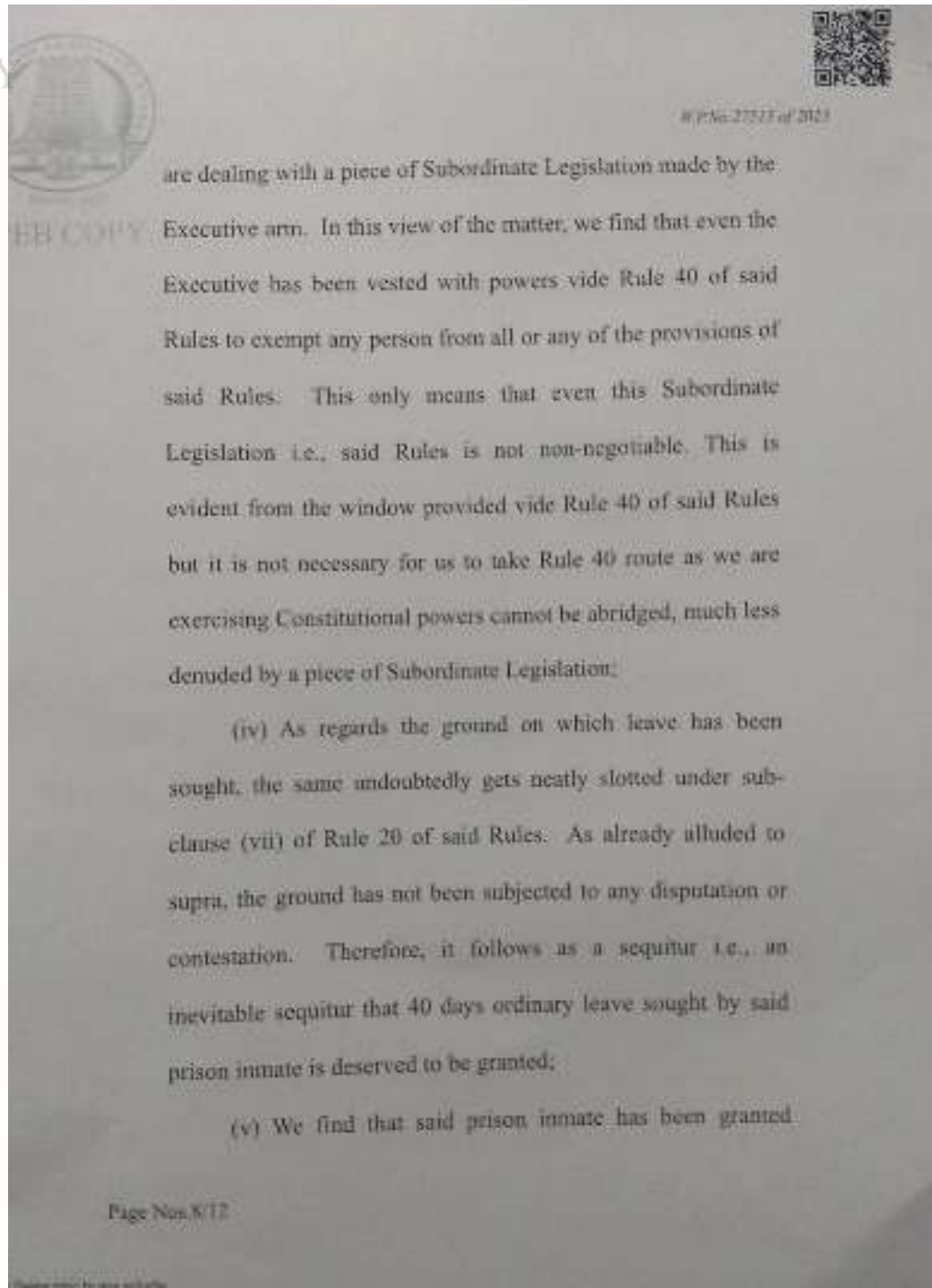




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WP(MD)No.30362 of 2023





WP(MD)No.30362 of 2023

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leave on earlier occasions and on all occasions, leave period has passed without any untoward incident and said prison inmate has returned on the leave period elapsing. The details are as follows:

427 days
Ordinary leave - 160 days
Government leave - 60 days
Emergency leave - 207 days

To be noted, on earlier occasion, said prison inmate has availed leave without escort;

(vi) It is also noticed that said prison inmate has served 17 long years i.e., 17 years, four months and one day including the remand set off period as on 19.09.2023. This is also weighed in favour of, we acceding to mandamus limb of prayer on the teeth of Rule 22(3) of said Rules;

(vii) The aforementioned one year cooling period qua Rule 22(3) of said Rules will also elapse by end of next calendar month which barely 6 weeks away (to be noted, earlier leave was from 21.09.2022 to 01.11.2022).

Page Nos 9/12

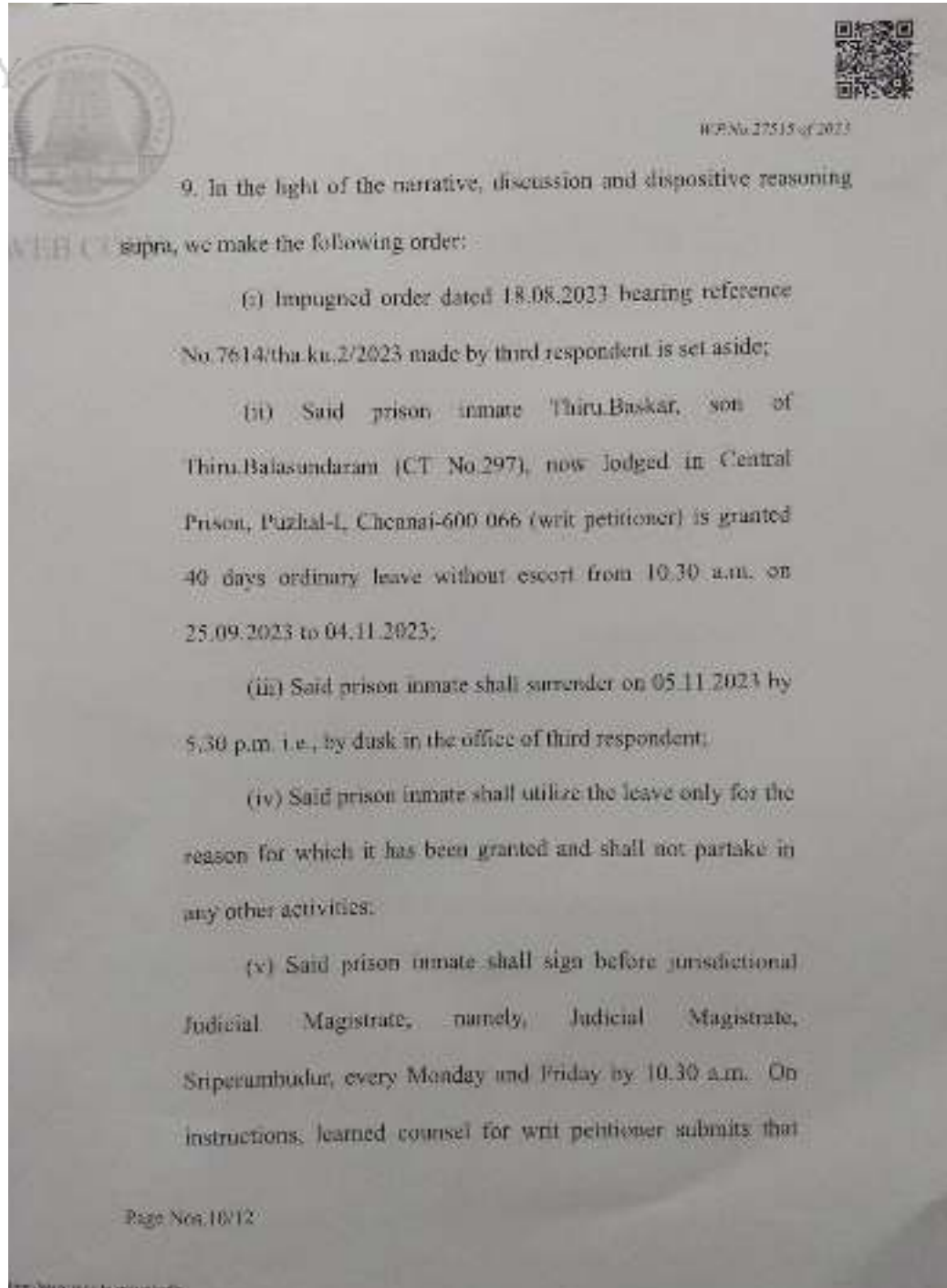
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WP(MD)No.30362 of 2023





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WP(MD)No.30362 of 2023

WP No 30362 of 2023

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said prison inmate during the period of leave will be staying with his sister, who has given representation dated 19.07.2023 in the address given in the said representation and jurisdictional Magistrate is qua jurisdictional Magistrate this address.

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

(M.S.,J.) (R.S.V.,J.)
20.09.2023

Index : Yes/No
Speaking/Non-speaking
Neutral Citation : Yes/No
mk

Note: Upload forthwith

To

1. The State rep. by its
The Home Secretary to Government
Prison Department, Secretariat,
Chennai-600 009.
2. The Deputy General of Prisons
Chennai Range, Gandhi Irwin Road
CMDA Building, Egmore - 600 008.
3. The Superintendent of Prison
Central Prison at Puzhal-I
Thiruvallur District - 600 066.
4. The Public Prosecutor
High Court, Madras.

Page Nos.11/12.



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WP(MD)No.30362 of 2023

iii) aforementioned order, which interprets Rule 22(3) of said Rules when it comes to exercise of powers by Constitutional Courts, applies in all force to the case on hand. We hasten to add that when prison authorities deal with applications for leave, they will have to perambulate within the codified said Rules but when this Court interferes and when this Court exercising Constitutional powers is convinced that leave ought to be granted, the powers of this Court can neither be curtailed nor constricted by said Rules, which is a piece of subordinate legislation made by the Executive arm without going through the legislative drill. To be noted, said Rule has been made by the Executive arm in exercise of Rule making power *inter alia* under Section 432(5) of 'The Code of Criminal Procedure, 1973 (2 of 1974)' [hereinafter 'Cr.P.C' for the sake of brevity and convenience]. In any event, Hon'ble Supreme Court has made it clear that even statutory provisions cannot curtail the Constitutional powers of this Court which has been respectfully followed in ***Baskar's case order***. Therefore, the legal position is while



WP(MD)No.30362 of 2023

prison authorities either the Superintendents of Prisons or Deputy Inspectors General of Prison exercise powers under Rules 10 or 19 of said Rules, they would perambulate within said Rules but when a Constitutional Court decides to interfere in a given case, powers could not be curtailed by said Rules; and

iv) As the ground on which further leave has been sought ie., serious renal ailment for said prison inmate, is not subjected to any disputation or contestation that by itself becomes a ground for grant of leave.

8. In the light of the narrative, discussion and dispositive reasoning, we make the following order:

i) impugned order, being order dated 11.12.2023 bearing reference No. 619/உ.த.2/2023, made by the first respondent, is set aside;



WP(MD)No.30362 of 2023

ii) said prison inmate ie., Mr.Sundar, son of Mr.Mupputathi (C.P.No.619) now lodged in Central Prison, Palayamkottai is granted one month ordinary leave without escort from 31.12.2023 (10.30 a.m.) to 31.01.2024;

iii) said prison inmate shall surrender in the office of the second respondent on 01.02.2024 by dusk ie., by 5.30 p.m.;

iv) said prison inmate shall stay in his residence at No.4/114, Pillaiyar Kovil Street, Thimmarajapuram, Palayamkottai, Tirunelveli with the exception of hospitalization if it becomes necessary;

v) said prison inmate shall sign before the jurisdictional Magistrate (we are informed that the jurisdictional Magistrate is Judicial Magistrate I, Tirunelveli) on every Monday and Friday;



WP(MD)No.30362 of 2023

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vi) if there is any hospitalization, it is open to any one representing the said prison inmate to file a petition under Section 317 of Cr.P.C. and the same will be considered by the Judicial Magistrate on its own merits and in accordance with law dehors this order and the conditions adumbrated herein;

vii) if the given Monday or Friday becomes a Court holiday, said prison inmate will sign on the next working day;

viii) said prison inmate shall not partake in any activity, which is outside the realm of the grounds on which leave has been granted;

ix) said prison inmate shall utilise the leave only for the purpose for which it has been granted.



WP(MD)No.30362 of 2023

9. Before writing the concluding paragraph, this Court places on record its appreciation to learned State Additional Public Prosecutor for taking a very fair and balanced stand in the matter.

10. Captioned WP is disposed of in the aforesaid manner with the aforesaid directives. There shall be no order costs.

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

21.12.2023

Neutral Citation : Yes
Index : Yes

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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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WP(MD)No.30362 of 2023

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

vsm

To

- 1.The Deputy Inspector General of Prison,
O/o. The Deputy Inspector General of Prison,
Madurai Range,
Madurai Central Prison Campus,
New Jail Road, Madurai.
- 2.The Superintendent of Prison,
Central Prison,
Palayamkottai,
Tirunelveli District.
- 3.The Judicial Magistrate I,
Tirunelveli.
- 4.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

W.P.(MD)No.30362 of 2023

21.12.2023