

**IN THE HIGH COURT OF ANDHRA PRADESH : AMARAVATI**

**HON'BLE SRI JUSTICE K. SURESH REDDY**

**CRIMINAL PETITION No.6994 of 2023**

**ORDER:**

Heard Mr. Posani Venkateswarlu, learned Senior Counsel assisted by Mr. Posani Akash, learned counsel for the petitioner, and the learned Additional Advocate General appearing on behalf of the respondent-State. Perused the material available on record.

2. Accused No.1 in Crime No.79 of 2023 on the file of Mudiveedu Police Station, Annamayya District, filed this petition, under Sections 437 and 439 of Cr.P.C., for grant of regular bail in connection with the said crime.

3. The aforesaid crime has been registered for the offences punishable under Sections 120-B, 147, 148, 153, 307, 115, 109, 323, 324 and 506 read with 149 I.P.C., on the basis of the report dated 08.08.2023 lodged by one D.R. Umapathi Reddy, Chairman of Market Committee, Kurabalakota Mandal. The contents of his report, in brief, are as under:

On 04.08.2023, the *de facto* complainant, who is a party worker of YSRC Party, along with other party workers of YSRC Party and villagers, was waiting at three-road junction, Angallu, by setting up a tent and wearing black scarves, with the intention of giving a representation

against obtaining of stay orders with regard to Pitchalavandlapalle Project to the former Chief Minister of Andhra Pradesh, Sri Nara Chandra Babu Naidu (accused No.1), who was about to travel along that way on that day on account of his visit to Chittoor District from Ananthapuramu. At about 2.30 p.m. on that day, the convoy of accused No.1 reached the three-road junction of Angallu village and at that time, accused No.1, upon seeing the tent set up by the *de facto* complainant and others and upon identifying them as YSRCP leaders, pointed his finger towards them and by referring to them, stated as "*thamaashaaga vundha? Aa naa kodukulanu tharamandira, vesityandira vaallani*" (Is it fun? chase away these fellows, do away with them). Upon hearing the same, accused Nos.2 to 13 present in his vehicle instigated their followers, accused Nos.14 to 20, and other TDP workers, by way of certain gestures and words, to make an attack on the *de facto* complainant and other YSRC party workers, upon which they formed into an unlawful assembly and made an attack on the *de facto* complainant and others, with deadly weapons i.e., stones, sickles, bricks, sticks and iron rods, carried by them. On realizing that the said TDP persons were prepared to kill them, the *de facto* complainant party tried to run away, but the accused party threw stones at them and caused bleeding injuries and some of the police officials, who came to control the situation, were also injured. While attributing specific overt acts to certain accused persons, it is alleged that the manner in which accused No.1 and

other leaders in the vehicle provoked the attack would indicate that all of them conspired together, brought deadly weapons with an intention to kill those who intended to give representation, attacked them and attempted to kill them.

4. At the outset, it is to be noted that admittedly, the petitioner has not yet been arrested in the present crime. He has been arrested in connection with Crime No.29 of 2021 of CID Police Station, A.P., Mangalagiri, in the intervening night of 08/09.09.2023 and upon production before the Court of the III Additional Sessions Judge-cum-Special Judge for SPE & ACB Cases, Vijayawada, he has been remanded to judicial custody on 10.09.2023. While so, contending that since the petitioner has been in judicial custody in Crime No.29 of 2021 of CID Police Station, he cannot move an application seeking anticipatory bail, under Section 438 Cr.P.C. in the present crime, and that the judicial custody of the petitioner in respect of Crime No.29 of 2021 of CID Police Station, should be treated as deemed judicial custody in the present crime also and he should be granted regular bail in the present crime, this petition under Sections 437 & 439 of Cr.P.C. has been filed.

5. So far as the maintainability of this petition under Sections 437 & 439 of Cr.P.C. is concerned, it is argued by Mr. Posani Venkateswarlu, learned Senior Counsel, that the petitioner, having been arrested in

connection with Crime No.29 of 2021 of CID Police Station, A.P., Mangalagiri, in the intervening night of 08/09.09.2023, is in judicial custody since 10.09.2023, and that the police are now making efforts to secure the custody of the petitioner in connection with the present crime, and as the petitioner, being in judicial custody, cannot move an application under Section 438 Cr.P.C., seeking anticipatory bail, the present petition for regular bail has been filed. It is contended that there is deliberate negligence on the part of the police in taking steps to show the arrest of the petitioner in the present crime also after his arrest in the other crime, despite the fact that the present crime has been registered much prior to the arrest of the petitioner. Since the petitioner has already been remanded to judicial custody in one crime, he should be deemed to have been in judicial custody in the present crime also, in which he is figured as an accused, for the purpose of enabling him to avail the remedy under Section 439 Cr.P.C. In this regard, reliance has been placed upon the judgments of this Court in **Tupakula Appa Rao v. State of Andhra Pradesh**<sup>1</sup>, **Viswanathan v. State of Andhra Pradesh**<sup>2</sup>, and **K.R. Giri Babu v. State of Andhra Pradesh**<sup>3</sup>.

On merits, it is contended that it is only a false case foisted on account of political rivalry, that there is an unexplained delay of four days

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<sup>1</sup> 2001 SCC OnLine AP 1575 : (2002) 1 ALT (Cri) 76

<sup>2</sup> 2018 SCC Online Hyd 484 : (2019) 1 ALT 755

<sup>3</sup> 2019 SCC OnLine AP 115 : (2019) 1 ALD (Cri) 649

in lodging the F.I.R., which casts a serious doubt on the veracity of the prosecution's case, that the injuries allegedly sustained by the *de facto* complainant and others are only simple in nature, and that the alleged overt acts attributed to the petitioner do not attract an offence under Section 307 I.P.C., which has been incorporated only with an intention to deprive the rights of the petitioner under Section 41-A Cr.P.C. It is further contended that after obtaining requisite permission, the petitioner was travelling on a rally along with thousands of people, and when he reached Angallu in that process, persons associated with YSRC party, with an intention to cause obstruction to the rally, started throwing stones on the petitioner and his convoy, and the petitioner was protected by his security NSG commandoes. It is further contended that the other accused in this crime were granted either bail or interim protection and taking into consideration that the petitioner is aged about 73 years, and as there is no chance of his fleeing from justice owing to his stature as leader of the opposition party and national President of Telugu Desam Party, it is prayed that he may be enlarged on bail.

6. Learned Additional Advocate General appearing on behalf of the State contended that even though the petitioner is in judicial custody in respect of one case, such custody of the petitioner cannot be treated as custody in the present crime, wherein he is not arrested by the police. The crime in which the petitioner is undergoing judicial custody and the crime

in respect of which the present application has been filed are registered in different police stations. The offences alleged against the petitioner in the two crimes are different and distinct and the investigation in respect of each of the offence is to be carried out individually and independently. Thus, the petitioner cannot take the plea of deemed custody and seek regular bail in the present crime in which he is not arrested and remanded to judicial custody. It is further contended that an application under Section 267 Cr.P.C. seeking production warrant to secure the presence of the petitioner before the concerned court in connection with the present crime is being filed and at this stage, granting bail to the petitioner treating his judicial custody from 10.09.2023 in the other crime as deemed custody in respect of the present crime also, would deprive the police of the right to have custodial interrogation of the petitioner for the purpose of investigation in the present crime. It is further contended that the present crime has been registered on 08.08.2023 and the investigation in the present crime is under progress and it cannot be said that the investigating agency has not taken steps to arrest the petitioner immediately after registration of the said crime or after arrest of the petitioner in the other crime. Reliance has been placed on the judgments of the Apex Court in **C.B.I. v. Anupam J. Kulkarni**<sup>4</sup> and **State of West**

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<sup>4</sup> (1992) 3 SCC 141

**Bengal v. Dinesh Dalmia**<sup>5</sup>, and it is contended that in view of the proposition laid down therein, the judgments of the single Benches of this Court relied upon by the petitioner in relation to deemed custody do not apply to the facts of the case on hand and the present application for regular bail is not maintainable. So far as the other grounds raised by the learned Senior Counsel on merits are concerned, it is argued that the delay in lodging the report is only fatal when any improvement of the version takes place and in view of the evidence available with the prosecution, including the video footages of the incident, the delay of four days pales into insignificance. It is further contended that series of attacks have occurred on the date of alleged incident, resulting in severe injuries to several individuals and nearly 47 police officials, and the manner in which the incident took place reveals criminal conspiracy, and usage of deadly weapons indicates the intention to kill on the part of the accused, and thus, it cannot be said that Section 307 IPC is not attracted. It is, thus, prayed to dismiss the present application.

7. In the light of the rival contentions advanced, the main question that requires to be considered in this petition is whether the judicial custody of the petitioner in another crime can be held to be deemed judicial custody in the present crime, which pertains to different occurrence/transaction, in which the petitioner is not arrested and

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<sup>5</sup> (2007) 5 SCC 773

remanded to judicial custody, for the purpose of entertaining this petition for grant of regular bail.

8. To deal with the above question, it would be appropriate to refer to the judgments relied on by the petitioner and the State, in support of their respective contentions.

9. In **Tupakula Appa Rao vs. State of A.P.** (supra), four crimes were registered against the petitioner therein, he was granted bail in one case, and apprehending arrest in other three crimes, he filed petitions seeking anticipatory bail. A coordinate Bench of this Court was considering the question whether the petitioner therein was deemed to have been in custody in other crimes also although there has been no formal arrest in connection with those cases. This Court referred to paragraphs 8 and 9 of the judgment of the Hon'ble Supreme Court in **Niranjan Singh v. Prabhakar**<sup>6</sup>, which deal with the meaning of the term "custody" appearing in Section 439 Cr.P.C., which read as under:

"8. Custody, in the context of Section 439, (we are not, be it noted, dealing with anticipatory bail under Section 438) is physical control or at least physical presence of the accused in court coupled with submission to the jurisdiction and orders of the court.

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<sup>6</sup> (1980) 2 SCC 559

9. He can be in custody not merely when the police arrests him, produces him before a Magistrate and gets a remand to judicial or other custody. He can be stated to be in judicial custody when he surrenders before the court and submits to its directions...”

10. This Court also took note of the observation made by the Hon’ble Supreme Court in **Niranjan Singh**, that no person accused of an offence can move the Court for bail under Section 439 Cr.P.C. unless he is in custody. Further, reference was made to the judgment of the Hon’ble Supreme Court in **Government of Andhra Pradesh v. A.V. Rao**<sup>7</sup>, wherein, at paragraph No.8, it was held as follows:

“In *A.V. Rao case* (WP 1865/76), he was already in detention under the Preventive Detention Act when the first information report was lodged on December 18, 1969 in connection with the sessions cases. Some of the co-accused in these cases were arrested and produced before the Magistrate for remand on December 19, 1969, but Rao was produced before the Magistrate sometime in April 1970 after he was released from preventive detention. It was argued that he also could have been produced before the Magistrate on December 19, 1969. On behalf of the respondent, State of Andhra Pradesh, it was contended that as Rao was already in detention under the Preventive Detention Act, it was not possible to produce him before the Magistrate for remand until the period of preventive detention was over. We do not

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<sup>7</sup> (1977) 3 SCC 298

find any justification in law for the position taken up by the State. Rao being already in custody, the authorities could have easily produced him before the Magistrate when the first information report was lodged. Nothing has been pointed out to us either in the preventive detention law or the Code of Criminal Procedure which can be said to be a bar to such a course. That being so we think that the claim that the entire period from December 19, 1969, when many of the co-accused were produced before the Magistrate, to April 18, 1970 should be treated as part of the period during which Rao was under detention as an undertrial prisoner, must be accepted as valid. A.V. Rao's Appeal 484 of 1976 is allowed to this extent."

11. This Court also referred to the judgment of Full Bench of the Allahabad High Court in **Shaboo v. State of U.P.**<sup>8</sup>, which having followed the judgment of the Hon'ble Supreme Court in **Government of Andhra Pradesh v. A.V. Rao**, held as follows at paragraph 18 of the judgment:

"...Whether or not the detention of a person in one case should also be treated to be his detention for the purpose of any other case, wherein he is wanted, is a question to be decided upon the facts and circumstances of each case. No set formula can be laid down in that behalf. If the facts and circumstances of a particular case indicate that a person already detained in one case was also subsequently wanted in another case and he was not formally detained in

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<sup>8</sup> (1982 Cri. L.J 1757)

that other case on account of the negligence of the concerned authorities, and for no fault of his, he can, with all justification, claim that his detention in the earlier case should also be deemed to be his detention for the purposes of the second case. In that event the benefit of Sec. 428 Cr.P.C. can be extended to him...”

12. Having taken note of the ratios laid down in the above cases, this Court, in **Tupakula Appa Rao**, held at paragraphs 19 and 20, as follows:

19. If the arrest is shown in all the cases, simultaneously there is no difficulty he can be said to be in custody in each of those cases. If for any reason his arrest is limited to one case like in the instant cases it is not as though he is remedy less. The fall out of the above discussion is that whether or not the custody of a person in one case should also be treated as custody in other cases wherein he is wanted is a question of fact and is to be decided with reference to facts and circumstances of each case. If the facts indicate that a person already detained in custody in one case out of more than one case and his arrest is not formally shown on account of the negligence of the concerned authorities and for no fault of the accused he can with all justification claim that his custody in one case should also be deemed to be in custody for the purpose of other case or cases.

20. The problem would arise only in cases where the accused is concerned in different cases pertaining to different Police Stations and pending before the different

Courts where no negligence on the part of the authorities can legitimately be shown. Whether it is a case where the accused is involved in series of offences pertaining to the same Police Station or a case where he involved himself in different offences pertaining to different Police Stations, if he is arrested in one case and produced before the Court in connection with the other case, the period of detention would enure to the benefit of the accused in both the cases. In view of the Judgment of the Apex Court in *Niranjan Singh's* case (referred to supra 2), no person accused of an offence can move the Court for bail under Section 439 of the Code unless he is in custody. In such cases, he cannot surrender himself before another Court on account of the fact that he has been in judicial custody in the former case. This situation would not arise when he is involved himself in series of cases pertaining to the same Police Station and within the territorial jurisdiction of the same Court where negligence on the part of the authorities can validly be attributed. Even if no negligence can be validly attributed to Police, the accused can himself offer to surrender before the Court on his production before the Court in connection with one case when he is remanded to judicial custody, and as a result whereof he can be in custody in all cases. To surmount such contingency, an application seeking his production in connection with the case before it can be mooted in the other Court in which case that Court after issuing notice to the concerned police can pass appropriate orders. The investigating agency can also seek police custody of the accused for the purpose of interrogation in that case or cases as the case may be. That appears to be the possible

solution, in my considered view, which can obviate the difficulty of the accused who has been involved in more than one case pertaining to different Police Stations. The procedure suggested by me supra is consistent with administration of justice and would safe guard the interests of the accused as well as the investigating agency and would meet the ends of justice. Turning to the instant cases, having regard to the fact all the cases registered against the petitioner pertain to the same police station and the fact that his arrest could have been shown in other cases also simultaneously but not shown the facts warrant a conclusion that he is deemed to have been in custody in respect of other crimes also although formal arrest is not shown in the other cases also. However, it is needless to say whether the bail can be granted or not, depends upon the facts of each case and would be left to the discretion of the Court to exercise the same on merits in each case."

Holding thus, this Court refused to entertain the anticipatory bail applications as the petitioner therein was deemed to be in custody in the remaining cases also.

13. In **K.R. Giri Babu v. State of Andhra Pradesh** (supra), the bail application filed by the petitioner, who was arrested in different crimes, before the District Court, Kadapa, under Section 439 Cr.P.C., was returned with an endorsement that P.T. Warrants and remand reports were not filed. It was the case of the petitioner that the police officials were not producing him before the concerned Magistrates in respect of

the respective crimes, though they have knowledge of the fact that he was arrayed as an accused, and that police officials were filing P.T. Warrants in respective crimes, one after another, only after his getting bail in one case, with an intention to keep him in custody as long as possible without affording him an opportunity of approaching the courts to obtain bail. A coordinate Bench of this Court referred to the judgment of the Hon'ble Supreme Court in **Sundeep Kumar Bafna v. State of Maharashtra**<sup>9</sup>, wherein the order passed by a learned single Judge of the High Court of Bombay dismissing the application filed by the accused, firstly, to permit him to surrender to the High Court and secondly, to consider his case for grant of bail by the High Court, was set aside with a direction that the learned single Judge of the High Court shall consider the appellant's plea for surrendering to the Court and depending on that decision, he shall, thereafter consider the appellant's plea for grant of bail. This Court also referred to the judgment of this Court in **Tupakula Appa Rao** (1 supra), and held at para 11 as follows:

"11. In view of the above, there need not be any further demur to hold that the petitioner, who is in custody in different crimes, can be deemed to be in custody pertaining to other crimes, in which he figured as accused. Therefore, the remedy of bail under Section 439 Cr.P.C. cannot be denied, on the ground that his arrest was not shown in the crime in which he

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<sup>9</sup> (2014) 16 SCC 623

is shown as accused. There can be no reason for the police not to show his arrest in the current crime except for the reason alleged by the petitioner.”

Holding so, this Court set aside the impugned endorsements, and directed the District and Sessions Judge, Kadapa, to entertain the bail applications filed by the petitioner under Section 439 Cr.P.C., subject to his filing remand report pertaining to the crimes in which he was in custody.

14. In **Viswanathan v. State of Andhra Pradesh** (supra), a coordinate Bench of this Court was dealing with a question as to whether the person accused in several crimes, having been arrested during investigation by police in one crime and produced therein within 24 hours and taken to judicial custody and is in jail as pre-trial prisoner, having been not asked by him or by the police concerned to issue P.T. warrant for taking to judicial custody in all other crimes, was entitled to claim set-off for the period under Section 428 Cr.P.C., in other crimes and further, whether he is in deemed custody for purposes of Sections 437 to 439 Cr.P.C. Having taken note of the fact that the Superintendent of Police concerned has got knowledge of the other crimes registered against the petitioner and having referred to various decisions, this Court issued direction to the Superintendent of Police, the concerned S.H.Os. and Director General of Police, State of A.P, to see that the petitioner is

produced on P.T. warrants immediately after receipt of the warrant in all the crimes where so far he was not produced irrespective of he is entitled to bail or not and granted bail or not, unless released on bail and not in judicial custody. A direction was also issued to the Sessions Judges or the Magistrates concerned in both the States, to entertain regular bail applications from the accused in deemed custody even not produced on P.T. warrant and not surrendered voluntarily, as the case may be.

15. In **C.B.I. v. Anupam J. Kulkarni**, relied upon by the State, the Hon'ble Supreme Court was considering a question whether a person arrested and produced before the nearest Magistrate as required under Section 167(1) Cr.P.C. can still be remanded to police custody after the expiry of the initial period of 15 days. It is pertinent to refer to relevant portions of paragraph 11 of the said decision, which read as under:

"11..... In one occurrence it may so happen that the accused might have committed several offences and the police may arrest him in connection with one or two offences on the basis of the available information and obtain police custody. If during the investigation, his complicity in more serious offences during the same occurrence is disclosed that does not authorise the police to ask for police custody for a further period after the expiry of the first fifteen days. If that is permitted then the police can go on adding some offence or the other of a serious nature at various stages and seek further detention in police custody repeatedly, this would

defeat the very object underlying Section 167. However, we must clarify that this limitation shall not apply to a different occurrence in which complicity of the arrested accused is disclosed. That would be a different transaction and if an accused is in judicial custody in connection with one case and to enable the police to complete their investigation of the other case, they can require his detention in police custody for the purpose of associating him with the investigation of the other case. In such a situation he must be formally arrested in connection with other case and then obtain the order of the Magistrate for detention in police custody...

...The occurrences constituting two different transactions give rise to two different cases and the exercise of power under Sections 167(1) and (2) should be in consonance with the object underlying the said provision in respect of each of those occurrences which constitute two different cases. Investigation in one specific case cannot be the same as in the other. Arrest and detention in custody in the context of Sections 167(1) and (2) of the Code has to be truly viewed with regard to the investigation of that specific case in which the accused person has been taken into custody...

... The procedural law is meant to further the ends of justice and not to frustrate the same. It is an accepted rule that an interpretation which furthers the ends of justice should be preferred. It is true that the police custody is not the be-all and end-all of the whole investigation but yet it is one of its primary requisites particularly in the investigation of serious

and heinous crimes. The legislature also noticed this and permitted limited police custody. The period of first fifteen days should naturally apply in respect of the investigation of that specific case for which the accused is held in custody. But such custody cannot further held to be a bar for invoking a fresh remand to such custody like police custody in respect of an altogether different case involving the same accused.”

16. At paragraph 13 of the judgment, the conclusions arrived at have been summed up briefly and the relevant portion thereof reads as under:

“13..... There cannot be any detention in the police custody after the expiry of first fifteen days even in a case where some more offences either serious or otherwise committed by him in the same transaction come to light at a later stage. But this bar does not apply if the same arrested accused is involved in a different case arising out of a different transaction. Even if he is in judicial custody in connection with the investigation of the earlier case, he can formally be arrested regarding his involvement in the different case and associate him with the investigation of that other case and the Magistrate can act as provided under Section 167(2) and the proviso and can remand him to such custody as mentioned therein during the first period of fifteen days and thereafter in accordance with the proviso as discussed above...”

17. Now coming to the fact situation of the case on hand, the petitioner has been arrested and remanded to judicial custody in one crime, i.e.,

Crime No.29 of 2021 of C.I.D. Police Station, A.P., Mangalagiri, and the police are contemplating to obtain P.T. warrant for his production in the present crime, i.e., Crime No.79 of 2023 of Mudiveedu Police Station, Annamayya District. The said cases registered against the petitioner are totally different from each other, they are registered in different police stations, they arise out of different transactions, the investigation to be conducted by the respective investigating officers is also different from one another, and the witnesses to be examined and the evidence to be collected are also different. This being the position, the observation made by the Hon'ble Supreme Court in **C.B.I. v. Anupam J. Kulkarni**, which states that in a case arising out of different transaction and different occurrence, the accused must be formally arrested in connection with other case and then order of the Magistrate be obtained for detention in police custody be obtained, would be squarely applicable and the judicial custody which the petitioner has been undergoing in respect of one of the above crimes cannot be deemed to be his judicial custody in the present crime also, entitling him to seek regular bail in the present crime, in which he is not arrested and remanded to judicial custody. The plea of the petitioner that there is deliberate negligence on the part of the police in taking steps to arrest him immediately after registration of the present crime and are now taking such steps after his arrest in another crime, only with a view to extend his stay in jail, is without any merit for the reason

that the petitioner is aware of the registration of the present crime against him, and in fact, many of the persons, who were arrayed as accused in the present crime, obtained anticipatory bails. The petitioner, having slept over his right of applying for an anticipatory bail, now cannot throw the blame on the prosecuting agencies saying that there is deliberate negligence on their part. The contention that there is also deliberate negligence in showing the arrest of the petitioner in the present crime immediately after his arrest in the other crime, also does not merit acceptance, in view of the fact that the cases registered against the petitioner are in different police stations and arising out of different offences and transactions and also in view of the stand taken by the State that steps are being taken for obtaining P.T. warrant in the present crime. Viewed in this perspective, the decisions of this Court in **Tupakula Appa Rao** and **Viswanathan**, relied upon by the petitioner, where the negligence of the police in taking required steps was the backdrop of the cases, are not applicable to the fact situation in the present case and hence, do not come to the rescue of the petitioner. At any rate, in view of the proposition laid down by the Hon'ble Supreme Court in **C.B.I. v. Anupam J. Kulkarni**, which is the law of the land and binding on this Court under Article 141 of the Constitution of India and which specifically dealt with the scenario relating to custody in cases arising out of different transactions, the judgments rendered by coordinate Bench of this Court

referred above, which are distinguishable on facts, cannot be taken into consideration, for the purpose of holding that the petitioner is deemed to be in judicial custody in the present crime also.

18. In the light of the above discussion and the opinion arrived at on the aspect of deemed custody, the other grounds raised by both sides on merits of the matter as to the entitlement of the petitioner to regular bail or otherwise, need not be gone into.

19. Accordingly, this criminal petition is dismissed. Pending interlocutory applications, if any, shall stand closed.

**K. SURESH REDDY, J**

Dt: 09.10.2023  
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