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Crl.M.P.No.5765 of 2026

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.07.2026

CORAM

THE HON'BLE MR.JUSTICE M.NIRMAL KUMAR

Crl. M.P. No. 5765 of 2026

in

Crl. A. No. 373 of 2026

Tharunkumar

... Petitioner

Vs.

State rep., by
The Inspector of Police,
All Women Police Station,
Gobichettipalayam,
Erode District.
(Crime No. 2 of 2023)

... Respondent

To suspend the sentence made in Special Sessions Case No. 136 of 2023 on the file of the Sessions Judge, Magalir Neethi Mandram, (Fast Track Mahila Court), Erode dated 11.02.2026 and grant bail to the petitioner / appellant / sole accused.

For Petitioner : Mr. D. Veerasekharan

For Respondent : Ms. Sharada Vivek,
Government Advocate



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ORDER

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The petitioner / accused in Spl.S.C.No.136 of 2023, convicted by the trial Court by judgment dated 11.02.2026 and sentenced to undergo 10 years RI and to pay a fine of Rs.5,000/- for the offence under Sections 3 and 4 of POCSO Act and 3 years RI and to pay a fine of Rs.5,000/- for offence under Sections 11(iv) and 12 of the POCSO Act, has filed this suspension of sentence / bail petition.

2. The case of the prosecution is that the victim child, aged about 16 years, residing with her parents and pursuing first-year Diploma in Mechanical Engineering at a Polytechnic college. The petitioner resided in the nearby locality of Vadugampalayam Pudur. Both were in a relationship. During the first week of January, the accused took the victim in his motorbike to a field, near a channal, he undressed her and committed penetrative sexual assault. On hearing victim's crie of pain, persons in the vicinity rushed to the spot and the accused fled,

2.1. The mother of the victim lodged a complaint, case registered, the investigating officer examined the victim and her parents, recorded their statements, collected the victim's birth certificate, observation mahazar and

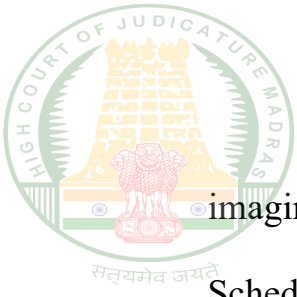


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rough sketch prepared. The accused was arrested, both the accused and the victim sent for medical examination and the doctor who examined them issued the medical report. The victim appeared before the Magistrate, gave statement under Section 164 Cr.P.C. During trial, the prosecution examined PW1 to PW11, marked Exs.P1 to P18 and produced Mos1 to 3. On conclusion of trial, the trial Court convicted the petitioner as stated above.

3. The learned counsel for the petitioner contended that the petitioner and the victim were in love relationship, which was objected by the victim's parents, as they belonged to different communities. Earlier on 22.12.2022, the victim went missing and a girl missing complaint came to be registered at Kadathur Police Station. Thereafter, on 24.12.2022, the victim and the petitioner appeared before the police, during enquiry, the victim stated that the petitioner had taken her to Mettupalayam and Ooty on his motorbike, she went voluntarily with him, there was not sexual assault. Later both returned back.

3.1. The further allegation that, during the first week of January 2023, the petitioner took the victim to a field and thereafter near a channal, where he undressed himself and committed penetrative sexual assault, is wholly



imaginary. According to the learned counsel, the petitioner belong to the Scheduled Caste community and as the love relationship was not accepted by the victim's parents, a false case alleging sexual assault came to be foisted against him.

3.2. It was further submitted that PW1, the mother of the victim, admitted that both the petitioner and the victim had gone missing from 22.12.2022 to 24.12.2022 and had subsequently returned. Though she claimed to have lodged a complaint before the Kadathur Police, no complaint or document was produced to substantiate the said claim. It was also contended that both had travelled to Mettupalayam and Ooty during the said period there is no sexual assault.

3.3. The learned counsel further pointed out that PW1 admitted that the victim staying with her aunt till the 1st week of February. If that be so, the prosecution case that the occurrence took place during the first week of January becomes doubtful. He further submitted that the victim, in her statement, admitted that she was in a love relationship with the petitioner and that both were in regular contact. Even after the victim discontinued her studies and while she stayed at her aunt's residence, she continued to remain in contact with the petitioner. According to the prosecution, the petitioner



threatened to circulate their intimate photographs on social media and to the relatives of the victim. Hence, in order to collect those photographs, the victim accompanied the petitioner and thereafter he said to have committed penetrative sexual assault.

3.4. The learned counsel further submitted that the mobile phone of the victim, produced by PW1, did not contain any such photographs and was not even sent for forensic examination. Likewise, no mobile phone was seized from the petitioner. Therefore, the allegation that the petitioner threatened the victim by using such photographs is false. He further contended that the medical evidence does not conclusively establish the commission of penetrative sexual assault by the petitioner.

3.5. According to the doctor, PW7, who examined the victim and issued Ex.P12, the hymen being not intact would be attributable to various reasons. It was further submitted that PW10, the Sub-Inspector attached to the Cyber Crime Wing, admitted that although deleted photographs were noticed on the mobile phone, it was not sent for forensic examination to ascertain whether photographs can be retrieved. The learned counsel also submitted that the victim is now married and living with her husband, and that she had stated earlier that her parents had arranged her marriage against



her wishes and that she had only been in a love relationship with the petitioner.

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4. The learned Government Advocate strongly opposed the petitioner's contention and submitted that PW1, the mother of the victim, lodged the complaint. According to her, on 22.12.2022, the victim went missing, pursuant to which a complaint was lodged before the Kadathur Police. Subsequently, on 24.12.2022, the victim returned home, following which the earlier complaint was withdrawn. It was further submitted that, during the first week of January, the petitioner took the victim to an isolated place on the pretext of returning her intimate photographs and committed penetrative sexual assault. Consequently, the present complaint came to be lodged.

4.1. The learned Government Advocate further submitted that the prosecution examined 11 witnesses. PW1 is the mother of the victim, PW2 is the victim, PW3 is the father of the victim, PW4 is the Sanitary Inspector, produced the birth certificate of the victim establishing that she was a minor, PW5 witnessed the preparation of the observation mahazar and rough sketch, PW6 recorded the confession statement of the accused and obtained



the signatures of the accused and the witnesses, PW7 is the doctor who examined the victim, PW8, the Sub-Inspector of Police, received the complaint and seized the mobile phone, PW10 is the Sub-Inspector attached to the Cyber Crime Wing and PW11 is the investigating officer.

4.2. It was further submitted that the victim, in her earlier statement recorded under Section 164 Cr.P.C., as well as in her deposition before the trial Court, stated that the petitioner had committed penetrative sexual assault, which also finds corroboration from the medical evidence of PW7. Therefore, the trial Court, considering all these aspects, rightly convicted the petitioner.

5. Considering the submissions and on perusal of the materials, it is seen that PW1, the mother of the victim, deposed that her daughter had gone missing from 22.12.2022 to 24.12.2022 and that she had lodged a complaint before the Kadathur Police. However, the said complaint was not pursued after the victim returned. Thereafter, PW1 sent the victim to her sister-in-law's house in another village, from where she returned during the first week of February. The alleged occurrence is stated to have taken place during the first week of January. There is also a delay of 38 days in lodging the



complaint.

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6. It is not in dispute that the petitioner belongs to the Scheduled Caste community, whereas the victim belongs to the Nadar community. Further both were in a love relationship, which was not accepted by the victim's parents. The marriage of the victim with another person had also been arranged against her wishes. The victim continued to remain in telephonic contact with the petitioner even while she stayed at her aunt's residence.

7. The prosecution case rests mainly on the allegation that the petitioner threatened the victim with her intimate photographs. However, the mobile phone, MO1, produced before PW8 along with the complaint, was examined by PW10, the Sub-Inspector attached to the Cyber Crime Wing, who reported that no such photographs found in the device. Admittedly, the mobile phone was not sent to forensic examination to ascertain whether any deleted photographs could be retrieved. Further, no mobile phone was seized from the petitioner after his arrest. Therefore, the prosecution theory that the petitioner threatened the victim by using such photographs is not proved.



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8. As regards the allegation of penetrative sexual assault near a channel during the first week of January, the same also appears to be doubtful. PW7, the doctor, in Exs.P11 and P12, noted the absence of injuries and admitted that the hymen was found to be not intact and that no injuries were found. The doctor also admitted that the medical findings could be attributable to various reasons. The victim also admitted before the doctor that she was in a love relationship with the petitioner and further it is seen that the penetrative sexual assault is said to have committed in a standing position, which is highly doubtful and the appellant has made a case for appeal. Hence, this Court is inclined to grant the relief of suspension of sentence to the petitioner.

9. Accordingly, the substantive sentence of Imprisonment imposed on the petitioner is suspended till the disposal of the appeal and he is ordered to be enlarged on bail, on condition that he shall execute a bond for a sum of Rs.5,000/- (Rupees Five thousand only) with two sureties, each for a like sum to the satisfaction of the trial Court.



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10. Further, the petitioner shall appear before the Trial Court once in three months at 10.30 a.m. on the first working day of the month, until the disposal of the appeal and if he is not able to appear before the Trial Court on that day, he shall make arrangements to file an application under Section 317 Cr.P.C. and shall appear before the Trial Court on any other day in lieu of the date of his absence as directed by the Trial Court.

11. Accordingly, this Criminal Miscellaneous Petition is ordered.

13.07.2026

Neutral Citation: Yes/No
AT

Note: Issue order copy on 13.07.2026

To

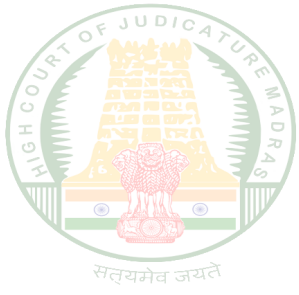
1.The Sessions Court, Magalir Neethi Mandram, (Fast Track Mahila Court), Erode.

2.The Inspector of Police,
All Women Police Station,
Gobichettipalayam,
Erode District.

3.The Central Prison,
Coimbatore.

4.The Public Prosecutor,
High Court of Madras.

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M.NIRMAL KUMAR, J.

AT

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