



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06-07-2026

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THE HONOURABLE MR JUSTICE M. NIRMAL KUMAR

CRL MP No. 10145 of 2026

in

CRL A No.728 of 2026

Balakrishnan

Petitioner(s)

Vs

State of Tamil Nadu
Rep by Inspector of Police
W-22, All Women Police Station,
Mylapore, Chennai-600 004.
Cr.No.06 of 2019.

Respondent(s)

PRAYER: Criminal Miscellaneous Petition filed under 430 of BNSS 2023, to suspend the sentence imposed in judgment dated 01.04.2025 on the file of Sessions Judge Special court for Exclusive trial of cases under POCSO Act, Chennai in Spl.SC.No.107 of 2020, and enlarge them on bail pending disposal of main appeal.

For Petitioner(s): Mr.D.Percivul Pericles

For Respondent(s): Mrs.Sharada Vivek
Government Advocate (Crl. Side)

ORDER

This Criminal Miscellaneous Petition has been filed seeking to suspend the sentence imposed in the judgment dated 01.04.2025 by the learned Sessions Judge Special court for Exclusive trial of cases under the POCSO Act, Chennai



in Spl.SC.No.107 of 2020, and to enlarge the petitioner on bail pending disposal of main appeal.

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2. The petitioner is the sole accused, who was convicted by the trial Court Spl.S.C.No.107 of 2020, vide judgement dated 01.04.2025 for offences under Section 6 read with Section 18 altered to Section 10 r/w Section 18 of the POCSO Act, and was sentenced to undergo rigorous imprisonment for a period of 3 years and 6 months. Aggrieved by the said conviction and sentence, the petitioner has filed the present appeal along with this petition seeking suspension of sentence.

3. Notice was ordered on this petition for suspension of sentence, and the learned Government Advocate (Crl. Side) has filed a counter affidavit on behalf of the respondent state.

4. The learned counsel for the petitioner submitted that the victim in this case has been projected as a mentally challenged child aged about 9 years. He pointed out that the school certificates was marked as Ex.P4, showing her date of birth as 06.06.2011 and indicating that she was studying in the 6th standard. However, Ex.P4 was not marked through any school authorities and marked



only through the mother of the victim (P.W.2). Hence, it is argued that this certificate cannot be taken as conclusive proof of the victim's age.

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4.1. The learned counsel further submitted that there is only one purported eyewitness, P.W.1., the aunt of the victim, who has given three contradictory versions at three different stages. In the initial complaint (Ex.P.1), she stated that the victim was merely found sitting along with the petitioner. In her statement recorded under Section 164 of Cr.P.C., she stated that she saw the appellant attempting to hug the victim. In her oral evidence, before the Court, she gave an improved version, stating that upon hearing a knocking sound from the shutter, she came out and saw the petitioner placing his leg on the victim while the victim was resisting.

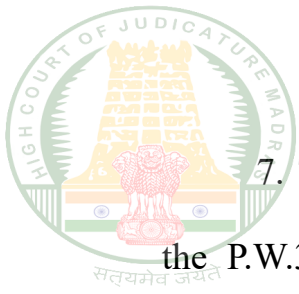
4.2. It is contended that at each stage, PW1 has introduced material improvements and contradictions without any independent corroboration. The trial Court finding that the uncorroborated evidence of this solitary witness is sufficient to convict is unsustainable. In this case, there are various contradictions, the trial Court taking it as proved is not proper. The petitioner, a migrant worker from a rural area, who came to the city for employment, was



merely sitting at the spot, and the victim happened to be near him. The petitioner has been falsely implicated based on an exaggerated version of events. Therefore, the reasoning rendered by the trial court is not sustainable in law.

5. The learned Government Advocate (Crl. Side) appearing for the respondent Police submitted that the counter has been filed in this case. She further submitted that the case has been registered, based on the compliant filed by the aunt of the victim. The petitioner was caught red-handed, taken initially to the Abiramapuram Police Station, and subsequently taken to All Women Police Station (AWPS), Mylapore, Chennai 600 004, where FIR was registered.

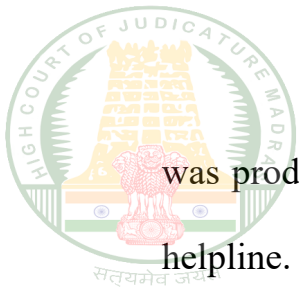
6. To prove its case, the prosecution examined six witnesses. P.W.1 is the aunt of the victim, P.W.2 is the mother of the victim, P.W.3., is the Psychologist, P.W.4 is the Observation Mahazar witnesses, P.W.5 is the Investigation Officer, who conducted the initial investigation, and P.W.6 is the Investigation Officer who completed the investigation and filed the charge sheet.



7. The learned Government Advocate (Crl. Side) further submitted that the P.W.3., Psychologist, submitted a report marked Ex.P5, confirming the victim's health condition. The report notes that the victim suffers from Attention Deficit Hyperactivity Disorder and was unable to respond to questioning. It is submitted that the minor status and mental condition of the victim stand fully established, and since the petitioner was caught red-handed by P.W.1, whose evidence was found credible by the trial Court, and therefore, the conviction does not warrant interference.

8. Heard the learned counsel for the petitioner and the learned Government Advocate (Crl. Side) for respondent police and also perused the materials available on record.

9. Considering the submission made by the learned counsel on either and upon perusal of the materials available on record, it is seen that the sole eyewitness P.W.1, has given 3 different versions across the initial complaint, her statement under Section 164 of Cr.P.C., and her deposition before the Court. It appears, prima facie, that the statements of P.W.1 contain material improvement and exaggerations. Furthermore, P.W.5, the Investigation Officer who conducted the initial investigation, stated that the petitioner was caught red handed and he

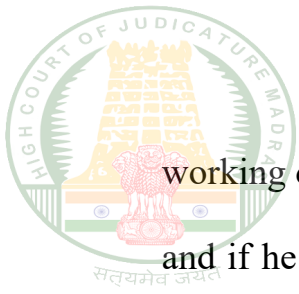


was produced before him after a call was made to the '100' emergency police helpline. However, the prosecution has failed to examine any of the police personnel attached to the emergency response team to confirm this apprehension, nor any records produced to substantiate the claim.

10. In view of the above facts and circumstances of the case, and also taking into account the period of incarceration undergone by the petitioner and the petitioner has made out a *prima-facie* case for his appeal and since there are violations of mandatory provisions, the petitioner's conviction needs reconsideration. Further there are arguable points involved in this appeal and it would take some time for the appeal to be taken up for final hearing, this Court is inclined to suspend the sentence imposed on the petitioner.

11. Accordingly, the substantive sentence of Imprisonment imposed on the petitioner is suspended till the disposal of the above 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.

12. Further, the petitioner shall appear before the Trial Court on the first



working day of every English Calendar month at 10.30 a.m., until further orders and if he is not able to appear before the Trial Court on any day, he shall make arrangements to file an application under Section 355 of BNSS, 2023 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.

13. Accordingly, the Criminal Miscellaneous Petition is ordered.

06-07-2026

Jd

Neutral Citation: Yes/No

Note: Issue order copy today i.e., on 07.07.2026.

To

1. The learned Sessions Judge Special Court for Exclusive Trial of cases under POCSO Act, Chennai.

2. The Superintendent
Central Prison, Puzhal.

3. The Inspector of Police,
W-22, All Women Police Station,
Mylapore, Chennai-600 004.
Cr.No.06 of 2019.

4. The Public Prosecutor, High Court of Madras.



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