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CRL MP No. 14580 of 2
in Crl.A.No.974 of 2



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21-08-2026

CORAM

THE HON'BLE MR JUSTICE M. NIRMAL KUMAR

**CRL MP No. 14580 of 2026
in Crl.A.No.974 of 2026**

Murugesan,
S/o.Mannathan,
No.4/73B, Kattur,
Neruppur Post, Nagamarai,
Pennagaram Taluk,
Dharmapuri District.

..Petitioner(s)

Vs

The State rep by
The Inspector of Police,
Eriyur Police Station,
Dharmapuri District.
Crime No.161 of 2022.

..Respondent(s)

PRAYER: Criminal Miscellaneous Petition filed under Section 430 of BNSS, praying to suspend the sentence imposed against the Petitioner in Spl.S.C.No.254 of 2023 on the file of the Learned Special Court (POCSO Act 2012) Dharmapuri, Dharmapuri District, dated 24.06.2025 (Old Spl.S.C.No.21 of 2023 on the file of the learned Fast Track Mahila Court, Dharmapuri, Dharmapuri District, and enlarge the petitioner on bail pending disposal of the said Crl.A.No.974 of 2026 on the file of this Honourable Court.

For Petitioner(s):

Mrs.S.Priyadharshini

For Respondent(s):

Mrs.Sharada Vivek,
Government Advocate (Crl.Side)
Assisted by Mr.M.Arul Raj



ORDER

This Criminal Miscellaneous Petition has been filed seeking suspension of the sentence of imprisonment imposed by the judgment dated 24.06.2025 passed in Spl.S.C. No. 254 of 2023 by the learned Special Court (POCSO Act, 2012), Dharmapuri, Dharmapuri District, and to enlarge the petitioner on bail pending disposal of Criminal Appeal No. 974 of 2026 before this Court.

2. The conviction and sentence imposed on the petitioner/appellant vide the impugned judgment dated 24.06.2025 are as follows:

Section	Imprisonment	Fine Amount
5(m)5(n) r/w 6(1) of POCSO Amended Act, 2019	Sentenced to undergo Rigorous Imprisonment for a period of twenty years and to pay a fine of Rs.25,000/-, and in default of payment of fine, the accused shall undergo further one year of simple imprisonment.	Rs.25,000/-

3. The case of the Prosecution is that the de facto complainant is residing at Pennagaram Taluk, Dharmapuri District, and the victim child is her daughter, who was born on 27.08.2016. The victim child was aged about 6 years at the time of the occurrence and is a "child" as defined under Section 2(1)(d) of the POCSO Act. She was studying in the First Standard at Newtons Apple School, Eriyur, Pennagaram. The accused, Murugesan, is residing in the same village, was working as a coolie at Kattur Village, and is a relative, namely the uncle, of



the victim child.

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4. On 04.12.2022 at about 03.00 p.m., when the victim child was playing in front of the house of the accused, the accused, taking advantage of the fact that the victim child was alone, enticed her with sexual intent and took her inside his house. Thereafter, the accused made the victim child lie down on a bed, touched her breasts and external genitalia, bit her on the mouth, voluntarily removed his pants, exposed his private part, and committed aggravated penetrative sexual assault upon the victim child by forcibly penetrating her. Hence, the present case.

5. Based on the complaint lodged by the de facto complainant, a case was registered at Eriyur Police Station in Crime No. 161 of 2022 under Sections 5(m), 5(l), and 6 of the POCSO Act on 06.12.2022 at about 12.00 hours by Thiru M. Mari, the then Sub-Inspector of Police, Eriyur Police Station. The investigation was thereafter taken up by Thiru V. Yuvarajan, the then Inspector of Police.

6. After completion of a detailed and elaborate investigation, the Investigating Officer altered the sections of law to Sections 5(m), 5(n), and 6(1) of the POCSO Act and filed the final report against the accused. The case was initially taken on file by the Fast Track Mahila Court, Dharmapuri, as Spl.S.C.



No. 21 of 2023, and was subsequently transferred to the Special Court to deal with cases related to the POCSO Act, Dharmapuri, and renumbered as Spl.S.C. No. 254 of 2023.

7. During the trial, the prosecution examined 20 witnesses [P.W.1 to P.W.20] and marked 22 exhibits [Ex.P1 to Ex.P22]. On behalf of the defense, the accused examined himself as D.W.1 and examined one other witness as D.W.2. No documentary evidence was marked on the side of the defense.

8. The contention of the learned counsel for the petitioner is that there was an ongoing dispute between the petitioner and the de facto complainant's family with regard to taking care of the father-in-law, which is explicitly admitted by P.W.4 (the grandmother of the P.W.1 de facto complainant). P.W.2 (the victim child) also confirmed in her testimony that the petitioner and her family were not on good terms.

9. The petitioner further submitted that while the case of the prosecution states that the petitioner took the victim child inside his house, removed her inner garments, and committed penetrative sexual assault, the medical evidence directly disproves this version. P.W.11, the casualty doctor, examined the victim child and recorded the Accident Register under Ex.P10. Thereafter, the victim child was referred to P.W.12 (Doctor), who examined her and gave



reports and opinions marked as Ex.P12 and Ex.P13.

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10. A perusal of Ex.P10, Ex.P12, and Ex.P13 reveals that there is absolutely no evidence of penetrative sexual assault or sexual intercourse. The only physical finding recorded was a dark red colored abrasion found in the left axillary region, with no external injuries found on any of her private parts. It is argued that the initial complaint was a result of animosity, fueled by the family's visit to P.W.9 (a midwife) before lodging the police complaint. Therefore, the conviction under the rigorous provisions of the POCSO Act is unsustainable.

11. The learned Government Advocate (Criminal Side) strongly opposed the petition and submitted that the contents of the counter-affidavit filed by the respondent state fully justify the conviction. She submitted that P.W.2 is the victim child who clearly narrated the incident and confirmed that she was subjected to penetrative sexual assault, which is fully corroborated by her statement recorded under Section 164 of the Cr.P.C.

12. She further submitted that P.W.1 (mother) and P.W.3 (father) enquired with the victim child immediately after the incident and confirmed her version. Furthermore, it is contended that the oral testimonies of P.W.9 (midwife), P.W.11 (casualty doctor), and P.W.12 (doctor) confirm that the child was subjected to sexual assault. On conclusion of all the material evidence, the



Trial Court rightly convicted the petitioner.

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13. Heard both sides and perused the materials available on record.

14. Considering the facts and circumstances of the case, it is not in dispute that the petitioner did not share a cordial relationship with P.W.1 (mother) and P.W.3 (father). P.W.4 (grandmother) categorically confirms that there was existing family dispute regarding the care of the victim child's grandfather, and it was the petitioner who was actively supporting the grandfather against the wishes of P.W.1 and P.W.3.

15. The evidence given by P.W.2 alleges a forceful physical thrust and penetrative assault causing immense pain. However, the medical records directly contradicts this presentation. P.W.11, the casualty doctor who examined the child immediately and registered the Accident Register under Ex.P10, recorded no external injuries anywhere on her body except for a single minor abrasion in the left axillary region.

16. Most crucially, P.W.12 (Doctor) issued medical certificates and opinions under Ex.P11, Ex.P12, and Ex.P13, which explicitly confirm that there is absolutely no evidence of penetrative sexual assault or any external or internal injuries to the private parts of the victim child. Hence, the conviction of



the petitioner requires reconsideration during the final hearing of the appeal.

Consequently, this Court is inclined to grant the relief of suspension of sentence to the petitioner.

17. Accordingly, this Criminal Miscellaneous Petition stands **allowed** and the sentence imposed on the petitioner is suspended till the disposal of the above Criminal Appeal and the petitioner is ordered to be released on bail on the following conditions:

(i) The petitioner/Appellant/Accused shall execute a bond for a sum of Rs.10,000/- (Rupees Ten Thousand only), with two sureties, each for a like sum to the satisfaction of the learned Special Court (POCSO Act 2012) Dharmapuri, Dharmapuri District.

(ii) The Petitioner/Appellant/Accused and the sureties shall affix their photographs and Left Thumb Impressions in the surety bond and the Trial Court may obtain a copy of their Aadhar card or Bank pass Book and mobile numbers to ensure their identity and;

(iii) The petitioner/Appellant/Accused shall appear before the trial Court at 10.30 a.m., once in every three months, without fail, until further orders;

(iv) On breach of any of the aforesaid conditions, the learned Judicial Magistrate/Trial Court is entitled to take appropriate action against the petitioner in accordance with law as if the conditions have been imposed and the petitioner released on bail by the learned Magistrate/Trial Court himself as



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laid down by the Hon'ble Supreme Court in ***P.K.Shaji vs. State of Kerala [(2005)AIR SCW 5560]***.

18. Accordingly, this Criminal Miscellaneous Petition stands ordered.

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

CDA



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To

- 1.The Special Court (POCSO Act 2012) Dharmapuri,
Dharmapuri District
- 2.The Inspector of Police,
Eriyur Police Station,
Dharmapuri District.
- 3.The Central Prison, Salem.
- 4.The Public Prosecutor,
High Court of Madras.



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M.NIRMAL KUMAR J.

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