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CRL MP No.24822 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 12-02-2026

PRONOUNCED ON : 16-02-2026

CORAM

THE HON'BLE MR.JUSTICE SUNDER MOHAN

CRL MP No.24822 of 2025

AND CRL A No. 1953 of 2025

Thulasimadhu

... Petitioner

Vs.

State Rep. by
The Inspector of Police
All Women Police Station,
Bhavani, Erode District.
(Cr.No.10/2020)

... Respondent

Prayer: Criminal Miscellaneous Petition filed under Section 430(1) of BNSS, to suspend the sentence imposed on the petitioner/appellant in Spl.S.C.No. 42/2020 by the Learned Sessions Judge, Magalir Neethimandram (Fast Track Mahila Court), Erode dt. 12.02.2021 and enlarge him on bail pending disposal of the Criminal Appeal.

For Petitioner:

M.Vijayaragavan

For Respondent:

Mr.S.Balaji

Government Advocate(Crl.Side)



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Order

This Criminal Miscellaneous Petition has been filed seeking to suspend the sentence imposed on the petitioner/accused by judgment and order dated 12.02.2021 passed in Spl.S.C.No.42 of 2020 on the file of the learned Sessions Judge, Magalir Neethi Mandram (Fast Track Mahila Court), Erode District, and to enlarge the petitioner on bail pending disposal of the appeal.

2. It is the case of the prosecution that the petitioner, the father of the victim girl child, who is an infant aged 75 days, aggrieved by the fact that his wife had not agreed to have sexual intercourse with him, made the victim child lie down on the cot and was attempting to insert his private part into the private part of the victim child; that on another occasion when the petitioner gave bath to the victim child, he rubbed his hands on the private part of the victim child; that on 22.05.2020 and 23.05.2020, the petitioner once again committed penetrative sexual assaults in the similar manner and this was witnessed by PW1, the mother of the victim child; that PW1 thereafter lodged the complaint [Ex.P1] and



the victim was subjected to medical examination by the Doctor [PW6]; and that on completion of investigation, the final report was filed.

3. The petitioner was convicted by the trial Court for the offence under Sections 5(l), 5(m), 5(n) r/w 6 of the POCSO Act, 2012 and sentenced to undergo rigorous imprisonment for 20 years and to pay a fine of Rs.1,000/-, in default to undergo simple imprisonment for three months.

4.(i) The learned counsel for the petitioner would submit that the evidence of PW1 cannot be believed as PW1 herself in her cross-examination would state that whatever she had stated against the petitioner was false; that the prosecution had not treated her as hostile; and therefore, the conviction based on such evidence cannot be sustained.

(ii) The learned counsel further submitted that the evidence of the doctor does not corroborate the evidence of PW1 and that PW1 had matrimonial differences with the petitioner and there were certain issues relating to settlement of property in favour of PW1 and their son, who



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was examined as PW4. The learned counsel also submitted that the petitioner is in custody from 27.05.2020 and since the appeal is not likely to be taken up in the near future, prayed for grant of suspension of sentence.

5. The learned Government Advocate (Crl.Side) *per contra* submitted that the impugned judgment is justified; that certain admissions made in the cross-examination of an illiterate lady cannot be the basis to disbelieve her; that the doctor's evidence corroborates the evidence of PW1 as the victim child has sustained injuries on her private part; that the evidence of PW4, who is deaf and dumb, examined through an Interpreter suggests that the petitioner had committed penetrative sexual assault on the victim child; and hence, he opposed the grant of suspension of sentence to the petitioner.

6. Perusal of records shows that PW1, who had lodged the complaint against the petitioner would state in her deposition that she had told the Doctor at Government Hospital that the victim child sustained injuries due to nail scratches when she was made to take bath by the



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petitioner. She would also add that she did not know the contents of the complaint which was recorded at the police station. Further, PW1 in her cross-examination has stated as follows:

“என் கணவர் தண்ணீர் போட்டாலும் என்னிடம் அன்பாகவும், பாசமாகவும்தான் இருப்பார் என்றால் என்னை ஒரு அடி கூட அடித்ததில்லை. என் மகனை என் கணவர் அக்கறையாக பார்த்துகொள்வார் என்றால் சரிதான். பிரசவத்தில் இருந்தபோது கூட என் கணவர்தான் எனக்கு அனைத்து உதவிகளையும் செய்தார். மருத்துவர் சொன்ன காரணத்தினால்தான் நான் புகாரில் சொன்ன விவரங்களை சொன்னேன், என் கணவர் நல்லவர் என்றால் சரிதான். என் கணவர் இல்லாமல் என் மகனும் கஷ்டப்படுகிறான். நானும் வருமானத்திற்கு கஷ்டப்படுகிறேன். நான் என் கணவரை பற்றி கூறிய விவரங்கள் அனைத்தும் பொய் மருத்துவர் சொன்னதால் அவ்வாறு சொன்னேன். என் கணவர் நல்லவர்தான். தவறு எதுவும் செய்யவில்லை.”

The above portion is extracted for better understanding of her evidence.

7. Therefore, in the above appeal it has to be considered whether the above deposition of PW1 in the cross examination has to be accepted or not. The Doctor [PW11], in her observations in the Accident Register [Ex.P10] had stated that there is no active bleeding / vaginal discharge;



that bacterial infection was noticed in the external genitalia; and that there were no other external injuries on the body of the victim child.

8. The petitioner is in custody from 27.05.2020. As stated earlier the question as to whether PW1's evidence which is the sole basis for conviction can be relied upon in the light of the above admission, has to be necessarily considered in the above appeal. The appeal is not likely to be taken up in the near future. Therefore, considering all the above facts, this Court is inclined to grant the relief of suspension of sentence to the petitioner.

9. Accordingly, this criminal miscellaneous petition stands **allowed**. The sentence imposed on the petitioner is suspended and the petitioner is ordered to be released on bail on the following conditions:

- (i) The petitioner shall execute a bond for a sum of Rs.10,000/-, with two sureties, each for a like sum to the satisfaction of the learned Sessions Judge, Magalir Neethimandram (Fast Track Mahila Court), Erode;
- (ii) The petitioner and the sureties shall affix their photographs and Left Thumb Impression in the surety bond and the trial



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Court may obtain a copy of their Aadhar card or Bank pass
Book and mobile numbers to ensure their identity; and

(iii)The petitioner shall appear before the trial Court on the first working day of every month at 10.30 a.m. until the disposal of the appeal 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 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.

16-02-2026

Index: Yes/No

Speaking/Non-speaking order

Neutral Citation: Yes/No

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To

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1. The Sessions Judge,
Magalir Neethimandram (Fast Track Mahila Court),
Erode.
2. The Inspector of Police
All Women Police Station -Bhavani,
Erode District.
3. The Superintendent of Prisons,
Central Prison, Coimbatore.
4. The Public Prosecutor,
High Court, Madras.



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SUNDER MOHAN J.

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