

Crl.M.P.(MD)No.10956 of 2026

in Crl.A.(MD)No.665 of 2026

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **08.07.2026**

CORAM

THE HONOURABLE MR JUSTICE B.PUGALENDHI

Crl.M.P.(MD)No.10956 of 2026

in Crl.A.(MD)No.665 of 2026

D.Murugan

... Petitioner/
Sole accused

versus

The State of Tamil Nadu,
Rep. by the Inspector of Police,
AWPS – Tirunelveli Town,
Tirunelveli District.

... Respondent

Petition filed under Section 430(2) of BNSS to suspend the sentence of imprisonment imposed by the learned Sessions Judge, Special Court for POCSO Act Cases, Tirunelveli, in Spl.C.C.No.62 of 2025 by Judgment dated 29.04.2026 and enlarge the petitioner/appellant on bail, pending disposal of the above said criminal appeal.

For Petitioner : Mr.Aayiram K.Selvakumar

For Respondent : Mr.V.Shathurthi Raja,
Government Advocate (Crl. Side)

ORDER

The petitioner is the sole accused in Spl.C.C.No.62 of 2025 on the file of the Special Court for POCSO Act Cases, Tirunelveli. He was prosecuted for the



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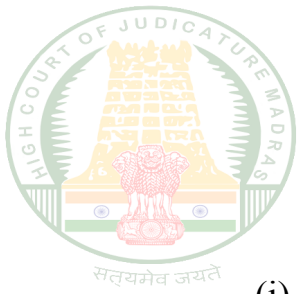
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offence under Section 9(m) r/w. 10 of POCSO Act and Section 506(i) IPC that he has committed sexual assault on the victim child aged about 11 years. In conclusion of trial, the trial Court, by its Judgment dated 29.04.2026, found the petitioner guilty for the offence under Section 9(m) r/w. 10 of POCSO Act and Section 506(i) IPC and convicted and sentenced him as under:

Sl.No	Sections	Punishment	Fine amount	Default
1.	9(m) r/w. 10 of POCSO Act	5 years rigorous imprisonment	Rs.5,000/-	6 months simple imprisonment
2.	506(i) IPC	1 year rigorous imprisonment	Rs.1,000/-	3 months simple imprisonment

Challenging the judgment of conviction, the petitioner has preferred an appeal before this Court in Crl.A.(MD)No.665 of 2026 and the same has been admitted by this Court on 12.06.2026. Along with the appeal, the petitioner has moved this petition seeking to suspend the sentence imposed by the trial Court.

2. The learned counsel appearing for the petitioner has raised the following grounds for grant of suspension of sentence.



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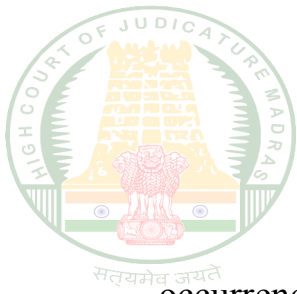
(i) The alleged occurrence is said to have taken place on 23.05.2024, but, a complaint has been lodged before the respondent on 29.08.2024. Therefore, there was an inordinate delay in lodging the complaint, for which, there was no sufficient reason on the side of the prosecution.

(ii) P.W.1-the mother of the victim refused the medical examination for the victim/P.W.2. Therefore, there is no material to corroborate the medical evidence and the foundational facts for the presumption under Sections 29 and 30 of the Act could not be invoked.

(iii) The prosecution has miserably failed to establish the genesis of the complaint, the date, time and the place of occurrence, besides serious contradictions in the evidence of the prosecution witnesses in this regard.

(iv) In fact, the alleged occurrence had taken place in a compound, wherein, multiple houses were situated and the same was admitted by the prosecution witnesses. However, the prosecution has failed to examine the independent witnesses available near the place of occurrence to prove the prosecution case.

(v) The petitioner has clearly established the presence of his family members by examining D.W.1 and marking the documents Exs.D1 and D2. Further, the prosecution witnesses have also admitted that the alleged



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occurrence place is surrounded by people. But, the prosecution has miserably failed to place witnesses to connect the presence of both petitioner and victim at the time of alleged occurrence, thus, the required foundational facts to attract the legal presumption are not available.

(vi) The petitioner has successfully rebutted the presumption and failed to examine all material witnesses and address contradictions in the evidence, resulting in a failure to discharge its evidentiary burden as per the principles laid down in Crl.A.(MD)No.268 of 2018 (Chellapandi vs. Inspector of Police).

3. The learned counsel for the petitioner, by referring to the evidence adduced by P.W.1, submits that P.W.1 has lodged a similar complaint as against a neighbour, one Balan and he has also deposed about that complaint. The learned counsel has also referred to the evidence of P.W.2-victim and submits that the victim child has admitted that she is having certain issue, for which, she was taken to a church, where, they stayed for a period one week prior to the occurrence. According to him, the victim is not mentally sound.

4. The learned counsel for the petitioner further submits that the complaint was lodged on 29.08.2024 for the incident, said to have taken place



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on 25.08.2024, alleging that the petitioner has touched the victim's private parts.

While lodging the complaint, the defacto complainant added an incident, said to have taken place on 23.05.2024, by exaggerating as if the petitioner kissed the victim child, pressed her breast and shown his private parts to the victim child. The P.W.1/defacto complainant knew about this occurrence even on 23.05.2024, enquired the petitioner and his wife and warned him. However, they have not preferred any complaint as against the petitioner. Therefore, according to him, the defacto complainant is in the habit of lodging such complaint and the victim child is also not mentally sound and she was taken for some treatment in a church. The prosecution, which has been laid based on this evidence, would not suffice to attract the presumption under Section 29 of the Act. He further submits that there is no medical evidence and the victim was not subjected for medical examination.

5. The learned Government Advocate (Crl. Side) opposed this petition that it is not a penetrative sexual assault and therefore, she was not subjected for medical examination. Moreover, the mother of the victim child has refused for medical examination. He further submits that at the time of occurrence, the victim child was aged about 11 years and the petitioner was aged about 51



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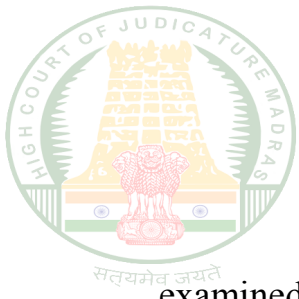
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years. The allegation against the petitioner is that he took the victim child to his house, removed her dress, pressed her breast and private parts and also kissed her and showed his private parts to the victim. Therefore, the evidence of the victim child clearly established the offence committed by the petitioner. Hence, the petitioner is not entitled for grant of bail.

6. This Court considered the rival submissions made.

7. The complaint was lodged on 29.08.2024 for the incident said to have taken place on 25.08.2024. There was another incident that is alleged to have taken place on 23.05.2024. The main allegation against the petitioner is that he has committed sexual assault on the victim child on 23.05.2024. The victim child said to have informed the same to her aunt. The defacto complainant/ P.W.1 came to know about this offence even on 23.05.2024 and also warned the petitioner and his wife, however, they have not preferred any complaint.

8. The victim child, when she was examined in cross, stated she had certain issue, for which, she was taken to a church, wherein, they had stayed for a period of one week. Further, a neighbour to the petitioner and the victim was



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examined as D.W.1 and he has stated that the defacto complainant has lodged a similar complaint as against him. All these factors have created a doubt with regard to the manner in which the prosecution has projected the case.

9. Further, the grounds raised by the petitioner can be appreciated only during the final hearing of the criminal appeal. However, the criminal appeal could not be taken up for final hearing immediately for want of time. Considering the grounds raised by the petitioner, his period of incarceration, the affidavit filed by the petitioner undertaking that he would stay away from the victim and would not, at any point of time, disturb the victim and also considering the fact that the appeal could not be taken up for final hearing immediately, this Court is inclined to suspend the sentence imposed against the petitioner.

10. Accordingly, the substantive sentence of imprisonment alone is suspended pending disposal of the criminal appeal and the petitioner is ordered to be enlarged on bail on the following conditions:



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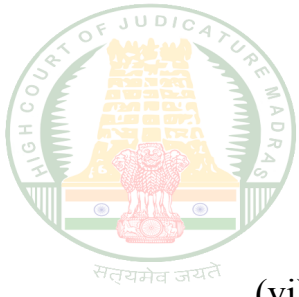
(i) The petitioner shall execute a bond for Rs.25,000/- (Rupees twenty five thousand only) with two sureties each for a like sum to the satisfaction of the learned Sessions Judge, Special Court for POCSO Act cases, Tirunelveli.

(ii) The petitioner and the sureties shall submit a copy of their Aadhaar Card or any other identity card issued by the Government in proof of their residence address, before the trial Court as well as before the respondent Police. In the event, if there is any change of address, the same shall be intimated to the respondent Police without fail.

(iii) The petitioner shall not misuse the liberty granted to him by indulging in any further offence.

(iv) The petitioner shall stay at Coimbatore and report before the Inspector of Police, C2 - Race Course Police Station, daily at 10.30 a.m. until further orders.

(v) The petitioner and the sureties shall file an affidavit before the respondent Police that he will keep away from the occurrence village and he will not disturb the victim and her family at any point of time.



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(vi) If the petitioner violates any of the above conditions, it is open to the respondent police to file an application to cancel the bail granted to him.

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To

1. The learned Sessions Judge,
Special Court for POCSO Act Cases,
Tirunelveli.
2. The Superintendent,
Central Prison, Palayamkottai.
3. The Inspector of Police,
AWPS – Tirunelveli Town,
Tirunelveli District.
4. The Inspector of Police,
C2 - Race Course Police Station,
Coimbatore.
5. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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B.PUGALENDHI, J.

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