



Crl.M.P.No.10893 of 2025
in
Crl.A.No.220 of 2025

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 31.07.2025

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THE HONOURABLE MR.JUSTICE M. NIRMAL KUMAR

Crl.M.P.No.10893 of 2025

in

Crl.A.No.220 of 2025

Vajiha Sultana

...Petitioner/A2

Vs.

The State Rep. by
The Inspector of Police,
Devattipatty Police Station,
Salem District.
Crime No.209 of 2018

...Respondent

PRAYER: Criminal Miscellaneous Petition has been filed under Section 528 of Bharatiya Nagarik Suraksha Sanhita, 2023, to suspend the sentence imposed by the judgment dated 31.01.2025 made in Special S.C.No.271 of 2019 passed by the learned Sessions Judge, Principal POCSO Court, Salem, till the disposal of the criminal appeal in Crl.A.No.220 of 2025.

For Petitioner : Mr.S.Ashok Kumar,
Senior Counsel
for Mr.P.Palaninathan

For Respondent : Mr.Leonard Arul Joseph Selvam
Government Advocate (Crl. Side)



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ORDER

This Criminal Miscellaneous Petition has been filed to suspend the sentence imposed by the judgment dated 31.01.2025 made in Special S.C.No.271 of 2019 passed by the learned Sessions Judge, Principal POCSO Court, Salem, till the disposal of the criminal appeal in Crl.A.No.220 of 2025.

2. The petitioner/A2 in Special S.C.No.271 of 2019 was convicted by the Trial Court by the judgment dated 31.01.2025 for the offences under Sections 314, 304(ii) IPC and Section 15(2)(b) of Indian Medical Council Act 1956 and sentenced to undergo 10 years rigorous imprisonment and to pay a fine of Rs.1,000/-, in default, to undergo two years additional rigorous imprisonment, for the offence under Section 304(ii) of IPC and sentenced to undergo 10 years rigorous imprisonment, for the offence under Sections 15(2)(b) of Indian Medical Council Act 1956 and sentenced to undergo 1 year rigorous imprisonment. The sentences are directed to run concurrently. Aggrieved by the said conviction, the petitioner filed Crl.A.No.220 of 2025 before this Court along with the instant miscellaneous petition seeking suspension of sentence and bail.



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WEB COPY 3. During trial, on the side of the prosecution, PW1 to PW24 examined and Exs.P1 to P31 marked and material objects M.O.1 and M.O.2 produced. On conclusion of the trial, the Trial Court on the evidence of witnesses and the materials produced, convicted the petitioner as stated above.

4. The case of the prosecution is that the petitioner was practising medicine as a Nurse in her house on the first floor and administering medicines and also illegally conducting abortions for pregnant persons. The daughter of PW1 and PW2, became pregnant and she was taken to A2 for an abortion in the year 2018. Since her daughter was a minor, everything was kept in secrecy and the petitioner administering overdose medicine and given her some treatment due to which she had profuse bleeding and was later taken to the hospital. Initially to Rani Hospital, Salem thereafter to Vasantham Hospital, Salem, where surgery had taken place and later her condition deteriorated and she was taken to the Government Hospital, Salem where she died on 31.03.2018.

5. Learned Senior Counsel for the petitioner submits that PW1, father of the deceased, confirms that he had taken the deceased to the petitioner's house.



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The petitioner is a midwife. Since her daughter was profusely bleeding and the petitioner found the girl was in a weak condition, she administered saline water to her daughter. Later surgery was conducted in Vasantham Hospital and holes made in the intestine and private part of the victim, due to which she developed abdominal sepsis and later she died.

6. Learned Senior Counsel further submits that the witness, PW1 to PW4 are the parents and brothers of the deceased who had not spoken anything against the petitioner. PW5 and PW6 the Observation Mahazar for the house of A1. PW7, PW8 and PW11 are neighbours of the petitioner all three not supported the case of the prosecution. PW9 is the VAO who has been witness for the Observation Mahazar prepared in the house of the petitioner. He has stated some medicines seized but no surgical instruments or any scientific materials used for medical treatment seized from the residence of petitioner. PW14 is Doctor who along with a team visited and searched petitioner's house and recorded the drugs available in the house of A2 in Ex.P4. PW14 confirms no medicines for abortion found. Thus it is clear that the petitioner not treating any person for abortion. This being so, the Trial Court primarily relied upon the evidence of PW23, Investigation Officer and



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WEB COPY on the statement of hostile witnesses, convicted the petitioner.

7. This case is an unfortunate one, A1 is the brother of the victim. PW1 and PW2 are the parents of the deceased and A1. PW3 and PW4 brothers of A1, illicit relationship by A1 with his own sister and committed penetrative sexual assault, making her pregnant. Since A1 was a nursing student, he had some knowledge of medicines and used the same for earlier abortion. On the last occasion, the medicine had no effect. Subsequently, bleeding started hence, daughter of P.W1, taken to petitioner. Thereafter she was taken to hospitals. The statement of the deceased to the Doctor at Rani Hospital and Vasantham Hospital, Salem, confirmed that the petitioner not given medicine or used any surgical instruments. Hence the injury found on the upper part of the abdomen and in the fallopian tube is not due to the petitioner. But the Trial Court not considered the medical evidence in proper perspective and convicted the petitioner. Hence, he prays for grant of bail to the petitioner.

8. Learned Government Advocate (Crl. Side) submits that in this case, the deceased is the daughter of PW1 and PW2. A1 committed penetrative sexual assault on the victim. In the year 2018, the deceased became pregnant,



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and the self medication did not work. Later, she was taken to the clinic of the petitioner, there forcible abortion done, which caused injury and profuse bleeding. Thereafter, she was taken to Rani Hospital, Salem and later surgery was conducted in Vasantham Hospital, Salem. Where her condition become critical and she was shifted to the Government Hospital, Salem, where she died and the case registered. Initially the PW1 not disclosed true facts, later after thorough questioning gave full facts and thereafter A1 and A2 arrested in this case. From the scene of occurrence, materials collected witnesses examined after inquest body sent for postmortem, on conclusion of investigation filed the charge sheet against A1 and A2. During trial, A1 died case against him got abated, trial proceeded against A2 and A2 was convicted and sentenced for the offence under Sections 314, 304(ii) IPC and Section 15(2)(b) of Indian Medical Council Act 1956 . During trial, on the side of the prosecution, PW1 to PW24 examined and Exs.P1 to P31 marked and material objects M.O.1 and M.O.2 produced.

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



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WEB COPY10. It is seen that in this case PW1, father and PW2, mother, PW3 and

PW4- brothers of the deceased have not stated anything against the petitioner except PW1 stating that he had taken the deceased to the petitioner's house for treatment since his daughter was profusely bleeding. She had only injected saline water and nothing more. Thereafter, she was referred to Rani Hospital, Salem and Vasantham Hospital, Salem, PW16 confirms that PW12 had referred the patient to her and thereafter she conducted surgery and later the condition of the victim girl deteriorated and she was taken to the Government Hospital, Salem and there she was treated for two days; condition improved latter her health condition deteriorated on 31.03.2018 she succumbed due to septicemia. The team of Doctors lead by PW14 along with PW9 and others visited the house of the petitioner, searched, seized and collected medicines in her house recorded in Mahazar Ex.P4. The neighbours and family members of A1 and neighbours of the petitioner not supported the case of the prosecution, but the medical evidence confirms that the deceased died due to septicemia. PW16 in her evidence confirms that the victim girl was pregnant and attempted abortion by consuming tablets and she was profusely bleeding and suffered severe stomach ache for the past two days. PW16 stated that the scan report indicated abdominal hemorrhage and she suspected that the foetus



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might have been formed in the fallopian tube and caused miscarriage and she did surgery immediately and latter developed septicemia, and she died. In this case no surgical instruments used by the petitioner during the initial treatment, even during the scan no injuries found, only after surgery by P.W.16 in Vasantham Hospital, the possibility of any injury which later developed abdominal Sepsis and victim died.

11. Finding prima-facie case is made out and further taking note of the fact that 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.

12. 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.10,000/- (Rupees Ten thousand only) with two sureties, each for a like sum to the satisfaction of the trial Court.



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WEB COPY 13. Further, the petitioner shall appear before the Trial Court on the first working day of once in three months at 10.30 a.m. until the disposal of the criminal appeal and if she is not able to appear before the Trial Court on that day, she 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 her absence as directed by the Trial Court.

14. Accordingly, this Criminal Miscellaneous Petition is ordered.

31.07.2025

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Note: Issue Order Copy on 01.08.2025.

To

1. The Sessions Judge, Principal POCSO Court,
Salem.
2. The Inspector of Police,
Devattipatty Police Station,
Salem District.
3. The Central Prison,
Coimbatore.
4. The Public Prosecutor,
High Court, Madras.



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M. NIRMAL KUMAR, J.

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