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*Crl.M.P.No.16607 of 2023  
in Crl.A.No.1133 of 2023*

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.01.2025

CORAM

THE HONOURABLE MR.JUSTICE SUNDER MOHAN

**Crl.M.P.No.16607 of 2023**

**in**

**Crl.A.No.1133 of 2023**

Jyothilal M.K.

... Petitioner /Accused

Vs.

State Rep. by  
The Inspector of Police,  
Palloor Police Station, Mahe.  
(Crime No.45/2021)

... Respondent

PRAYER: Criminal Miscellaneous Petition has been filed under Section 389(1) of Cr.P.C. praying to suspend the sentence of imprisonment imposed in the judgment dated 29.09.2023 passed by the learned Fast Track Court exclusively to deal with offence under the POCSO Act at Puducherry in Spl.S.C.No.128 of 2023 and enlarge the petitioner on bail pending disposal of the above Criminal Appeal.

For Petitioner : Mr.R.Thirumoorthy

For Respondent : Mr.A.V.Ramachandramurthy  
Additional Public Prosecutor  
(Puducherry)



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## **ORDER**

This Criminal Miscellaneous Petition has been filed to suspend the sentence imposed on the petitioner by the judgment dated 29.09.2023 passed in Spl.S.C.No.128 of 2023 by the learned Sessions Judge, Fast Track Court Exclusively to deal with offences under the POCSO Act, Puducherry, pending disposal of the above criminal appeal and enlarge the petitioner on bail.

2. It is the case of the prosecution that in the month of August, 2021 the petitioner, who worked as a TV mechanic, installed a TV at the house of the de-facto complainant and thereafter developed a friendship with the victim, aged about 14 years; that during September to November, 2021 whenever she was alone at her house, the petitioner trespassed into her house and induced her, on the promise of marriage, to have sexual intercourse and thus committed penetrative sexual assaults on several occasions. On the complaint given by the victim's mother, a case was registered for the offences under Sections 449 of I.P.C. and 6 of POCSO Act, 2012.



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3. The petitioner/Accused in Spl.S.C.No.128 of 2023 was convicted by the Trial Court by the judgment dated 29.09.2023 for the offences under Sections 449 of I.P.C. and 6 of POCSO Act and sentenced to undergo seven years rigorous imprisonment and to pay a fine of Rs.2,000/-, in default, to undergo rigorous imprisonment for three months for the offence under Section 449 of I.P.C. and for the offence under Section 6 of POCSO Act, sentenced to undergo 20 years rigorous imprisonment and to pay a fine of Rs.5,000/-, in default, to undergo rigorous imprisonment for three months. Aggrieved by the same, he filed Crl.A.No.1133 of 2023 before this Court along with the instant miscellaneous petition seeking suspension of sentence and bail.

4.The learned counsel for petitioner would submit that the evidence of PW1/mother of the victim and the victim herself would show that the victim had love affair with the petitioner; that the case was registered only because of the marriage between the petitioner and the victim did not fructify and that the evidence of Doctor would suggest that the victim was not subjected to forcible sexual intercourse and that considering the period of incarceration, the petitioner may be released on bail.



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5.The learned Additional Public Prosecutor (Puducherry), however, strongly opposed the bail application stating that the victim was aged 14 years and her consent is immaterial; that the evidence of the mother of victim/PW1 would clearly show that in order to find a solution they approached the petitioner and the petitioner had abused the PW1 and also the victim in filthy language and insulted them and therefore, no indulgence should be shown to the petitioner.

6.The evidence of PW1/mother of victim would show that the victim and the petitioner were in constant touch with each other and fell in love with each other. The evidence of the victim also would confirm the said fact. The petitioner was aged 21 years according to the prosecution and 19 years according to the petitioner at the time of occurrence. In any case, it appears to be a case of biological attraction and mutual innocence of the petitioner and the victim. Even according to PW1, the complaint was lodged only after the petitioner had abused them when they attempted to find a solution. This Court has to examine whether conviction can be based on the sole testimony of the victim especially in the light of evidence of the Doctor suggesting that the victim was not subjected to penetrative sexual intercourse. Considering the



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above facts, the period of incarceration suffered by the petitioner and since the appeal is not likely to be taken up in the near future, this Court is inclined to grant the relief of suspension of sentence to the petitioner.

7. 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 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, Fast Track Court Exclusively to deal with offences under the POCSO Act, Puducherry;
- (ii) The petitioner and the sureties shall affix their photographs and Left Thumb Impression 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 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



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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.

**30.01.2025**

rsi

**Issue order copy by 31.01.2025**  
**Upload the order copy forthwith.**

To

- 1.The Sessions Judge,  
Fast Track Court Exclusively to deal with offences  
under the POCSO Act, Puducherry.
- 2.The Inspector of Police,  
Palloor Police Station, Mahe.
- 3.The Superintendent,  
Central Prison at Kalapet  
Puducherry.
- 4.The Public Prosecutor,  
High Court, Madras.



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**SUNDER MOHAN, J.**

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**30.01.2025**