



*Crl.M.P.No.18238 of 2024
in Crl.A.No.1621 of 2024*

WEB COPY IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24-01-2025

CORAM

THE HONOURABLE MR JUSTICE SUNDER MOHAN

CRL MP NO. 18238 of 2024

in

Crl A No.1621 of 2024

ARTHANARI

S/o. Subramani, Mettu Street, Avadathur, Sovriyur
Post, Mettur Taluk, Salem District.

Appellant(s)

Vs

The State Rep , By The Inspector Of Police,
All Women Police Station, Salem District. (crime
No. 2 Of 2023)

Respondent(s)

For Appellant(s):

Mrs.Sumithra Vasudevan

For Respondent(s):

Dr.C.E.Pratap Govt Advocate (crl Side)

ORDER

This Criminal Miscellaneous Petition has been filed to suspend the sentence imposed on the petitioner in Special Sessions Case No.137 of 2018 dated 30.09.2024 on the file of the learned Sessions Judge, Principal POCSO Court, Salem and release the petitioner on bail pending disposal of the above Criminal Appeal.



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2. It is the case of the prosecution that the victim girl aged about four years used to play in the defacto complainant's house; that the petitioner is the grand father of the victim's friend who was residing in the same street; that on 11.01.2023, at about 7.00 p.m, when the victim girl was playing, the petitioner with the intention to commit sexual assault on the victim child, made her to sit on his lap, inserted his hand into the inner wear, and penetrated his finger into her genuine part and thus, committed aggravated penetrative sexual assault.

3. The petitioner/accused in Special Sessions Case No.137 of 2023 was convicted by the Trial Court by judgment dated 30.09.2024 for the offences under Section 9 (m) r/w.10 of Protection of Children from Sexual Offences Act, 2012 and sentenced him to undergo 7 years rigorous imprisonment and to pay a fine of Rs.1,000/-, in default, to undergo additional rigorous imprisonment of one year. Aggrieved by the same, he filed Crl.A.No.1621 of 2024 before this Court along with the instant miscellaneous petition seeking suspension of sentence and bail.

4.The learned counsel for the petitioner would submit that Trial Court



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disbelieved the prosecution as regards penetrative sexual assault and convicted the petitioner for the offence under Section 9(m) of the POCSO Act; The evidence of the PW3 would show that the victim girl had not suffered any external injuries and that the doctor had opined that there were no indication that the victim girl was subjected to penetrative sexual assault and hence prayed for suspension of sentence.

5. Heard the learned Government Advocate [CrI. Side] and also perused the materials available on record.

6. The learned Government Advocate [CrI Side] submitted that the there is no reason to disbelieve the evidence of the victim and hence, the petitioner has not made out a ground for suspension of sentence.

7. Admittedly, the prosecution case as regards penetrative sexual assault was disbelieved by the Trial Court. The evidence of the victim is contrary to the evidence of the doctor PW3. This Court has to examine whether the conviction can be sustained only based on the sole testimony of the victim girl aged about 3 ½ years at the time of the occurrence. A fixed period of sentence has been



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imposed by the trial Court.

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8. Considering the aforesaid facts; that there are several arguable points in the appeal, which requires consideration; the fact that the appeal is not likely to be taken up in the near future and since the petitioner is in custody from 30.09.2024, this court is inclined to grant the relief of suspension of sentence to the petitioner.

9. 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, Principal POCSO Court, Salem.
- (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 any



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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.

24.01.2025

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Issue order copy by 29.01.2025
Upload the order copy forthwith.



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SUNDER MOHAN, J.

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To

1. Sessions Judge, Principal POCSO Court, Salem.
2. The Central Prison,
Coimbatore
3. The State Rep , By The Inspector Of Police,
All Women Police Station, Salem District.
4. The Public Prosecutor,
High Court, Madras.

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