



CRL.MP.No.140 of 2025
in CRL.A.No.17 of 2025

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 14 .02.2025

DELIVERED ON : 21.03.2025

CORAM:

THE HON'BLE MR.JUSTICE M.S.RAMESH
and
THE HON'BLE MR.JUSTICE N.SENTHILKUMAR

CRL.MP.No.140 of 2025
in CRL.A.No.17 of 2025

Manikandan
(Currently detained at
Central Prison, Cuddalore)

...Petitioner

vs.

The State Rep. by its
Inspector of Police,
Panruti All Women Police Station,
Cuddalore District.
(Crime No.41/2021)

...Respondent

Prayer: Criminal Miscellaneous Petition filed under Section 389(1) of Cr.P.C. & New Section 415(2) of BNSS, to suspend the sentence imposed in Spl.S.C.No.112/2022 passed by the learned Special Court for Exclusive Trial of Cases Under POCSO Act, Cuddalore dated 23.10.2024 till disposal of the above Criminal Appeal.



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For Petitioner : Mr.P.Vijendran
For Respondent : Mr.S.Rajakumar
Additional Public Prosecutor

ORDER

N.SENTHILKUMAR, J.

This Criminal Miscellaneous Petition has been filed seeking to suspend the sentence imposed on the petitioner by the learned Special Judge for Exclusive Trial of Cases Under POCSO Act, Cuddalore on 23.10.2024 in Spl.S.C.No.112 of 2022 and enlarge them on bail.

2.The learned Special Judge for Exclusive Trial of Cases Under POCSO Act, Cuddalore, in Spl.S.C.No.112 of 2022, has convicted the petitioner and sentenced him as follows:

	<i>Offence</i>	<i>Sentence imposed</i>
<i>Accused</i>	Sections 5(1), 5(j)(ii), 6 of the POCSO Act	Life sentence along with a fine of Rs.1,00,000/- in default to undergo 3 years imprisonment.

The sentences is ordered to run concurrently.



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3.Challenging the above conviction and sentence, the petitioner has filed the above Criminal Appeal and he seeks for suspension of sentence in the present miscellaneous petition.

4.The case of the prosecution is that the petitioner had approached the victim girl's father and requested him to send the victim girl to his home for taking care of his blind wife and 1 1/2 years old child, as the victim girl did not go to school during Corona period and the victim girl started visiting the accused home for the said purpose. The accused had promised her that he will marry her and on that pretext, had penetrative sex with the minor girl on 22.08.2021 around 2.00 p.m.

5.The Trial Court had convicted the petitioner based on the evidence of the complainant, who is a Chief Advisor and the evidence of PW2/the minor victim girl, whose evidence was corroborated with the evidence of PW3 and PW4.

6.Learned counsel appearing for the petitioner had relied upon



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Exs.P16 and P17, the school certificate and admission register of the victim girl which would show that the age of the victim girl is 13 years as per the school certificate which states the date of birth as 10.06.2012. The evidence of PW3, the victim girl's mother stated that the victim girl's age was 14 years. He further pointed out that the victim girl was pregnant.

7.According to the learned counsel for the petitioner, in the cross examination, the mother of the victim girl had deposed that the age of the victim girl is 19 years, and the Trial Court had failed to determine whether the age of the victim girl is 9 years or 13 years or 19 years. In the absence of any concrete materials for determination of age of the victim girl, the conviction by the Trial Court could not be substantiated.

8.Learned counsel for the petitioner contended that the victim girl and the accused belonged to the Irular community, they have a custom which permits the person to have sa second wife. The victim girl had deposed that her age is 15 years.



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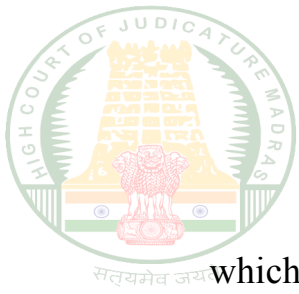
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9.Per contra, the learned Additional Public Prosecutor appearing for the respondent submitted that as per the School Records and the evidence of the mother, the victim is a child as per Section 2(d) of the POCSO Act, therefore, the case falls within the purview of POCSO Act and there is no infirmity in the judgment passed by the Trial Court. Therefore, he vehemently opposed for suspension of sentence.

10.Heard Mr.P.Vijendran, learned counsel appearing for the petitioner and Mr.S.Rajakumar, learned Additional Public Prosecutor appearing for the respondent Police and perused the materials available on record.

11.The victim girl, in her cross examination stated that she had love affair with the accused and had denied recording of statement under Section 164 of Cr.P.C and had further denied that she had sexual intercourse.

12.Though the evidence of the victim girl would show that she had love affair with the accused and the custom of the community to



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which the victim girl and the accused belong may allow several marriages, the same cannot be a valid ground to overcome the findings of the Trial Court that the victim girl was aged about 13 years as per the medical report and school records.

13. The victim is a child under Section 2(d) of POCSO Act. Therefore, the consent of the child is immaterial insofar as the offence committed by the accused is concerned. The evidence of the victim girl is unequivocal in terms that the accused indulged in sexual intercourse with her. As per the definition of 'child' under Section 2(d) of POCSO Act and presumption under Section 29 and 30 of the said Act, there is no reason to suspend the sentence.

14. In the result, the criminal miscellaneous petition is dismissed.

(M.S.R.,J) (N.S.,J)
21.03.2025

Index: yes
Speaking order: yes
Neutral Citation: yes
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The Inspector of Police,
Panruti All Women Police Station,
Cuddalore District.
(Crime No.41/2021)



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and
N.SENTHILKUMAR, J.

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**~~Pre-delivery~~ order in
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