



CRL.M.P.No.2049 of 2024
in CRL.A.No.165 of 2024

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.06.2025

CORAM :

THE HONOURABLE MR. JUSTICE M.S. RAMESH

AND

THE HONOURABLE MR. JUSTICE V. LAKSHMINARAYANAN

CRL.M.P.No.2049 of 2024
in CRL.A.No.165 of 2024

Prabhu

... Petitioner

Vs.

The State rep. by
The Inspector of Police,
Kondalampatti Police Station,
Salem District.
(Crime No.138 of 2019)

... Respondent

Prayer: Criminal Miscellaneous Petition filed under Section 389 of Cr.P.C., seeking to suspend the sentence imposed in judgment dated 30.11.2022 made in Spl.S.C.No.253 of 2019 on the file of the learned Sessions Judge, Principal POCSO Court, Salem.

For Petitioner : Mr.D.Mario Johnson

For Respondent : Mr.A.Damodaran,
Additional Public Prosecutor



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ORDER

(Order of the Court was made by *M.S.RAMESH, J.*)

This is a case where the petitioner/accused is alleged to have committed aggressive penetrative sexual assault and was convicted and imposed with a fine of Rs.1,000/- in default of payment, to undergo 6 months rigorous imprisonment for the offence under Section 342 IPC; sentenced to undergo 5 years rigorous imprisonment for the offence under Section 506(ii) IPC; sentenced to undergo imprisonment for life along with a fine of Rs.5,000/- for the offence under Section 5(m) r/w. 6 of Protection of Children from Sexual Offences Act, 2012 (POCSO Act) by the learned Sessions Judge, Principal POCSO Court, Salem through her judgment dated 30.11.2022 passed in S.C.No.253 of 2019.

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



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3. Heard Mr.D.Mario Johnson, learned counsel for the petitioner and Mr.A.Damodaran, learned Additional Public Prosecutor appearing for the respondent/Police.

4. The learned counsel for the petitioner/accused would submit that for the alleged occurrence that had taken place before 7 years, the complaint was made only in the year 2019 and there was no evidence before the Trial Court to fix the culpability of the crime on the petitioner. He further submitted that the petitioner has been languishing in jail for the past 2½ years and apart from him, his wife and children have been infected with HIV and therefore, sought for a lenient view from this Court.

5. The learned Additional Public Prosecutor opposed the submissions of the learned counsel for the petitioner and stated that the age of the victim girl, during the occurrence, has been clearly established by the prosecution and it is for the petitioner to prove the fact that he had a culpable mental state in view of the presumption under Section 30 of the POCSO Act. He also submitted that pending the trial, the victim girl died.



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6. Among the oral evidences let in by the prosecution, P.W.9 is the Magistrate who had recorded the statement of the victim girl under Section 164 Cr.P.C. The Trial Court, while recording the guilt of the accused, had predominantly placed reliance on the statement of the victim girl made under Section 164 Cr.P.C. alone. Apart from such a statement, no other evidences have been relied upon for the purpose of fixing the culpability on the petitioner herein. Insofar as the evidences of P.W.1 and 4 to 7, who are the close relatives, they are all hearsay witnesses.

7. Thus, the recording of the guilt by the Trial Court, appears to be only on the basis of the statement of the victim girl given under Section 164 Cr.P.C., which by itself is a very weak piece of evidence, as held in various catena of the decisions by the Hon'ble Supreme Court.

8. The issue as to whether the petitioner can be acquitted from the charges can be adjudicated at a later stage. However, in view of the *prima facie* case made out by him, he may have a fair chance of success in the



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appeal. We also take into account that the petitioner is under incarceration for 2 ½ years and that the appeal may not be taken up in the near future for final disposal.

9. Accordingly, this Criminal Miscellaneous Petition stands **allowed**, and the sentence imposed on the petitioner/accused, is suspended on the following conditions:-

- (i) The petitioner shall execute a bond for a sum of Rs.25,000/-, 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 bonds 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 day, he



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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.

[M.S.R, J.]

[V.L.N, J.]

05.06.2025

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Note: Issue Order Copy on 10.06.2025.



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To

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



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and
V. LAKSHMINARAYANAN, J.

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