



Crl.M.P.(MD)No.2178 of 2025

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 03.04.2025

CORAM

THE HONOURABLE MR JUSTICE B.PUGALENDHI

Crl.M.P.(MD)No.2178 of 2025

in Crl.A.(MD)No.223 of 2025

Soundarajan,
S/o.Chinnaiah,
Anna Nagar Theru,
Alwanthulukan Patti,
Tirunelveli District.

Petitioner(s)

versus

State of Tamil Nadu through
The Inspector of Police,
Tirunelveli Rural Sub Division,
AWPS Ambasamudram Police Station,
Tirunelveli District.

Respondent(s)

For Petitioner(s):

Dr.R.Alagumani
Advocate

For Respondent(s):

Mr.P.Kottaichamy,
Government Advocate (Crl. Side)



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The petitioner is the sole accused in Spl.C.C.No.136 of 2019 on the file of the learned Sessions Judge, Special Court for POCSO Act Cases, Tirunelveli. After the trial, the Trial Court, by its Judgment dated 26.12.2024, found the petitioner guilty for the offence under Section 9(m) r/w 10 of POCSO Act and convicted and sentenced him to undergo five years rigorous imprisonment and to pay a fine of Rs.3,000/-, with the default sentence of six months simple imprisonment. Challenging the Judgment of conviction and sentence, the petitioner has preferred an appeal in Crl.A. (MD)No.223 of 2025 and the same was admitted by this Court on 20.02.2025. The petitioner has also moved this petition seeking to suspend the sentence imposed by the trial Court pending the appeal.

2. The case of the prosecution is that the petitioner has misbehaved with the victim child aged about 13 years.

3. The learned counsel appearing for the petitioner submits that at the time of occurrence, the petitioner was aged about 60 years and there was a dispute between the petitioner's family and the defacto complainant. Therefore, according to him, this case is a foisted one. The learned counsel, by referring the evidence of P.W.1 and P.W.2, submits that admittedly, the occurrence had taken place in the house of one Lakshmi, but, the said Lakshmi was not examined by the prosecution. Apart from



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that, at the time of occurrence, even according to the prosecution, the petitioner's wife, namely, Vijayakumari, was sitting near the place of occurrence and talking with one Renuka. But, the said Vijayakumari and Renuka were not examined by the prosecution. The learned counsel has also pointed out that the alleged occurrence was said to have taken place on 30.01.2018, but, the complaint was lodged only on 05.02.2018, i.e. after a period of 5 days. He further submits that the Doctor, who examined the victim child, has not noted down any injury on the victim child. Therefore, the petitioner is having certain arguable points in this appeal. The petitioner is in jail from the date of conviction, i.e. from 26.12.2024. Even during the trial, he was in jail for two months. Therefore, the learned counsel seeks to suspend the sentence imposed by the trial Court.

4. The learned Government Advocate (Crl. Side) submits that at the time of occurrence, the age of the victim child was 13 years. The petitioner, who is a neighbour, molested the victim child. Therefore, the prosecution was laid as against the petitioner. According to him, the prosecution has proved its case through P.W.1 to P.W.3 and other prosecution witnesses. Therefore, the grounds raised by the petitioner cannot be considered for grant of suspension of sentence.

5. This Court considered the rival submissions and perused the materials placed on record.



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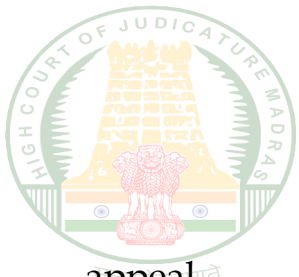
6. As per the statement of the victim child recorded under Section 164 of Cr.P.C. and the evidence of the victim child, the occurrence had taken place in the house of one Lakshmi. The petitioner's wife Vijayakumari was sitting near the place of occurrence and talking with one Renuka. But, the said Lakshmi, Vijayakumari and Renuka were not examined by the prosecution. The non-examination of the said Lakshmi, Vijayakumari and Renuka is a material defect, which needs to be considered and it can be considered only at the time of final hearing. However, the appeal could not be taken up for final hearing for want of time.

7. Considering the points raised by the petitioner, his period of incarceration and for the reason that the appeal could not be taken up immediately, this Court is inclined to allow this petition.

8. Accordingly, the substantive sentence of imprisonment alone is suspended pending disposal of the criminal appeal and the petitioner is ordered to be enlarged on bail on the following conditions:

(i) The petitioner shall execute a bond for Rs.25,000/- (Rupees Twenty Five Thousand only) with two sureties each for a like sum to the satisfaction of the learned Sessions Judge, Special Court for POCSO Act Cases, Tirunelveli.

(ii) The petitioner shall stay in Madurai and report before the Inspector of Police, Othakadai Police Station, Madurai, daily at 10.30 a.m. till the disposal of the



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appeal.

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(iii) The petitioner shall file an undertaking affidavit before the respondent

Police that he will not visit the village of the victim child and not disturb the victim child.

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Sub-Assistant Registrar ()
Madurai Bench of Madras High Court,
Madurai - 625 023.

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TO

1. The Judge, Special Court for POCSO Act Case, Tirunelveli.
2. The Superintendent,
Central Prison, Palayamkottai.
3. The Inspector of Police,
Tirunelveli Rural Sub Division,
AWPS Ambasamudram Police Station,
Tirunelveli District.
4. The Inspector of Police,
Othakadai Police Station, Madurai.
5. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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IN

CRL MP(MD) No.2178 of 2025

Date :03/04/2025

MK /SAR/ (03/04/2025) 6P/6C

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