

CrI.MP(MD)No.2960 of 2023

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 14.03.2025

CORAM:

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

**CrI.MP(MD)No.2960 of 2023
in
CrI.A(MD)No.136 of 2023**

Venkateswaran

Petitioner

Vs.

**The State through
The Inspector of Police,
All Women Police Station,
Sivagangai.
Cr.No.14/2017**

Respondent

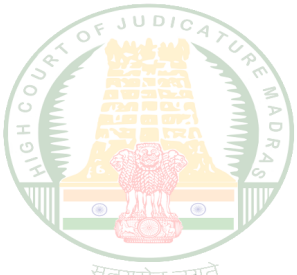
PRAYER: Petition filed under Section 389(1) CrPC to suspend the sentence imposed against the petitioner in Spl.SC.No.18 of 2018 dated 30.12.2022 passed by the Principal Special Court for Exclusive Trial of Cases under POCSO Act, Sivagangai and enlarge the petitioner on bail pending disposal of the appeal.

For Petitioner : Mr.G.Karuppasamy Pandian

**For Respondent : Mr.A.S.Abdul Kalam Azad
Government Advocate (CrI. Side)**

ORDER

The petitioner / accused was found guilty by the learned Judge, Principal



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Special Court for Exclusive Trial of Cases under POCSO Act, Sivagangai in
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Spl.SC.No.18 of 2018 and he was convicted and sentenced as follows:-

- to undergo imprisonment for two years and to pay a fine of Rs.1,000/-, i/d to undergo simple imprisonment for three months for the offence u/s.506(ii) IPC;
- to undergo rigorous imprisonment for three years and to pay a fine of Rs.5,000/-, i/d to undergo simple imprisonment for six months for the offence u/s.11(iii) r/w 12 of POCSO Act; and
- to undergo rigorous imprisonment for twenty years and to pay a fine of Rs.10,000/-, i/d to undergo simple imprisonment for one year for the offence u/s.5(l), 5(m) r/w 6 of POCSO Act.

2.As against the conviction and sentence, the petitioner has filed CrI.A(MD) No.136 of 2023. Pending the appeal, the petitioner has moved this application to suspend the sentence.

3.Learned Counsel for the petitioner submitted that there is no material that there was any penetrative sex. Even assuming without admitting that it is a case of sexual assault, the maximum punishment is three years and the petitioner is inside the prison from the date of conviction for the past two years.



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4.By referring to the evidence of the Doctor, learned Counsel for the petitioner contended that not even a injury was found in the victim and the Doctor has not noticed any contusions or abrasions in the victim. Therefore, he prayed for suspending the sentence.

5.Learned Government Advocate (Crl. Side) for the respondent State submitted that the victim, aged about nine years old then, was subjected to sexual harassment by the petitioner, aged about 22 years then. The victim child had not attained puberty. However, attempt was made for penetrative sex and it continued for some days. The victim was not subjected for medical examination immediately after the occurrence and therefore, the injuries were not visible on the victim. This, by itself, cannot be a ground to come to a conclusion that there was no penetrative sexual assault. In this regard, he has relied on the decision of the Hon'ble Supreme Court in *Ganesan v. Inspector of Police* [CDJ 2020 SC 772].

6.This Court considered the rival submissions made on either side and perused the materials placed on record. This Court has also perused the statement of the victim girl recorded u/s.164 CrPC.



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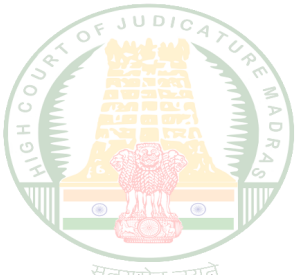
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7.The victim was aged about nine years then and was studying fourth standard.

The accused is the brother of the Teacher, where the victim studied tuition. The victim's father was in abroad and her mother was working as a Tailor. Taking advantage of this position, the accused appears to have sexually harassed the victim girl. A neighbor of the tuition centre noticed the manner in which the dress of the victim child was ruptured and informed the victim's mother and the Teacher. Only then, they came to know about the sexual assault committed by the accused on the victim.

8.Though the petitioner contends that there is no evidence for any penetrative sex, the evidence of PW1 discloses that an attempt was made for penetrative sex. Admittedly, the victim had not attained puberty and she was subjected to sexual assault. The Doctor, in his evidence, has stated that the hymen was not intact. The absence of any injury on the victim is not a material ground for consideration, as admittedly the victim was not subjected for the medical examination immediately after the occurrence.

9.For the foregoing reasons and with the available materials, this Court is not



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inclined to entertain this petition and suspend the sentence. Accordingly, this
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criminal miscellaneous petition stands dismissed.

Since this Court has dismissed this petition seeking suspension of sentence,
Registry is directed to prepare the typed set of papers and list the appeal for final
disposal.

sd/-
14/04/2025

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/04/2025
Sub-Assistant Registrar (C.S. I / II / III / IV)
Madurai Bench of Madras High Court,
Madurai - 625 023.

GK

TO

- 1 THE PRINCIPAL SPECIAL JUDGE
FOR EXCLUSIVE TRIAL OF CASES UNDER POCSO ACT,
SIVAGANGAI.
- 2 THE INSPECTOR OF POLICE
ALL WOMEN POLICE STATION, SIVAGANGAI.
- 3 THE SUPERINTENDENT
CENTRAL PRISON, MADURAI.
- 4 THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.



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ORDER
IN
CRL MP(MD) No.2960 of 2023
in
CrI.A(MD)No.136 of 2023
Date :14/04/2025

SS/SAR- /29/04/2025/ 6P/5C

Madurai Bench of Madras High Court is issuing certified copies in this format from 17/07/2023