

CRL MP(MD)No.2326 of 2025

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 07 .03.2025

CORAM:

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

CRL MP(MD)No.2326 of 2025

IN

CRL A(MD) No.267 of 2022

Nagarajan

... Petitioner

Vs

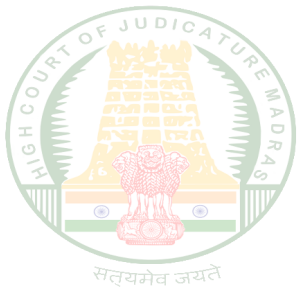
The State of Tamil Nadu through
the Inspector of Police,
All Women Police Station,
Thirupparankundram,
Madurai City.
(Crime No.9 of 2018)

... Respondent

Prayer: Petition filed under Section 389(1) of CrPC to suspend the sentence imposed by Principal Special Court Exclusive for Trial of Cases under POCSO Act, Madurai in Spl.SC.No.5 of 2019, dated 21.02.2022 and enlarge the petitioner on bail pending disposal of the criminal appeal.

For Petitioner : Mr.N.Anandha Padmanabhan
Senior Counsel for
Mr.P.R.Prithivraj

For Respondent : Mr.P.Kottaichamy,
Government Advocate (Crl Side)



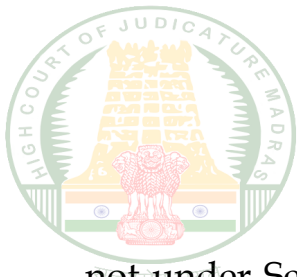
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ORDER

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The petitioner / accused in SplSC.No.5 of 2019 on the file of the Principal Special Court Exclusive for Trial of Cases under POCSO Act, Madurai was found guilty, convicted and sentenced to undergo 20 years rigorous imprisonment with a fine of Rs.5,000/-, in default, to undergo 1 year rigorous imprisonment for the offence under Sections 5(m), 5(l), 5(i) and Section 6 of the POCSO Act. As against the conviction, the petitioner has filed an appeal in CrlA(MD)No.267 of 2022 and it has been admitted by this Court. Along with the appeal, the petitioner has earlier filed a petition in CRL MP(MD)No.5857 of 2022 to suspend the sentence and it was dismissed by order dated 28.06.2022. This is the second petition filed to suspend the sentence.

2.The learned Senior counsel for the petitioner submits that even as per the statement of the victim girl recorded under Section 164(3) CrPC, it is not a case of penetrative sex. This was corroborated by the evidence of the Doctor PW10 that there is no injury on the victim girl. PW3 in her cross examination admitted that she was dispossessed from the house of the accused, three months prior to the occurrence, she only informed the mother (PW1) of the victim girl and PW1 is a hearsay witness. The learned Senior Counsel further submits that even assuming the prosecution case is admitted, it would make out an offence under Sections 7 and 9 of the POCSO Act and



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not under Section 5 of the Act. He also submits that the petitioner is in jail from the date of conviction, ie., from 21.02.2022. The petitioner has undergone a surgery with permission of this Court. Therefore, he prayed that the sentence imposed on the petitioner be suspended pending the criminal appeal.

3.The learned Government Advocate (Crl Side) submits that this is the second petition filed to suspend the sentence. The first petition was considered by this Court in detail and it was dismissed 28.02.2022. There is no change in circumstance from the dismissal of the earlier petition. Therefore, he objects to suspend the sentence pending the appeal.

4.This Court considered the rival submissions made and perused the material placed on record.

5.The grounds raised by the petitioner herein had already been advanced by the petitioner in the earlier petition to suspend the sentence. This Court perused the evidence of PW2 and PW3 and the statement recorded under Section 164 CrPC. The evidence of the victim girl discloses the commission of offence, which has been corroborated by the evidence of PW3. Apart from PW3, the prosecution has established its case through independent witnesses. There is no change in circumstance from the dismissal of the earlier petition. Entertaining this petition would amount to reviewing the earlier order passed by this Court. Therefore, this



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Court is not inclined to entertain this petition. Accordingly, this petition is dismissed.

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Since the petition is dismissed, the Registry is directed to list the main criminal appeal for final hearing after two weeks.

sd/-
07/03/2025

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/03/2025
Sub-Assistant Registrar
(C.S. I / II / III / IV)
Madurai Bench of Madras High Court,
Madurai - 625 023.

DSK

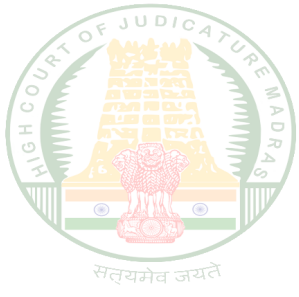
TO

1 THE SESSIONS JUDGE,
PRINCIPAL SPECIAL COURT FOR EXCLUSIVE TRIAL
OF CASES UNDER THE POCSO ACT, 2012,
MADURAI.

2 THE SUPERINTENDENT,
CENTRAL PRISON, MADURAI.

3 THE INSPECTOR OF POLICE,
ALL WOMEN POLICE STATION,
THIRUPPARANKUNDRAM,
MADURAI CITY.

4 THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT,
MADURAI.



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ORDER

IN

CRL MP(MD)No.2326 of 2025

IN

CRL A(MD) No.267 of 2022

Date :07/03/2025

SA/SAR. /24.03.2025/5P/5C

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