



Crl.MP(MD) No.3355 of 2025

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
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DATED : 09.04.2025

CORAM:

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

Crl.MP(MD) No.3355 of 2025
in Crl.A(MD) No.161 of 2024

Murugan

... Petitioner

Vs.

State of Tamil Nadu
Represented by
the Inspector of Police,
Keeriparai Police Station,
Kanyakumari District.
(Crime No.61 of 2024)

... Respondent

Prayer: Petition filed under Section 389 (1) of BNSS to suspend the execution of sentence by granting bail in Spl.SC.No.2 of 2014 dated 21.09.2023 on the file of the Special Court for POCSO Act Cases, Nagercoil till the disposal of the criminal appeal.

For Petitioner : Mr.V.Kathirvelu
Senior Counsel,
for Mr.K.Prabhu

For Respondent : Mr.AS.Abul Kalam Azad
Government Advocate (Crl Side)

ORDER

The petitioner is the sole accused and he was tried in Spl.SC.No.2 of 2024 before Special Court for Exclusive Trial of Cases under POCSO Act, Nagercoil, convicted and sentenced to undergo 23 years rigorous imprisonment and to pay a



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fine of Rs.5,000/-, in default to undergo 1 year rigorous imprisonment for the offence under Sections 5(1) r/w Section 6 of the POCSO Act and to undergo 7 years rigorous imprisonment with a fine of Rs.5,000/-, in default to undergo 1 year rigorous imprisonment. As against the conviction and sentence imposed by the trial Court, the petitioner has filed an appeal in Crl A(MD)No.161 of 2024 and it has been admitted by this Court. Along with the appeal he has earlier filed Crl MP(MD) No.2417 of 2024 and CrIMP(MD)No.10712 of 2024 to suspend the sentence and they were dismissed by this Court. Now this is the 3rd application filed to suspend the sentence imposed on him by the trial court.

2.The learned senior counsel appearing for the petitioner submits that the age of the victim girl was 18 years at the time of occurrence. According to him there are three certificates produced for the age of the victim. As per the school certificate the date of birth of the victim girl is 11.01.1996 and that was also marked through Ex.D1. However without considering the school certificate the trial Court has erroneously considered Ex.P4 birth certificate. The learned Senior Counsel has also relied on the evidence of PW2 the victim that she herself has admitted her date of birth as 11.01.1996 only and she was 18 years old at the time of occurrence. However the case was proceeded treating the age of the victim as 17 years and the trial Court has erroneously convicted the petitioner under the POCSO Act. The learned Senior



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Counsel has also submitted that PW2 victim is living with the accused and she has also delivered a child. The petitioner is in jail from the date of conviction ie., from 21.09.2023 and by considering the period of incarceration and the subsequent developments, the sentence imposed on the petitioner be suspended.

3.The learned Government Advocate appearing for the respondent submits that the birth certificate of the victim was produced and marked as Ex.P4 and as per the birth certificate the age of the victim is 23.02.1997 and on the date of occurrence she was aged about 17 years and 2 months. He has also relied on ExP.21 the SSLC mark statement and Higher Secondary mark statement and submits that as per the school records the date of birth of the victim girl is only 23.02.1997 and therefore, the prosecution has proved the case beyond reasonable doubt that the date of birth of the victim girl is 23.02.1997. He has also referred to the Juvenile Justice (Care and Protection of Children) Act and submits that to determine the age of the victim, matriculation or equivalent certificate of the concerned person is the highest rated option. In this case according to him, as per the school certificates the date of birth of the victim is 23.02.1997. That apart the birth certificate also denotes the same. Therefore, the age of the victim cannot be decided based on Ex.D1. He also pointed out that the victim has stated that she was below 18 years in the chief examination, however in the cross examination which was done after a long time she has changed



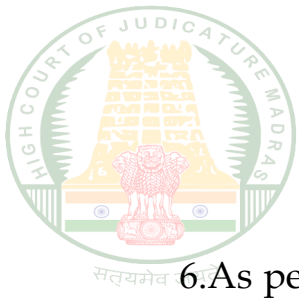
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her version and therefore, on this changed version, it cannot be presumed that the victim was aged 18 years at the time of occurrence. This is the third application filed by the petitioner. The first application was dismissed on technical grounds and the second application was dismissed after considering the points raised by the petitioner.

4.This court considered the rival submissions and perused the materials placed on record.

5.The petitioner claims that the victim at the time of occurrence was above 18 years and the prosecution claims that the victim was 17 years at the time of occurrence. Perusal of records show that Ex.P20 is the Education Certificate, Ex.P.21 is 10th mark sheet and the Higher Secondary Course Certificate and Ex.P.22 is the Transfer Certificate of the Victim. In all these certificates the date of birth of the victim is mentioned as 23.02.1997. Further Ex.P4 birth certificate of the victim also shows the same date. The petitioner has relied on Ex.D1, copy of the register of admission and withdrawals of a school, as per which the date of birth of the victim is 11.01.1996. Section 94 of Juvenile Justice (Care and Protection of Children) Act 2015 prescribes that to determine the age, the matriculation or equivalent certificate from the concerned examination Board has to be considered and only in the absence of such certificates, the other certificates have to be considered.



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6.As per the above provision, the matriculation or equivalent certificate has to be taken into consideration for determining the date of birth or age. Accordingly as per Ex.P20 the education certificate, Ex.P.21 10th mark sheet and the Higher Secondary Course Certificate the date of birth of the victim is 23.02.1997. The trial Court has considered all these documents to determine the age of the victim in this case. The grounds raised by the petitioner in this regard shall be considered in the appeal, however the appeal could not be taken up for final hearing for want of time.

7.Further the petitioner is in the relationship of father to the victim child. The victim is a fatherless girl and her mother was a coolie worker. The petitioner taking advantage of his position taken her to Kerala under the guise of providing treatment and committed the offence. The evidence of PW2 shows the manner of the offence.

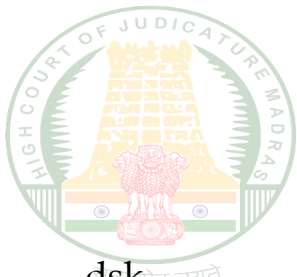
8.In view of the above discussion, this Court is not inclined to entertain this petition and accordingly, this petition is dismissed.

9.Since this petition is dismissed and the typed set of papers is ready, Registry is directed to list the appeal for final hearing during 2nd week of June 2025

sd/-
09/04/2025

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/05/2025
Sub-Assistant Registrar (C.S.-I/ II /III/ IV)
Madurai Bench of Madras High Court,
Madurai - 625 023.



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- 1 THE SPECIAL JUDGE, FOR POCSO CASES, NAGERCOIL.
- 2 THE SUPERINTENDENT, CENTRAL PRISON, PALAYAMKOTTAI.
- 3 THE INSPECTOR OF POLICE, KEERIPARAI POLICE STATION,
KANYAKUMARI DISTRICT.
- 4 THE ADDITIONAL PUBLIC PROSECUTOR MADURAI BENCH OF MADRAS
HIGH COURT, MADURAI.

copy to
THE SECTION OFFICER, CRIMINAL SECTION, MADURAI BENCH OF MADRAS
HIGH COURT, MADURAI.

+1 CC to M/s.K.PRABHU, Advocate (SR-4172[I] dated 09/04/2025)

ORDER
IN
CRL MP(MD) No.3355 of 2025
Date :09/04/2025

NBF/SAR/02.05.2025 6P/7C

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