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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 14.03.2025

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THE HONOURABLE MR JUSTICE B.PUGALENDHI

CrI.M.P.(MD)No.6862 of 2024

in CrI.A.(MD)No.576 of 2024

Kumar,
S/o.Mannar Thevar,
Sannanagkovil Parai,
Puliyamarathu Set,
Kodaikanal Road,
Palani.

Petitioner(s)

versus

The State rep. by the
Inspector of Police,
All Women Police Station,
Palani,
Dindigul District.

Respondent(s)

For Petitioner(s):

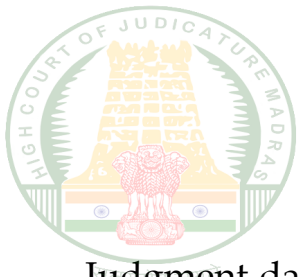
Mr.M.Jerin Mathew
Advocate
(Legal Aid Counsel)

For Respondent(s):

Mr.A.S.Abul Kalam Azad
Government Advocate

ORDER

The petitioner is the sole accused in Spl.S.C.No.178 of 2023 on the file of the Special Court (POSCO Cases), Dindigul. After the trial, the trial Court, by its



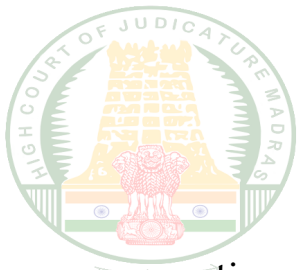
Judgment dated 04.08.2023, found the petitioner guilty for the offence under Sections 450 and 506(i) IPC and Section 6 of POCSO Act and convicted and sentenced him as under:

Sl. No.	Section of Law	Sentence of Imprisonment and fine
1.	u/s. 450 IPC	To undergo three years rigorous imprisonment and to pay a fine of Rs.500/- and in default, to undergo six months simple imprisonment.
2.	u/s. 506(1) IPC	To undergo six months rigorous imprisonment
3.	u/s.6 of POCSO Act	To undergo 20 years rigorous imprisonment and to pay a fine of Rs.2,000/- and in default, to undergo one year simple imprisonment.

Challenging the Judgment of conviction and sentence, the petitioner has preferred an appeal in CrI.A.(MD)No.576 of 2024 and the same was admitted by this Court on 09.07.2024. The petitioner has also moved this petition to suspend the sentence imposed on him by the trial Court.

2. The case of the prosecution is that on 16.09.2022, the petitioner had sexually assaulted the victim child, who was aged about 9 years at the time of occurrence.

3. The learned counsel appearing for the petitioner submits that the case of the



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prosecution rested on the evidence of P.W.1 and P.W.2, the mother and victim child respectively. The alleged date of occurrence was on 16.09.2022, but, the FIR came to be registered by the respondent Police belatedly after two days, i.e. on 18.09.2022. He further submits that P.W.6-Doctor had deposed that there was no external injury found on the victim child. Therefore, the allegation of sexual assault has not been proved by the prosecution beyond all reasonable doubt. He further submits that the petitioner is in jail from the date of conviction, i.e. from 04.08.2023 and even during the trial, the petitioner was in jail from 18.09.2022 to 04.08.2023. Therefore, he seeks for suspending the sentence imposed on the petitioner.

4. The learned Government Advocate submits that the age of the victim child was 9 years at the time of occurrence. The petitioner, who was aged about 65 years, was residing adjacent to the house of the victim child. Taking advantage that there was no one in the house of the victim child, the petitioner/accused entered into house of the victim child, locked the door and forcibly had penetrative sex with the victim child. The victim child could not bear the stomach pain and she was weeping all along, which was noticed by the neighbours and the same was informed to the mother of the victim child. After two days, the complaint was lodged. He further submits that the Doctor has also noted that hymen was not intact. Therefore, he strongly opposed to grant suspension of sentence.



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5. This Court perused the statement of the victim child recorded under Section 164 Cr.P.C and also the evidence of the victim child.

6. Considering the nature of offence and also considering the available materials as against the petitioner, this Court is not inclined to suspend the sentence imposed on the petitioner by the trial Court. Accordingly, this Criminal Miscellaneous Petition is dismissed.

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

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TO

- 1 THE JUDGE, SPECIAL COURT (POCSO CASES), DINDIGUL.
- 2 THE SUPERINTENDENT, CENTRAL PRISON, MADURAI.
- 3 THE INSPECTOR OF POLICE
ALL WOMEN POLICE STATION, PALANI, DINDIGUL DISTRICT.
- 4 THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

ORDER
IN
CRL MP(MD) No.6862 of 2024
Date :14/03/2025



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NBF/GSV/ SAR/ (21/03/2025) 5P/5C

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