



CRL MP(MD)No.11101 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Dated: 27.02.2025

CORAM:

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

**CRL MP(MD)No.11101 of 2023
in CRL A(MD)No.641 of 2023**

R.Chellapandi

... Petitioner

Vs

**The State represented by
All Women Police Station,
Aruppukottai
Virudhunagar District.
[Crime No.12 of 2022]**

... Respondent

Prayer: Petition filed under Section 389(i) of CrPC to suspend sentence of imprisonment imposed by the Special Court for Exclusive Trial of Cases under POCSO Act Virudhunagar at Srivilliputhur in SplSC.No.109 of 2022 by judgment dated 13.02.2023 and enlarge the petitioner on bail pending disposal of the criminal appeal.

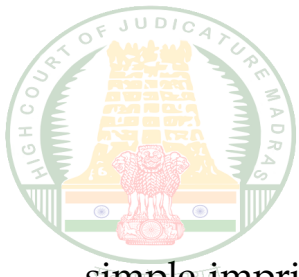
For Petitioner : Mr.R.Prakash

For Respondent : Mr.P.Kottaichamy,

Government Advocate (Crl Side)

ORDER

The petitioner / sole accused in SplSC.No.25 of 2019 on the file of Special Court for Exclusive Trial of Cases under the POCSO Act Virudhunagar at Srivilliputhur was found guilty, convicted and sentenced to undergo 10 years rigorous imprisonment with a fine of Rs.10,000/-, in default, to undergo 1 year



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simple imprisonment for the offence under Section 5(1) r/w 6 of POCSO Act and sentenced to undergo 5 years rigorous imprisonment with a fine of Rs.5,000/-, in default, to undergo 1 year simple imprisonment for the offence under Section 450 of IPC (3 counts) for each count. As against the conviction, the petitioner has filed an appeal in CrlA(MD)No.19 of 2024 and it has been admitted by this Court. Along with the appeal, the petitioner has filed this petition to suspend the sentence.

2.When this petition is taken up for hearing, the learned Counsel for the petitioner submits that he has handed over the papers to the petitioner and a new counsel Mr.R.Prakash has entered appearance.

3.The learned Counsel for the petitioner submits that according to the prosecution the time of alleged occurrence is on 13.06.2022 at about 3.00pm but FIR was registered only on 14.06.2022 at about 4.30 pm. Though the police station is available within 5 kms, there is delay in lodging the complaint. Further the FIR has reached the Court concerned only on 15.06.2022 at 10.30am. These delays have not been explained properly by the prosecution witnesses. He further submits that there is no eye witness to the incident. The conduct of the PW2 victim child at the time of occurrence and after the occurrence is doubtful. Therefore her evidence cannot be relied. The trial Court has failed to take into consideration all these aspects. The petitioner is in jail for the past two years.



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4.The learned Government Advocate (Crl Side) appearing for the respondent submits that the victim girl was 10 years old. She was depending on her elder sister, since they lost their parents. She was studying 6th standard by staying in hostel. During vacation she visited her sister's house. The petitioner is the husband of the victim's sister. The petitioner taking advantage of the status of the victim has committed the offence. He has referred to the statement recorded under Section 164 CrPC and produced a copy of the same.

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

6.Considering the statement recorded under Section 164 of CrPC this Court is not inclined to entertain this petition on the grounds raised by the petitioner, which can be appreciated during the final hearing of the appeal. Accordingly this petition is dismissed.

7.Perusal of the records shows that the typed set of papers is made ready. However, the statement recorded under Section 164 CrPC from the victim child is not enclosed. The statement under Section 164 CrPC was recorded by the learned Judicial Magistrate, Aruppukottai on 26.07.2022. However this initial document was not been placed before the trial Court and marked as an exhibit. Therefore it is not available in the typed set of papers. Therefore, the learned Government Advocate is



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directed to get instructions from the investigation officer concerned and the Public
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Prosecutor, who conducted the case in SplSC.No.109 of 2022 with regard to the non-
marking of the statement of the victim child dated 26.07.2022, during the trial.

Post this matter after three weeks.

sd/-
27/02/2025

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

DSK
TO

- 1 THE SPECIAL JUDGE FOR EXCLUSIVE TRIAL OF CASES UNDER
PROTECTION OF CHILDREN FROM THE SEXUAL OFFENCES ACT, 2012,
VIRUDHUNAGAR DISTRICT AT SRIVILLIPUTHUR.
- 2 THE SUPERINTENDENT,
CENTRAL PRISON, MADURAI.
- 3 THE STATE REPRESENTED BY
ALL WOMEN POLICE STATION,
ARUPPUKOTTAI
VIRUDHUNAGAR DISTRICT.
- 4 THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT,
MADURAI.



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ORDER
IN
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in CRL A(MD)No.641 of 2023
Date :27/02/2025

SA/GSV/SAR. /01.04.2025/5P/5C

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