



CRL MP(MD). No.9199 of 2025

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated : 21/07/2025

CORAM

THE HONOURABLE DR. JUSTICE R.N.MANJULA

CRL MP(MD). No.9199 of 2025
in CrI.A(MD) No.167 of 2024

Sahul Hameed

... Petitioner

Vs

The State of Tamilnadu,
Rep. by its the Inspector of Police,
All Women Police Station,
Sivagangai District.
(Crime No.18/2019).

... Respondent

PRAYER :-

This Criminal Miscellaneous Petition is filed to suspend the sentence and grant bail to the Appellant / Accused prefer this instant Memorandum of Appeal against the Judgment dated 03.05.2023 in Spl.S.C.No.01 of 2020 on the file of the Principal Special Court for Exclusive Trial of cases under the POCSO Act, 2012, Sivagangai.

For Petitioner : Mr.T.Lajapathy Roy
Senior Counsel

For Respondent : Mr.A.Albert James
Government Advocate (CrI.Side)



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ORDER

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The Criminal Miscellaneous Petition is filed for suspension of sentence imposed by the learned Sessions Judge, Principal Special Court for Exclusive Trial of cases under the POCSO Act, 2012, Sivagangai, dated 03.05.2023 made in Spl.S.C.No.01 of 2020.

2.The appellant is the sole accused who has been charged for the offences under sections 9(1) and 10 of POCSO Act. However, he has been convicted for the offence under section 6 of POCSO Act and sentenced to undergo rigorous imprisonment for a period of 20 years and to pay a fine of Rs.5,000/- in default to undergo simple imprisonment for a period of 6 months. Aggrieved over that, the appellant has preferred this appeal.

3.The learned senior counsel for the appellant submitted that the charges have been altered only at the time of pronouncing Judgment from 10 of POCSO Act to 6 of POCSO Act, taking into consideration of the statement of the victim given before the Court.

4.He further submitted that the victim boy/PW1 has stated only about



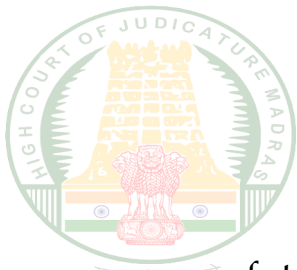
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the sexual assault, not about the penetrative sexual assault in his complaint as well as 164 Cr.P.C statement. However, during evidence alone, he has stated about the penetrative sexual assault.

5.Only in the evidence adduced by PW1 before the Court, he has stated that the accused had committed anus penetrative sexual assault. Though the Court could have altered the charges from Section 9 of POCSO Act to Section 6 of POCSO Act, based on the evidence given by PW1, the appellant ought to have given with opportunity to cross-examine PW1 based on the altered charge and to allow to let in any other evidence or to cross-examine the rest of the evidence also.

6.If a major offence is framed and the Court thinks it fit to convict the accused for a lesser offence, then there may not be any prejudice caused to the accused. When the charge is entirely changed from sexual assault to penetrative sexual assault, it may not be possible for the accused to defend his case otherwise, from the charge framed under a different provision.

7.The appeal has already been admitted as the appellant has made some grounds for detailed hearing. However, there is no possibility to hear the appeal in



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any near future. I feel during such time, it is appropriate to suspend the sentence imposed on the petitioner.

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8. Accordingly, the substantive part of the sentence alone is suspended till the disposal of the appeal on the following conditions:

- i. that the petitioner shall execute a bond for a sum of Rs.25,000/- (Rupees Twenty Five Thousand only) with two sureties each for a like sum to the satisfaction of the learned Sessions Judge, Principal Special Court for Exclusive Trial of cases under the POCSO Act, 2012, Sivagangai;
- ii. that the petitioner shall appear before the trial Court on all working days at 10.30a.m., till the disposal of the appeal.

9. Accordingly, this Criminal Miscellaneous Petition is allowed.

sd/-

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

PNM

TO

1. The Sessions Judge,
Principal Special Court for Exclusive Trial of cases
under the POCSO Act, 2012, Sivagangai.



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2.The Superintendent
Central Prison, Trichy.

3.The Inspector of Police,
All Women Police Station,
Sivagangai District.

4.The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.

+1 CC to M/s.M/S.ROY AND ROY ASSOCIATES, Advocate (SR-7870[I] dated
22/07/2025)

+1 CC to M/s.M/S.ROY AND ROY ASSOCIATES, Advocate (SR-7874[I] dated
22/07/2025)

ORDER
IN
CRL MP(MD) No.9199 of 2025
IN
CRL A(MD) No.167 of 2024
Date :21/07/2025

HPS/28.07.2025 /5P/7C

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