



CRL MP(MD) NO. 9704 of 2024

WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 03-03-2025

CORAM

THE HONOURABLE MR JUSTICE B.PUGALENDHI

CRL MP(MD) NO. 9704 of 2024

in

CRL A(MD)No.755 of 2024

Ganapathy
S/o.Sivasamy, Pudu Colony,
Vazkkai, Papanasam Taluk, Thanjavur District.
Now Confined at Central Prison Trichy.

...Petitioner/ Appellant/
Sole Accused

Vs

The Inspector of Police
Kabisthalam Police Station,
Thanjavur. Cr No.109/2014.

...Respondent/Respondent/
Complainant

Prayer: Petition filed under Section 430 of BNSS to suspend the sentence imposed by the Principal Special Court for Exclusive Trial of Cases under POCSO Act, Thanjavur in SplSC.No.108 of 2019 dated 08.03.2023 and release the petitioner on bail pending disposal of the criminal appeal.

For Petitioner : Mr.G.Bhagavath Singh, Advocate

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

ORDER

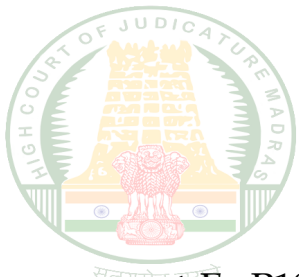
The petitioner / accused in SplSC.No.108 of 2019 on the file of the Principal



CRL MP(MD) NO. 9704 of 2024

Special Court for Exclusive Trial of Cases under POCSO Act, Thanjavur was found guilty, convicted and sentenced to undergo 10 years rigorous imprisonment with a fine of Rs.25,000/-, in default, to undergo 1 year rigorous imprisonment for the offence under Section 4 of POCSO Act, sentenced to undergo 5 years rigorous imprisonment with a fine of Rs.5,000/-, in default, to undergo 6 months rigorous imprisonment for the offence under Section 366 of IPC, sentenced to undergo 2 years rigorous imprisonment with a fine of Rs.5,000/-, in default, to undergo 3 months rigorous imprisonment for the offence under Section 506(1) IPC. As against the conviction, the petitioner has filed an appeal in CrlA(MD)No.215 of 2025 and it has been admitted by this Court. Along with the appeal, the petitioner has filed this miscellaneous petition to suspend the sentence pending the appeal.

2.The learned counsel for the petitioner submits that the Doctors PW18 and PW24 who examined the victim and the accused deposed that there is no injury either on the victim or on the accused. The Doctor PW18 who has examined the victim immediately after registration of the FIR on the very next day of the alleged occurrence deposed that there was no sign of recent sexual intercourse or assault. Further the medical report reveals that there was no injury on the private part of the victim girl. He further submits that the evidence of PW22, forensic expert and his

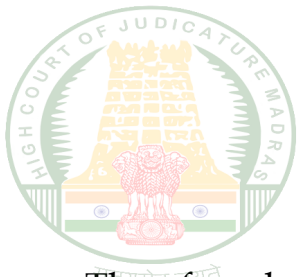


CRL MP(MD) NO. 9704 of 2024

report Ex.P10 reveal that the swab test and the analysis of the dress materials of the accused and the victim did not detect any semen traces. The statement of the victim girl recorded under Section 164 CrPC and her evidence before the court are entirely different with regard the alleged offence by the accused and the persons who had accompanied her at the time of occurrence. PW6, PW7, the grandparents and PW9 and PW10 have deposed that on the date of occurrence itself they went to the police station and lodged a complaint. But the case of the prosecution is since there was a festival on the date of occurrence, they lodged the complaint on the next day. Therefore it is clear that the earliest complaint has been suppressed. PW1 to PW5 have turned hostile. He further submits that the petitioner was 19 years at the time of occurrence and he is in jail from 28.03.2023. The trial Court has failed to consider all these facts. Therefore, the learned Counsel prayed that the sentence be suspended pending the appeal.

3.The learned Government Advocate (Crl Side) submits that the victim girl was 16 years at the time of occurrence and the petitioner had forcefully taken the victim to a coconut grove and committed the offence. Though PW1 to PW5 had turned hostile, trial Court by taking into account of the presumption under the POCSO Act, has rightly found the petitioner guilty and imposed conviction on the petitioner.

<https://www.mhc.tn.gov.in/judis>



CRL MP(MD) NO. 9704 of 2024

Therefore, he objects to suspend the sentence pending the appeal.

WEB COPY

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

5.Considering the period of incarceration of the petitioner, PW1 to PW5 had turned hostile and that the petitioner is having some arguable points in the main appeal and the appeal could not be taken up for final disposal immediately, this Court is inclined to suspend the sentence pending the criminal appeal.

6. Accordingly this petition is allowed and the substantive sentence of imprisonment alone is suspended pending disposal of the criminal appeal and the petitioner is ordered to be enlarged on bail on executing a bond for Rs.25,000/- (Rupees Twenty Five Thousand only) with two sureties each for a like sum to the satisfaction of the Principal Special Court for Exclusive Trial of Cases under POCSO Act, Thanjavur and the petitioner shall stay at Tuiticorin and report before Tuiticorin Central Police Station daily at 10.30 am.

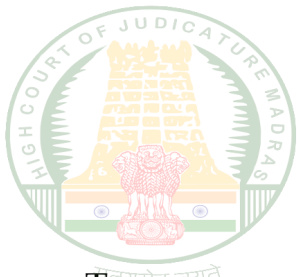
sd/-
03/03/2025

/ TRUE COPY /

04/03/2025
Sub-Assistant Registrar (AE)
Madurai Bench of Madras High Court,
Madurai - 625 023.

DSK

<https://www.mhc.tn.gov.in/judis>



CRL MP(MD) NO. 9704 of 2024

To
WEB COPY

1. THE PRINCIPAL SPECIAL JUDGE FOR EXCLUSIVE TRIAL OF CASES UNDER
POCSO ACT, THANJAVUR
 2. THE INSPECTOR OF POLICE
KABISTHALAM POLICE STATION,
THANJAVUR.
 3. THE INSPECTOR OF POLICE,
THOOTHUKUDI CENTRAL POLICE STATION, THOOTHUKUDI.
 4. THE SUPERINTENDENT, CENTRAL PRISON, TIRUCHIRAPPALLI.
 5. THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI
- +1 CC to M/s.G.BHAGAVATH SINGH, Advocate (SR-2322[I] dated 03/03/2025)

ORDER
IN
CRL MP(MD) NO. 9704 of 2024
in
CRL A(MD)No.755 of 2024
Date :03/03/2025

RK(04/03/2025) 5P / 7C

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