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CrIMP(MD)No.12
in CrLA(MD)No.429 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 13.10.2025

Pronounced on : 25.10.2025

CORAM

THE HONOURABLE MR JUSTICE K.MURALI SHANKAR

CRL MP(MD) No.12327 of 2025

in

CRL A(MD) No.429 of 2024

Balakrishnan

**Petitioner/
Appellant**

Vs

1.The State of Tamil Nadu represented by
The Inspector of Police,
Madurai Town All Women Police Station,
Madurai City.
(Crime No.13 of 2021)

2.Barakkath Nisha
*(R2 is impleaded as per the order of this Court dated
07.10.2025 in CrI.M.P.(MD)No.13073 of 2025 in
CrI.A.(MD)No.429 of 2024)*

Respondents

Prayer in CRL MP(MD).12327 of 2025 : This Criminal Miscellaneous Petition filed under Section 430(1) B.N.S.S. praying to suspend the sentence imposed on the petitioner by the order of the Principal Special Court for Exclusive Trial of cases under



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POCSO Act, Madurai in Spl.S.C.No.198 of 2021 dated 12.04.2024 pending disposal of the above criminal appeal in CrL.A.(MD)No.429 of 2024.

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Prayer in CRL A(MD).429 of 2024 : This Criminal Appeal filed under Section 374(2) Cr.P.C. praying to call for the records in Spl.S.C.No.198 of 2021 dated 12.04.2024 passed by the learned Principal Special Court for Exclusive Trial of cases under POCSO Act, Madurai and to set aside the same.

For Petitioner: Mr.A.B.Jeeva

For Respondents: Mr.B.Thanga Aravindh
Government Advocate (Criminal Side) for R1

ORDER

This Criminal Miscellaneous Petition has been filed to suspend the sentence of imprisonment imposed on the petitioner / sole accused by the learned Sessions Judge, Principal Special Court for Exclusive Trial of cases under POCSO Act, Madurai, in Spl.S.C.No.198 of 2021 dated 12.04.2024, till the disposal of the appeal.

2. The case of the prosecution is that on 08.09.2021 at about 07.00 p.m., when the second respondent / defacto complainant / P.W.1 and her minor daughter / victim girl / P.W.2 in their house, P.W.1 instructed P.W.2 to receive the clothes brought by iron man and gone for taking bath, that P.W.1, after coming out from bathroom, noticed that P.W.2 was not available in the house and that their neighbor informed P.W.1 that P.W.2 went to terrace and at that time, P.W.2 came down from the terrace and on enquiry, P.W.2 informed that the petitioner / sole accused, who is residing in upstairs, had taken P.W.2



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to terrace, pinched in her stomach and thereafter, the petitioner opened his pant zip and instructed P.W.2 to touch his private parts and P.W.2 pulled the hands of the accused and ran away from that place and on the basis of the complaint lodged by P.W.1, FIR came to be registered in Crime No.13 of 2021 on 09.09.2021 against the petitioner for the offences under Sections 7 and 8 of the Protection of Children from Sexual Offences (hereinafter referred as 'POCSO') Act, 2012. The first respondent police, after completing the investigation, laid the final report and the case was taken on file in Spl.S.C.No.198 of 2021 and the same was pending on the file of the Principal Special Court for Exclusive Trial of cases under POCSO Act, Madurai.

3. During trial, the prosecution examined 11 witnesses as P.W.1 to P.W.11 and exhibited 14 documents as Ex.P.1 to Ex.P.14. The defence adduced neither oral nor documentary evidence.

4. The learned trial Judge, upon considering the evidence both oral and documentary and on hearing the arguments of both the sides, passed the impugned judgment dated 12.04.2024 convicting the petitioner for the offence under Section 9(m) r/w 10 of the POCSO Act and sentenced him to undergo rigorous imprisonment for a period of five years and to pay a fine of Rs.25,000/-, in default to undergo simple



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imprisonment for further period of one year. Aggrieved by the impugned judgment of conviction and sentence, the accused has preferred the present Criminal Appeal along with the above miscellaneous petition for suspension of sentence.

5. Heard the learned counsel appearing for the petitioner and the learned Government Advocate (Criminal Side) appearing for the first respondent police.

6. The learned counsel appearing for the petitioner would submit that the victim girl, in her statement under Section 164 Cr.P.C., did not whisper anything even as to the factum of bad touch, that though the prosecution has alleged that the petitioner asked the victim girl to touch his private parts, neither the victim girl nor any of the witnesses deposed that the victim girl has touched the petitioner's private parts by any force but on the other hand, the victim girl gave evidence that she ran away from the place of occurrence by raising hue and cry and did not touch his private parts and that therefore, the learned trial Judge has failed to consider that the ingredients to constitute the offence of sexual assault is not made out.

7. The learned counsel appearing for the petitioner would further submit that the trial Court failed to see that when the foundational facts are not established, the



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presumption clause cannot be made applicable and that though the victim girl was shown to be in the custody of one Sams, the prosecution has not chosen to examine the said lady, which creates doubt over the prosecution case.

8. The learned Government Advocate (Criminal Side) appearing for the first respondent police would submit that the victim girl was aged about 5 years at the time of occurrence, that the petitioner had committed aggravated sexual assault against the victim girl, that the victim girl, in her evidence before the trial Court, has narrated about the occurrence and the same came to be corroborated by her mother, P.W.1 and that the learned trial Judge, considering the evidence available on record, has rightly convicted the petitioner.

9. No doubt, as rightly pointed out by the learned counsel appearing for the petitioner, the victim girl, in her 164 Cr.P.C. statement, has not stated anything about the instructions of the petitioner to the victim girl to touch his private parts but the victim girl has stated that the petitioner gagged her mouth and dragged her upstairs and asked her to touch front and back and pressed her stomach. As rightly pointed out by the learned Government Advocate (Criminal Side), the victim girl, in her evidence before the trial Court, would depose that the petitioner dragged her to upstairs and then at the



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upstairs, he unzipped his pants and asked her to touch his private parts. Though there is some variation between the statement of the victim girl under Section 164 Cr.P.C. and her evidence before the trial Court, as rightly contended by the learned Government Advocate (Criminal Side), the learned trial Judge, by observing that the victim girl's evidence was corroborated by her statement recorded under Section 164 Cr.P.C. and also corroborated by the evidence of P.W.1-mother, P.W.3-father and P.W.4-grandfather, has come to the conclusion that the charge framed against the petitioner for the offence under Section 9(m) r/w 10 of the POCSO Act proved and that the petitioner has not dispelled the presumption arising against him under Sections 29 and 30 of the POCSO Act.

10. The learned counsel appearing for the petitioner would contend that the petitioner is in jail from 12.04.2024 for the past more than 1½ years.

11. The learned Government Advocate (Criminal Side) appearing for the first respondent police would submit that the charges levelled and proved against the petitioner are serious and hence, the petitioner is not entitled to get the relief of suspension of sentence at this point of time.



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12. Considering the facts and circumstances and gravity of the charges allegedly levelled and proved and taking note of the period of imprisonment imposed and also the period of incarceration, this Court is not inclined to suspend the sentence at this point of time.

13. In the result, the Criminal Miscellaneous Petition is **dismissed**.

25-10-2025

CSM

To

- 1.The Sessions Judge,
Principal Special Court for Exclusive Trial of cases under POCSO Act,
Madurai.
- 2.Do through the Chief Judicial Magistrate,
Madurai District.
- 3.The Inspector of Police,
Madurai Town All Women Police Station,
Madurai City.
- 4.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

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