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CRL MP No. 806 of 2026

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20-02-2026

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THE HONOURABLE MR.JUSTICE SUNDER MOHAN

CRL MP No. 806 of 2026

in

CRL A No. 49 of 2026

Boopathi
S/o.Moorthy, Thiruvalluvar Nagar,
Vellakovil Post,
Now residing at Teachers Colony,
Moolanur Post, Dharapuram Taluk,
(Now confined in Central Prison -
Coimbatore)

... Petitioner(s)

Vs.

State Rep.by,
The Inspector of Police,
Moolanur Police Station,
Tiruppur District.
Crime No.566 of 2020.

...Respondent(s)

PRAYER: Criminal Miscellaneous Petition is filed under Section 430(2) of BNSS, 2023, to suspend the sentence made in Judgment dated 19.07.2023 made in Spl.S.C.No.60 of 2020 on the file of learned Sessions Judge, Magalir Neethimandram (FTMC), Tiruppur.

For Petitioner(s): Mr.J.Jayan

For Respondent(s): Mr.S.Balaji
Government Advocate (Crl. Side)

ORDER



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This Criminal Miscellaneous Petition has been filed to suspend the conviction and sentence passed by the learned Sessions Judge, Magalir Neethimandram (FTMC), Tiruppur, in Spl.S.C.No.60 of 2020 dated 19.07.2023 pending disposal of the above criminal appeal.

2. The petitioner/Accused in Spl.S.C.No.60 of 2020 was convicted and sentenced by the Trial Court by judgment dated 19.07.2023 as follows:

under Section	Sentence imposed
5(1) r/w 6 of POCSO Act, 2012	To undergo RI for 20 years and to pay a fine of Rs.2,000/-, (i.d) RI for 6 months.
366 IPC	To undergo RI for 7 years and to pay a fine of Rs.1,000/-, (i.d) RI for 6 months
428 Cr.P.C	Ordered to be set off the incarceration period of the accused from 14.06.2020 to 26.09.2020.
Sentences are ordered run concurrently.	

3. Aggrieved by the same, the petitioner filed Crl.A.No.49 of 2026 before this Court along with the instant miscellaneous petition seeking suspension of sentence and bail.



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4. The case of the prosecution is that petitioner aged about 23 years and the victim aged about 16 years at the time occurrence had a love affair; that on the promise of marriage, the petitioner had committed penetrative sexual assaults on the victim on several occasions; and thus committed the aforesaid offence.

5. The learned counsel for the petitioner would submit that the petitioner is in custody from 19.07.2023; that admittedly, the petitioner and the victim girl had consensual affair and the evidence of the Doctor rules out forcible sexual intercourse; that the prosecution had not established the age of the victim in the manner known to law; and since several arguable points have been raised in the above appeal, which require consideration, prayed for suspension of sentence imposed on the petitioner.

6. The learned Government Advocate (Crl. Side) for the respondent, per contra, would confirm that it is a case of love affair and consent is immaterial because the age of the victim was 16 years at the time of occurrence; and that the impugned judgment cannot be faulted.



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7. As could be seen from the submissions of either side, the petitioner and the victim had a love affair and the relationship was consensual. However, consent is immaterial if the victim is a minor. It is seen that the prosecution had marked Ex.P16 - School Certificate, through the Investigating Officer P.W10. The prosecution had neither examined the author of the said certificate nor proved that the date of birth contained in the said certificate, is based on the information given by the parents. Therefore, this Court is of the view that the petitioner has raised substantial grounds in the above appeal, which require consideration. Further, the petitioner is in custody from 19.07.2023 and since the appeal is not likely to be taken up in the near future, this Court is inclined to grant the relief of suspension of sentence.

8. Accordingly, this criminal miscellaneous petition stands **allowed** and the sentence imposed on the petitioner is suspended till the disposal of the above Criminal Appeal and the petitioner is ordered to be released on bail on the following conditions:

- (i) The petitioner shall execute a bond for a sum of Rs.10,000/- with two sureties, each for a like sum to the satisfaction of the learned Sessions Judge, Magalir Neethimandram (FTC), Tiruppur;



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- (ii) The petitioner and the sureties shall affix their photographs and Left Thumb Impression in the surety bond and the trial Court may obtain a copy of their Aadhar card or Bank pass Book and mobile numbers to ensure their identity; and
- (iii) The petitioner shall appear before the trial Court on the first working day of every month at 10.30 a.m. until the disposal of the appeal and if he is not able to appear before the trial Court on any day, he shall make arrangements to file an application under Section 317 Cr.P.C. and shall appear before the trial Court on any other day in lieu of the date of his absence, as directed by the trial Court.

20-02-2026

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SUNDER MOHAN, J.

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To

1. The Sessions Judge,
Magalir Neethimandram (FTC), Tiruppur.
2. The Inspector of Police
Moolanur Police Station,



CRL MP No. 806 of 2026

Tiruppur District.

3. The Public Prosecutor,
High Court of Madras, Madras.

4. The Central Prison, Coimbatore

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in CRL A No. 49 of 2026**

20-02-2026