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CRL MP No. 6818 of 2026 in Crl.A.No.457 of 2



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15-06-2026

CORAM

THE HON'BLE DR.JUSTICE ANITA SUMANTH

AND

THE HON'BLE MR.JUSTICE SUNDER MOHAN

CRL MP No. 6818 of 2026

inCRL A NO. 457 OF 2026

Palanisamy
S/o.Palani,
YeasuVeethi,
Sanarpalayam, Moolanur,
Tiruppur District.
Pin Code-638 656.
Presently confined in
Central Prison, Coimbatore.

..Petitioner(s)

Vs

The State Rep by
The Inspector of Police,
AWPS-Dharapuram Police Station,
Tiruppur District.
Cr.No.10/2020.

..Respondent(s)

Petition filed under Section 430(2) BNSS, to suspend the sentence imposed in judgment in SC.No.45 of 2021 dated 16.08.2022 passed by the Learned Sessions Judge, Magalir Neethimandram, Tiruppur and enlarge the petitioner on bail pending disposal of the above Criminal Appeal before this Hon'ble Court and thus render justice.



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For Petitioner(s):

Mr.B.Shruthan

For Respondent(s):

Mr. M.M.I. Khaleel,
Government Advocate (Criminal Side)

ORDER

(Order of the Court was made by Dr.Anita Sumanth J.)

The petitioner seeks suspension of sentence dated 16.08.2022 passed by the Sessions Judge, Madurai Needhimandaram, Tiruppur finding him guilty of offences under Sections 376(2)(1), 376(2)(n), 506(ii), 450 of IPC and imposing punishment of life with fine, on several counts that have directed to be to run concurrently.

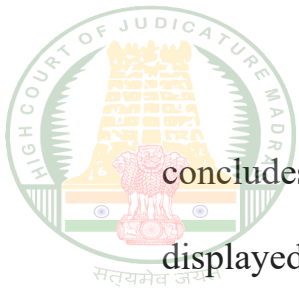
2. The petitioner is living in the vicinity of the victim girl who is aged 24 years. The victim had made a complaint on 29.08.2020 that the petitioner had raped her on two dates, that is, 22.08.2020 and 27.08.2020, a total of five times. The prosecution had examined 8 witnesses, marked 10 exhibits and produced 1 Material Object. The defence did not either produce witnesses or mark exhibits.

3. The trial Court framed the following three issues for consideration:

- 1. Whether the accused is known to the victim girl?*
- 2. Whether the victim girl is mentally retarded?*
- 3. Whether the accused has committed rape upon the victim girl?*

4. On issue 1, there is no question or doubt that the petitioner and the victim girl were known to each other. In fact, there appear to be certain contentious issues and quarrel between the families.

5. On issue 2, whether the victim was mentally retarded, the trial Court



concludes that she has a moderate mental retardation of 69% and the victim has displayed the ability to respond to questions posed by the defence counsel.

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6. On the 3rd issue, the Court has found the petitioner guilty.

7. Mr. B.Shruthan, learned counsel who appears for the petitioner would assail the impugned order arguing that the order has been passed on a total non-application of mind, since it makes extensive reference to the Protection of Children from Sexual Offences Act, 2012 (POCSO), which is irrelevant in this case, and also sets out the age of the victim as 12 years, whereas the victim in this case is 24 years.

8. To buttress the above submission, learned counsel draws attention to another judgment pronounced by the Sessions Judge, Magalir Neethimandram, Tiruppur in Special S.C.No.21 of 2021, on the same day as when the judgement in the petitioner's case was pronounced, i.e., 16.08.2022, the former relating to POCSO offence, insinuating that the facts in the two cases have been mixed up.

9. That apart, he contests the finding that the victim was suffering from mental retardation of 69%, as no disability card or other proof had been produced. At best, the victim might have had a low I.Q which, he submits, would not amount to mental retardation as required under Section 168(l) of the IPC.

10. He relies on the judgment in *Suchita Srivastava and another v. Chandigarh Administration* ((2009) 9 SCC 1), where three Judges of the Supreme Court have made a legal distinction between the possible gradations in



mental illness. He also draws attention to the fact that the victim in her statement had stated that she had confessed about the rape to one Ramathal, but that person had not been examined.

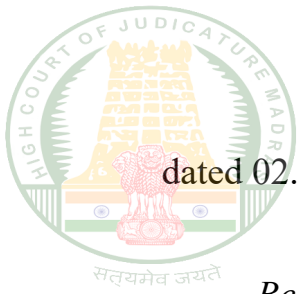
11. Per contra, Mr.M.M.I.Khaleel, learned Government Counsel (Criminal Side) for the prosecution, relies on the findings of the trial Court and states that the charges have been rightly confirmed.

12. Heard both the learned counsel and perused the materials placed before the Court.

13. The dates of occurrence are stated to be 22.08.2020 and 27.08.2020 when the victim alleges that the petitioner raped her a total of five times. The victim is 24 years old. There are some references on the record to the quarrels between the victim's family and the family of the accused.

14. The learned trial Judge has passed orders in both Spl.S.C.No.21 of 2021 and S.C.No.45 of 2021 on the same day. Spl. S.C.No.21 of 2021 involved offences as against a 14 year old girl and the provisions of the Protection of Children from Sexual Offences Act, 2012 (POCSO Act) were hence attracted. The accused in that case had been found guilty, sentenced accordingly and compensation awarded to the minor girl.

15. In the present case, the victim is 24 years old. The learned Judge however proceeds on the presumption that she was 12 years and this is perhaps based on the assessment of mental age by the Duty Medical Officer in Government Hospital, Darapuram. In the report of the Duty Medical Officer



dated 02.09.2020, she has made the following observations:

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Behaviour observation:

She was cooperation accepted, eye contact was not maintained speech not properly with the examiner. Activity level was normal, she understand and follow up simple instruction given at the time of testing and observation.

Test findings:

On BKT her MA was 12 years with an IQ of 50, mild MR

Impression:

Mild MR

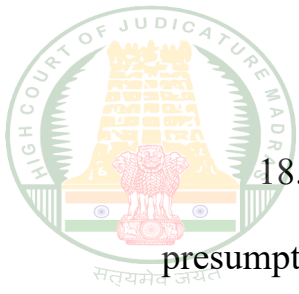
Mild mental retardation

IO level was 50 to 69.

.....

16. It will be noted that the mental age (MA) of the victim was noted as 12 years. This has, perhaps, prompted the learned Judge to proceed on the basis that the victim was 12 years old. Ultimately, the accused/petitioner has been found guilty of offences under Section 376(2)(l), 376(2)(n), 506(ii) and 450 of IPC and sentenced accordingly.

17. However, in the course of the judgment, various principles relating to the POCSO Act have been discussed. Learned Judge also refers to the presumptions under Sections 29 and 30 of the POCSO Act and Section 376(3) of the IPC which deals with rape of a woman under 16 years of age. We also find some reference to the facts in Spl.SC.No.21 of 2021 figuring in S.C.No.45 of 2021.



18. In all, it is unclear as to whether the references to POCSO Act and the presumptions under Sections 376(2)(l) and 376(2)(n) of the IPC have been made on account of the presumed age of the victim (based on the mental age being 12 years as fixed by the Duty Doctor) or whether they are incidental to the discussion and the ultimate judgment.

19. One thing is however clear; the fact that the victim was cognitively compromised. Section 376(2)(l) imposes punishment for rape of a woman suffering from mental or physical disability. The phrase '*mental disability*' has not been defined. Prima facie, it would appear that Legislature had in mind that a woman who would be unable to comprehend the nature of the act committed on her, or the gravity of the same and a finding in regard to what would constitute *mental retardation* for the purposes of Section 376(2)(l) would be better undertaken in the final hearing of the matter. In fact, the learned trial Judge, has observed that the victim had the ability to comprehend the questions and answer cogently. The victim had in her earlier version stated that the accused had promised to marry her and thereafter did not keep up his promise, which *prima facie* runs contrary to the prosecution case that the victim suffers from *mental retardation*.

20. On a wholistic appreciation of the circumstances before us, we are of the view that the petitioner is entitled to suspension of the sentence, particularly



seeing as he has suffered incarceration from 16.08.2022, though the appeal has belatedly been filed only in 2026.

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21. In light of the aforesaid discussion, this Court is inclined to suspend the sentence imposed on the petitioner herein. Accordingly, this Criminal Miscellaneous Petition stands allowed and the sentence of imprisonment imposed on the petitioner is suspended on the following conditions:-

(i) The petitioner shall execute a bond for a sum of Rs.25,000/- with two sureties, of whom, one should be a blood relative, for a like sum to the satisfaction of the learned Sessions Judge, Magalir Neethimandram, Tiruppur;

(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 number to ensure their identity;

(iii) The petitioner shall appear before the trial Court on the first working day of every week 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.*

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(A.S.M.,J.) (S.M.,J.)
15-06-2026

Index: Yes/No
Speaking/Non-speaking order
Neutral Citation: Yes/No
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Note: Issue today.

To

1. The Inspector of Police
The Inspector of Police,
AWPS-Dharapuram Police Station,
Tiruppur District.
Cr.No.10/2020.
2. The Public Prosecutor, High Court of
Madras.



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**DR.ANITA SUMANTH J.
AND
SUNDER MOHAN J.**

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