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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23-11-2026

CORAM

THE HON'BLE MR JUSTICE A.D.JAGADISH CHANDIRA

AND

THE HON'BLE MR.JUSTICE B.KARTHIKEYAN

CRL.MP.No.13163 of 2025
in
CRL.A.NO. 1609 of 2023

1. Vignesh
S/o. Nagesh .. 1st Petitioner / 1st Appellant / A1

2. Subash
S/o. Murugaiyan
Both are residing at Murugan Koil Street,
Kedar Colony, Vikravandi Taluk,
Villupuram District.
Presently confined in Central Prison,
Cuddalore. .. 2nd Petitioner / 2nd Appellant / A2

Vs

The State Rep. By,
The Inspector of Police
Gingee All Women Police
Station, Villupuram District.
Crime No.2 of 2020

..Respondent / Respondent

Prayer : Criminal Miscellaneous Petition filed under Section 389 (1) of Cr.P.C. to suspend the execution of the sentence against the petitioners / Accused by the Spl.S.C.No.75 of 2020 on the file of learned Court of Session Judge, Special Court for Exclusive Trial of Cases under POCSO Act Villupuram and set aside the judgment dated 27.10.2023 and enlarge the petitioner on bail, pending disposal of this appeal and thus render justice.

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For Petitioner(s): Mr. P.Muthamizhselvakumar

For Respondent(s): Mr. C.R.Malarvannan,
Additional Public Prosecutor

ORDER

(Order of the Court was made by A.D.Jagadish Chandira J.)

This Criminal Miscellaneous Petition has been filed seeking to suspend the sentences imposed on the petitioners / Accused 1 & 2 by the judgment dated 27.10.2023 passed in Spl.S.C.No.75 of 2020 on the file of the learned Sessions Judge, Special Court for Exclusive Trial of Cases under POCSO Act, Villupuram, and to enlarge them on bail, pending disposal of the appeal.

2. The case of the prosecution is that, on 23.05.2020, when the victim girl / P.W.1 went to attend nature's call, the second accused called her to the land belonging to one Alamelu, under the guise of gifting her a chudithar. Thereafter, she was made to get into a car parked in the said land, wherein accused Nos.1 and 2 allegedly committed penetrative sexual assault on her. The third accused, who was also present in the car, allegedly committed sexual assault by touching her breasts.

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3. Based on the complaint given by the de facto complainant/P.W.1, a case in Crime No.2 of 2020 was registered by the respondent police for the offences punishable under Section 366 of IPC, read with Sections 5(g) and 6 and Section 8 of the POCSO Act, 2012.

4. During the course of investigation, the then Inspector of Police visited the place of occurrence, prepared an observation mahazar and a rough sketch in the presence of witnesses, examined the witnesses and recorded their statements. On 25.05.2020, at about 14.30 hours, near Ariyalur Thirukkai Bus Stand, the then Inspector of Police arrested the accused, recorded their confession statement and produced them before the learned Special Court for POCSO Act, Villupuram, pursuant to which he was remanded to judicial custody.

5. After completion of the investigation, based on the statements of the witnesses, the then Inspector of Police altered the provisions of law in the FIR from Section 366 of IPC, read with Sections 5(g) and 6 and Section 8 of the POCSO Act, 2012, to Sections 366 and 376D of IPC and Sections 5(g) and 6 and 10 of the POCSO Act, and filed a charge sheet before the learned Special Court for POCSO Act, Villupuram. The same was taken on file in Spl.S.C.No.75 of 2020.

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6. On the side of the prosecution, P.W.1 to P.W.19 were examined, and Exs.P1 to P32 and M.O.1 and M.O.2 were marked. On the side of the defence, no witnesses were examined, no exhibits were marked and no material objects were produced.

7. The petitioners, who were arrayed as accused Nos.1 and 2 in Spl.S.C.No.75 of 2020 on the file of the learned Special Court for POCSO Act, Villupuram, were convicted and sentenced by judgment dated 27.10.2023 as follows:

Accused	***Provision under which convicted***	***Sentence***
A1 and A2	Section 366 IPC	Rigorous Imprisonment for 3 years and to pay a fine of Rs.5,000/-, in default to undergo one month simple imprisonment, each.
	Section 5(g) r/w 6 of POCSO Act	Life Imprisonment and to pay a fine of Rs.10,000/-, in default to undergo simple imprisonment for three months, each.

8. Challenging the aforesaid conviction and sentence, the petitioners have preferred Crl.A.No.1609 of 2023. Pending disposal of the appeal, the petitioners/A1 and A2 have filed the present Criminal Miscellaneous Petition seeking suspension of their respective sentences and enlargement on bail.

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9. Heard Mr. P.Muthamizhselvakumar, learned counsel appearing for the petitioners and Mr.C.R.Malarvannan, learned Additional Public Prosecutor appearing for the respondent/State.

10. The learned counsel appearing for the petitioners submitted that the case of the prosecution is that the petitioners, along with another accused (A3), had taken the victim in a car under the guise of purchasing dresses for her and had committed penetrative sexual assault on her. Immediately after the occurrence, the victim was allegedly taken before P.W.12, the Medical Officer. According to the evidence of the doctor and the Accident Register marked as Ex.P10 and Ex.P12, the victim was found to have an imperforate hymen. Further, no injuries were noticed on her external genitalia, and the doctor opined that there was no evidence of recent sexual intercourse. The doctor also stated that the victim did not speak of any pain. The learned counsel further submitted that the medical evidence does not corroborate the allegation of penetrative sexual assault. He also pointed out that the victim, in her evidence, had admitted that none of the accused had removed her clothes and that there were no stains on her clothes. Therefore, according to the learned counsel, the medical evidence does not support the charges alleged against the petitioners and the testimony of the victim requires careful scrutiny. The learned counsel further submitted that the petitioners have been in custody since 25.05.2020 and that the evidence available on record raises substantial grounds for

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consideration in the appeal. The learned counsel also brought to the notice of this Court that, in Crl.M.P.No.20153 of 2023, this Court had already granted suspension of sentence to the third accused/A3.

11. Per contra, the learned Additional Public Prosecutor appearing for the respondent/State filed a detailed counter affidavit and submitted that the Trial Court, upon properly appreciating the evidence of the victim, which was cogent and convincing, had rightly found the accused guilty of the offences charged against them. Hence, he opposed the petition seeking suspension of sentence.

12. We have carefully considered the rival submissions and perused the materials available on record.

13. Having considered the evidence of the victim/P.W.1, the evidence of the Doctor/P.W.12 and the medical records marked as Exs.P10 and P12, we are of the view that the petitioners have made out a *prima facie* case for suspension of their sentences. The petitioners have raised substantial grounds in the appeal, which require detailed consideration at the time of final hearing. Moreover, the petitioners have been in incarceration for more than three years, including the period of their detention prior to conviction. In such circumstances, this Court is of the view that the petitioners are entitled to the reliefs of suspension of sentence and enlargement on bail.

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14. Accordingly, this Criminal Miscellaneous Petition is allowed, and the sentences imposed on the petitioners by the judgment dated 27.10.2023 passed in Spl.S.C.No.75 of 2020 on the file of the learned Sessions Judge, Special Court for Exclusive Trial of Cases under POCSO Act Villupuram, are suspended and the petitioners / A1 & A2 are enlarged on bail, subject to the following conditions:

(i) The petitioners shall execute a separate bond for a sum of Rs.15,000/-, with two sureties, each for a like sum, to the satisfaction of the learned Sessions Judge, Special Court for Exclusive Trial of Cases under POCSO Act, Villupuram;

(ii) The sureties shall affix their photographs and Left Thumb Impression in the surety bond and the trial Court may obtain a copy of their Aadhaar card or bank pass book to ensure their identity; and

(iii) The petitioners shall appear before the learned Sessions Judge, Special Court for Exclusive Trial of Cases under POCSO Act Villupuram, on the first working day of every English calendar month at 10.30 a.m. until further orders.

(A.D.J.C.,J.) (B.K.,J.)
23-11-2026

Index: Yes/No
Speaking/Non-speaking order
Neutral Citation: Yes/No

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To

1. The learned Sessions Judge, Special Court for
   Exclusive Trial of Cases under POCSO Act
   Villupuram.

2.The Inspector of Police
  Gingee All Women Police Station,
  Villupuram District.

3.The Superintendent of Prison
  Central Prison, Cuddalore.

4.The Public Prosecutor,
   Madras High Court, Chennai.

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