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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.11.2026

CORAM

THE HON'BLE MR. JUSTICE A.D.JAGADISH CHANDIRA
AND
THE HON'BLE MR. JUSTICE B.KARTHIKEYAN

Crl.M.P.No.10547 of 2026 in Crl.A.No.967 of 2023

Ajith Kumar

..Petitioner

Vs.

State rep. by,
The Inspector of Police,
All Women Police Station
Omalur
Salem District
(Cr.No.9 of 2019)

..Respondent

Criminal Miscellaneous Petition filed under Sections 430(1) of BNSS, seeking to suspend the sentence imposed by the learned Sessions Judge, Principal POCSO Court, Salem, Salem District, in Spl. S.C.No.51 of 2020 dated 26.04.2023 and enlarge the petitioner on bail, pending disposal of the above Criminal Appeal.

For petitioner	Mr. S. Suresh for Mr. M. Marudhachalam
For respondent	Mr.M. Mohamed Riyaz Additional Public Prosecutor

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ORDER

(made by A.D.JAGADISH CHANDIRA, J.)

This Criminal Miscellaneous Petition has been filed by the petitioner/sole accused seeking suspension of the sentence imposed on him, *vide* judgment dated 26.04.2023 passed in Spl. S.C.No.51 of 2020 by the Sessions Judge, Principal POCSO Court, Salem, Salem District.

2. The case of the prosecution, in a capsule, is as follows:

2.1. The victim girl in this case, aged about 13 years at the time of occurrence, is mentally retarded and she is the daughter of the de facto complainant (P.W.1). When the parents of the victim girl go for work, she used to remain idle at home. The petitioner/accused who is a relative of the victim girl resides in the same locality and the victim girl used to frequent the house of the petitioner/accused and used to play with him.

2.2 While so, on 13.04.2019, when the victim girl had been to the house of the petitioner/accused to while away her time, the petitioner/accused, taking advantage of her mental instability, had coitus with her.

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3. Based on the complaint lodged by the de facto complainant/mother of the victim girl (P.W.1), a case in Crime No.9 of 2019, came to be registered by the respondent police for the offences under Sections 5(k), 5(n) and 6 of the POCSO Act, 2012.

4. After completion of the investigation, the Investigating Officer filed a final report before the Trial Court for the offences under Section 5(k) and 5(n) read with Section 6, *ibid*. which was taken on file as Spl.S.C.No.51 of 2020.

5. After hearing the learned counsel on both sides, charges were framed against the accused. During the initial questioning in respect of the charges, the petitioner/accused denied the same and sought to be tried.

6. On the side of the prosecution, P.W.1 to P.W.9 were examined and Exs.P.1 to P.27 and M.Os.1 to 3 were marked. On the side of the defence, no witness was examined nor any document marked.

7. The trial Court, after hearing the arguments on both sides and considering the materials on record, convicted and sentenced the petitioner/accused, *vide* judgment dated 26.04.2023, as follows:-

Offence under Section	***Sentence imposed***
5(k) read with Section 6 of the POCSO Act	Imprisonment for life and fine of Rs.5,000/-, in default, one year rigorous imprisonment
5(n) read with Section 6 of the POCSO Act	Imprisonment for life and fine of Rs.5,000/-, in default, one year rigorous imprisonment

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The aforesaid sentences were ordered to run concurrently and the period of detention already undergone by the petitioner/appellant was ordered to be set off under Section 428 Cr.P.C. Further, the victim girl was recommended to be paid a compensation of Rs.3 lakhs from the Victim Compensation Fund under Rule 7(3)(i) of the Protection of Children from Sexual Offences Rules.

8. Assailing the said judgment of conviction and sentence, this criminal appeal has been filed along with the present application in Crl.M.P.No.10547 of 2026 seeking the reliefs of suspension of sentence and bail.

9. At the outset, it is pertinent to point out that as is evident from the facts obtaining in this case, this is not a run-of-the-mill case under the POCSO Act and hence, it becomes imperative to trace the trajectory this matter has taken thus far.

10. A Coordinate Bench of this Court, while dealing with this petition on 08.07.2026, passed the following order:

> "This is a petition seeking suspension of judgment and order passed by the Sessions Judge, Principal POCSO Court, Salem, Salem District, in Spl.S.C.No.51 of 2020 dated 26.04.2023.
>
> 2. The petitioner was found guilty of offences under Section 5(k) r/w. Section 6 and 5(n) r/w. Section 6 of the Protection of Children from Sexual Offences Act, 2012 and convicted and sentenced to life imprisonment

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and additional rigorous imprisonment that were directed to be run concurrently along with fine.

3. We heard Mr.S.Suresh, learned counsel for petitioner and Mr.C.R.Malarvannan, learned Government Counsel for respondent

4. The petitioner is none other than the maternal uncle of the victim. When the matter was called for hearing, learned counsel for petitioner would submit that the petitioner is keen on marrying the victim who is his niece. He has also filed an affidavit dated 03.07.2026 to this effect.

5. Since the judgment records that the victim is mentally retarded, we had requested Dr.V.Venkatesh Kumar, Professor of Psychiatry, Institute of Mental Health, Kilpauk, Chennai to assess her intelligence and determine whether the victim was aware of the consequences of the proposal now put forth by the petitioner.

6. Report dated 02.07.2026 has been received from the Doctor and may be read as part and parcel of this order. The Report is the result of a detailed psychiatric analysis of the mental and cognitive abilities of the victim, and is in question and answer form. The answers of the victim reveal that she is inclined to marry the petitioner and she states so categorically.

7. The relevant questions and answers are extracted below:

உங்க மாமாவை பிடிச்சி தான் கல்யாணம் பண்ண போறீங்களா ?
ஆமாம்.
மாமா இல்லாமல் வேறு யார்ரையாவது கல்யாணம் பண்ணிப்பீங்களா?
வேண்டாம்.
கல்யாணத்திற்கு பிறகு மாமாவை பிடிக்கலைனா என்ன பண்ணுவீங்க?
அம்மா வீட்டிற்கு வந்துவிடுவேன்.
சின்ன வயதில் மாமாவைபற்றி எதோ தவறு சென்னீங்களா?
நான் சொல்லவில்லை. அம்மா அப்பாதான் சண்டை போட்டுக்கிட்டாங்க.

நீங்க மாமாவை கல்யாணம் பண்ணிகிளானா என்ன ஆகம் ?
மாமா ஜெயிலில் இருப்பார்.

மாமாவை அம்மா அப்பா சொல்லித்தான் கல்யாணம் பண்ணிக்கபோறிங்களா?
இல்லை இல்லை எனக்கு மாமாவை பிடிக்கும்.

குழந்தை பிறந்தால், குழந்தைக்கு என்ன சாப்பிட கொடுப்பிங்க ?
குழந்தைக்கு உறார்லிக்ஸ் கொடுப்பேன்

8. The victim has been found to be of subnormal intelligence. However, the Doctor has opined that on questioning, she has expressed a desire to marry her uncle who is the Petitioner herein. A careful perusal of the Report and the responses of the victim, especially the exchange extracted above indicates to us as well, that she has understood the questions posed to her and the proposal of the petitioner to marry her. In fact, she appears to be keen on

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marrying the petitioner and appears fully aware of the consequences of her decision.

9. There is thus everything to be gained in accepting the affidavit filed by the petitioner on condition that he honours the commitment made thereunder. In light of the above discussion, we suspend the sentence imposed on the petitioner under judgment dated 26.04.2023 in Spl.S.C.No.51 of 2020 on the file of the learned Sessions Judge, Principal POCSO Court, Salem, Salem District, for a period of two months and grant interim bail to the petitioner between 13.07.2026 and 15.09.2026.

10. The authorities are directed to release the petitioner on interim bail on Monday i.e., 13.07.2026 imposing the following conditions, and he shall surrender to the authorities on 15.09.2026 by 10.30 a.m. The petitioner shall execute a bond for a sum of Rs.25,000/- with two sureties each, of whom, one should be a blood relative, for a like sum to the satisfaction of the learned Sessions Judge, Principal POCSO Court, Salem, Salem District.

11. 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.

12. The petitioner shall marry the victim in line with the affidavit dated 03.07.2026 where he has undertaken to marry her and where he states that his decision is without any undue influence. The marriage shall be registered and registration certificate be filed along with an affidavit from the petitioner as soon as the marriage and registration thereof take place.

13. Barring 3 days prior to, and after the date of the wedding, the petitioner shall report every alternate day to the All Women Police Station, Omalur, Salem District. He shall ensure scrupulous compliance with the Prison and other applicable Rules.

14. List the appeal on 16.09.2026."

11. In view of change of roster following the aforesaid order, this matter was listed before another Coordinate Bench holding roster, on 22.09.2026, on which date, the Coordinate Bench, considering the nature of the directions issued by the predecessor Bench, opined that this matter can be decided by the same predecessor Bench which passed the order dated

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08.07.2026 and accordingly, directed the Registry to place this matter before the Hon'ble Chief Justice, for appropriate orders.

12. As directed *vide* order dated 22.09.2026, when this matter was placed before the Hon'ble Chief Justice, it was ordered that this matter shall be listed as per roster and that is how, this matter is on the board of this Division Bench.

13. Today, when the matter was taken up *in camera*, the victim girl, her parents, the elder brother of the petitioner/accused and his wife, were present before this Court.

14. Mr. S. Suresh, learned counsel for the petitioner/accused submitted that pursuant to the order dated 08.07.2026 passed by this Court, the petitioner/accused was released on interim bail and the petitioner/accused married the victim girl on 16.07.2026 in their village in the presence of their kith and kin and the said marriage was also registered before the Sub Registrar, Kadayampatti on 24.07.2026 *vide* marriage certificate bearing Sl.No.TMR/Kadaiyampatty/32/2026. To fortify his submission, the learned counsel invited the attention of this Court to the additional typed set of papers containing the marriage photos and marriage registration certificate. He further submitted that in due compliance of the directions issued by this Court *vide*

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order dated 08.07.2026, the petitioner/accused surrendered before the Central Prison, Salem, on 15.09.2026 and now that the marriage has been solemnised and a compromise has been effected between the parties, continuation of this appeal will only be an exercise in futility and hence, the main appeal itself may be allowed.

15. The parents of the victim girl and the elder brother of the petitioner/appellant and his wife who were present before this Court along with the victim girl, reaffirmed the factum of marriage between the victim girl and the petitioner/accused and pleaded that the criminal appeal itself may be allowed enabling the petitioner/appellant and the victim girl lead their marital life.

16. *Per contra,* Mr. M. Mohamed Riyaz, learned Additional Public Prosecutor, appearing for the respondent/State, submitted that though the petitioner/accused had married the victim girl and their marriage has also been registered, given the subnormal intelligence of the victim girl, the respondent police have an apprehension with regard to the subsequent conduct of the petitioner/accused and hence, in the interest of the victim girl, it would be ideal if the petitioner/accused is kept under observation and his behaviour monitored for a considerable period of time and a report submitted by the police, after

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which this Court can consider the plea of the petitioner/accused for allowing the main appeal itself.

17. Considering the submissions made on either side, especially, the apprehension expressed by the learned Additional Public Prosecutor, the factum of marriage that has taken place between the petitioner/accused and the victim girl pursuant to the directions of this Court *vide* order dated 08.07.2026 and also keeping in mind the subnormal intelligence and welfare of the victim girl, pending disposal of the appeal, we are of the opinion that the substantive sentence of imprisonment alone imposed on the petitioner/accused may be suspended and the petitioner/accused enlarged on bail. Accordingly, the sentence of imprisonment imposed on the petitioner/accused is suspended and he is enlarged on bail, subject to the following conditions:-

(i) The petitioner/accused shall execute a bond for a sum of Rs.5,000/- with two sureties (of whom one should be his elder brother), each for a like sum, to the satisfaction of the Sessions Judge, Principal POCSO Court, Salem;

(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 to ensure their identity;

(iii) The petitioner shall appear before the trial Court on the first working day of every English calendar month at 10.30 a.m., until further orders and also before the respondent police on the first and third Saturdays of every month at 6.30 p.m. until further orders.

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18. The respondent police is directed to observe the conduct of the petitioner/accused and submit a report about the same on the next hearing date.

List the appeal after a year.

(A.D.J.C., J.) (B.K., J.)
24.11.2026

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To:

1. The Inspector of Police
   All Women Police Station
   Omalur
   Salem District

2. The Sessions Judge
   Principal POCSO Court
   Salem
   Salem District

3. The Public Prosecutor
   Madras High Court

4. The Superintendent of Prison
   Central Prison
   Coimbatore

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A.D.JAGADISH CHANDIRA, J.

and

B.KARTHIKEYAN, J.

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