



Crl.M.P.No.24200 of 2025
in Crl.A.No.1914 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.02.2026

CORAM

THE HONOURABLE MR.JUSTICE SUNDER MOHAN

Crl.M.P.No.24200 of 2025
in Crl.A.No.1914 of 2025

Prakash

... Petitioner /Appellant

Vs.

The Inspector of Police,
W-26, All Women Police Station,
Ashok Nagar, Chennai – 83,
(Crime No.2 of 2019)

... Respondent/Complainant

PRAYER: Criminal Miscellaneous Petition has been filed under Section 430(1) BNSS, praying to suspend the sentence imposed in Spl.S.C.No.37 of 2021 on the file of the Sessions Judge, Special Court for Exclusive Trial of Cases Under POCSO Act, Chennai – 600 104 dated 24.02.2025, pending disposal of the above appeal.

For Petitioner : Mr.B.S.Manikandan

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



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ORDER

This Criminal Miscellaneous Petition has been filed to suspend the sentence imposed on the petitioner by judgment dated 24.02.2025 passed in Spl.S.C.No.37 of 2021 by the learned Sessions Judge, Special Court for Exclusive trial of Cases under POCSO Act, Chennai, pending disposal of the above criminal appeal and enlarge the petitioner on bail.

2. The petitioner/accused in Spl.S.C.No.37 of 2021 was convicted by the Trial Court by judgment dated 24.02.2025, for the offences under Sections 6 with alternate charge u/s. 376 DA of IPC @ 4 with alternate charge u/sec. 376(3) of IPC and sentenced him undergo 20 years rigorous imprisonment and to pay a fine of Rs.5,000/-, in default, to undergo one month simple imprisonment for the offence under Section 376(3) of IPC. Aggrieved by the same, he filed Crl.A.No.1914 of 2025 before this Court along with the instant criminal miscellaneous petition seeking suspension of sentence and bail.

3.The gist of the prosecution case is that on the mid night between 08.02.2019 and 09.02.2019, when the victim had gone to attend nature's call, the petitioner along with a juvenile accused had followed her and committed



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penetrative sexual assault one after the other and thus committed gang penetrative assault and that separate final reports were filed as against the petitioner and the juvenile in conflict with law.

4.The learned counsel for the petitioner would submit that the alleged occurrence did not take place in the manner alleged by the prosecution; that the prosecution had not proved the age of the petitioner and that he is an adult; that the victim has made contrary statements in her statement before the learned Magistrate under Section 164(5) Cr.P.C., and in her deposition; that it is the case of the victim in her deposition that the juvenile in conflict with law did not commit the offence and both the petitioner and the juvenile left, when PW4 came to the place of occurrence; that the complaint was lodged three days after the occurrence on 11.02.2019 and that the evidence of the Doctor who examined the petitioner would show that the petitioner could not have had any sexual intercourse before the examination; that the evidence of the victim's Doctor would show that the victim did not sustain any external injuries; and that for the above said reasons, the petitioner has made out a *prima facie* case for suspension of sentence.



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5.The learned Government Advocate (Crl. Side) per contra submitted that the prosecution has established the age of the petitioner by examining CW1, the doctor working in the hospital where the petitioner was born; that Ext.C1 establishes that the petitioner was aged about 19 years at the time of occurrence; that the petitioner had committed gang penetrative sexual assault along with the juvenile accused; that the juvenile accused was convicted by the Juvenile Justice Board; and all these circumstances would go to show that the impugned Judgment is justified and petitioner had made out no *prima facie* case for suspension of sentence.

6.The petitioner was arrested on 11.02.2019. During the course of investigation, he was released on bail on 06.09.2019 and thereafter, he was again arrested on 06.07.2023 pursuant to the execution of the NBW and is in custody since then. The investigating officer in this case had deposed that he had collected the school certificate of the petitioner, in which, the petitioner's date of birth is shown as 15.12.2001 and as per his birth certificate, his date of birth is 15.12.2000. However, the prosecution has neither marked the transfer certificate nor marked the birth certificate of the petitioner. The trial Court had summoned the hospital records said to be relating to the petitioner. However, there is a doubt as to whether the said record pertains to that of the petitioner.



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Therefore, there is a reasonable doubt as to whether the petitioner was a juvenile at the time of commission of the offence.

7. That apart, the victim has made several improvements from her earlier statements made before the Magistrate under Section 165(5) Cr.P.C., which has been elicited in the cross-examination of the victim as well as from the investigating officer. The victim would state that the Juvenile in conflict with law had not committed the offence and had fled from the occurrence on seeing PW4. PW4 in his evidence would state that when he went to the place of occurrence, she saw the petitioner and the juvenile talking to two girls, which is again contrary to the prosecution case. There has been an unexplained delay in lodging the complaint and the evidence of the Doctor who examined both the appellant and the victim belies the case of prosecution that the victim was subjected to forcible sexual intercourse. Considering the above facts and that the petitioner is in incarceration for more than two years and the appeal is not likely to be taken up in the near future, this Court is inclined to suspend the sentence imposed on the petitioner.

8. Accordingly, this criminal miscellaneous petition stands **allowed** and the sentence imposed on the petitioner is suspended till the disposal of the



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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, Special Court for Exclusive Trial of Cases under POCSO Act, Chennai – 600 104;
- (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.

12.02.2026

Tsg

Note: Issue order copy on 12.02.2026

To

1. The Sessions Judge,
Special Court for Exclusive Trial of Cases
under POCSO Act, Chennai – 600 104.



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- 2.The Superintendent,
Central Prison, Puzhal.
- 3.The Inspector of Police,
W-26, All Women Police Station,
Ashok Nagar, Chennai – 83,
(Crime No.2 of 2019).
- 4.The Public Prosecutor,
High Court, Madras.



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SUNDER MOHAN, J.

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