



CRL MP(MD). No.16618 of 2025

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated : 22/01/2026

CORAM

THE HONOURABLE MRS. JUSTICE N.MALA

CRL MP(MD). No.16618 of 2025

in

Crl A(MD)No.1190 of 2025

Ketheshraja

... Petitioner

Vs

1.The State of Tamilnadu,
Rep by Inspector of Police,
Chinnalapatti Police Station,
Dindigul District.
Cr.No. 25 of 2023.

2.Amala

... Respondents

PRAYER:- To suspend the sentence imposed in Spl.SC.No.275/2023 dated 22.04.2025 passed by the Special Court for Exclusive Trial of cases under POCSO Act, Dindigul and enlarge the petitioner on bail till the disposal of the above Crl.A

For Petitioner : Naresh Prabu A

For R1 : Mr.B.Nambi Selvan
Additional Public Prosecutor



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ORDER

This petition is filed to suspend the sentence imposed by the Special Court for Exclusive Trial of cases under POCSO Act, Dindigul in Spl.S.C.No.275 of 2023 dated 22.04.2025 and to enlarge the petitioner on bail pending disposal of the criminal appeal.

2.The case of the prosecution in brief is that the petitioner, who was studying in the same tuition centre, as that of her sister developed an association of romantic nature with the victim. While so, on 10.07.2022 when the victim visited his house for getting her chemistry notes taking advantage of the absence of his family members, he committed penetrative sexual assault on her. On another occasion (i.e) on 09.12.2022, when the victim visited his house to inform him that her mother and sister discovered their affair and scolded her, he repeated the penetrative sexual assault. The victim girl subsequently became pregnant. Hence, a complaint was registered against the accused.

3.Before the trial court, on the side of the prosecution, 13 witnesses were examined and 16 documents were marked. On the side of



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the accused, neither any witness was examined nor any document was marked.

4.The Trial Court on completion of trial convicted and sentenced the accused to undergo rigorous imprisonment for 20 years with a fine of Rs.1,00,000/-, and in default to undergo simple imprisonment for one year for the offence under Section 6 of the POCSO Act.

5.Challenging the above said conviction and sentence, the appellant has preferred the present Criminal Appeal along with the above Miscellaneous Petition seeking suspension of sentence.

6.The learned counsel for the petitioner submitted that the Trial Court failed to appreciate that the petitioner was a minor at the time of occurrence and so the failure to conduct trial under the provisions of the Juvenile Justice (Care and Protection of Children) Act, 2015, (hereinafter referred to as the Act) resulted in a miscarriage of justice to the petitioner. The learned counsel further submitted that the Special Court which was a designated Children's Court erred in not following the mandatory procedure provided under Section 19(1)(i) of the Act. The



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learned counsel submitted that on transfer of case under Section 15 of the Act, the Trial Court was bound to apply its independent mind to decide on the genuine need to try the petitioner as adult as required by Section 19(1)(i) of the Act. The learned counsel further submitted that since mandatory requirements were not complied, the judgment of the trial Court was vitiated. The learned counsel further submitted that the non-compliance of the mandatory requirements *prima facie* establish that the petitioner is entitled to be acquitted. The learned counsel relied on the judgment of the Hon'ble Supreme Court in the case of ***Thirumoorthy Vs State rep by the Inspector of Police*** reported in ***2024 INSC 247*** in support of his submission.

7.The respondent filed a detailed counter denying all the averments. Though the respondent filed a counter narrating the prosecution's case leading to conviction by the Special Court, the respondent had not countered the contention of the petitioner regarding the violation of the provisions of the Juvenile Justice (Care and Protection of Children) Act, 2015.



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Act on 03.06.2023, to the Trial Court and thereafter, the case was taken up by it on 20.06.2023. On receipt of the report, the Trial Court was bound to follow the mandatory procedure of Section 19 of the Act. The Trial Court has not applied its mind to decide whether the petitioner needed to be tried as an adult. Therefore, *prima facie* there appears to be a violation of the provisions of the Act. The enquiry under Section 19(1)(i) of the Act, is held to be mandatory by the Hon'ble Supreme Court in the case of **Ajeet Gurjar Vs. State of Madhya Pradesh** reported in **2023 SCC Online SC 1255**, and the same was followed by the Hon'ble Supreme Court in its subsequent judgment in **Thirumoorthy's case**. On 22.03.2024 following **Ajeet Gurjar's** case, the Hon'ble Supreme Court held as follows:

32. There is no dispute on the aspect that the offences of which the accused appellant was charged with, fall within the category of 'heinous offences' as defined under Section 2(33) of the JJ Act. Section 15(1) provides that in case where a heinous offence/s are alleged to have been committed by a child who has completed or is above the age of sixteen years, the Board shall conduct a preliminary assessment with regard to his mental and physical capacity to commit such offence, ability to understand the consequences of the offence and the circumstances in which he committed the offence. The Board, after conducting such assessment, may pass an order in accordance with the provisions of sub-section (3) of Section 18 of the JJ Act. Section 15(2) provides that where the Board is satisfied on preliminary assessment that the matter should



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be disposed of by the Board, then the Board shall follow the procedure, as far as may be, for trial of summons case under CrPC. Under first proviso to this sub- section, the order passed by the Board is appealable under Section 101(2) of the JJ Act.

33. Section 18(3) provides that where the Board after preliminary assessment under Section 15 opines that there is a need for the said child to be tried as an adult, then the Board may order transfer of the trial of the case to the Children's Court having jurisdiction to try such offences.

34. By virtue of Section 19(1), the Children's Court, upon receiving such report of preliminary assessment undertaken by the Board under Section 15 may further decide as to whether there is a need for trial of the child as an adult or not.

35. The procedure provided under Sections 15 and 19 has been held to be mandatory by this Court in the case of Ajeet Gurjar v. State of Madhya Pradesh. In the said case, this Court considered the import of Section 19(1) of the JJ Act and held that the word 'may' used in the said provision be read as 'shall'. It was also held that holding of an inquiry under 19(1) (i) is not an empty formality. Section 19(1)(ii) provides that after examining the matter, if the Children's Court comes to the conclusion that there is no need for trial of the child as an adult, instead of sending back the matter to the Board, the Court itself is empowered to conduct an inquiry and pass appropriate orders in accordance with provisions of Section 18 of the JJ Act. The trial of a child as an adult and his trial as a juvenile by the Children's Court have different consequences.

11.The learned Additional Public Prosecutor relied on the judgment of the Delhi High Court reported in **2019 SCC online Del 9075** and submitted that the failure to follow the procedure under Section 19 of the Act, was merely irregular and curable.



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12. At this interim stage, having regard to the binding precedent of the Hon'ble Apex court, this Court is not persuaded to rely on the Delhi High Court judgment, which has only persuasive value.

13. From the materials on record, it is apparent that the Trial Court has not followed the mandatory requirements of Section 19 of the Act. The Trial Court completely failed to apply its independent mind to decide whether there was a need for trial of the petitioner as an adult on the basis of the preliminary assessment report of the Juvenile Justice Board under Section 15 of the Act. This Court clarifies that the observations made above are *prima facie* in nature, confined to the disposal of the present petition, and shall not influence the adjudication of the appeal at the stage of final hearing. Further, since the appeal is not likely to be taken up for final disposal in the proximate future, this Court being *prima facie* satisfied that the petitioner has an arguable case in appeal, is inclined to allow the petition.



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14. Accordingly, the Criminal Miscellaneous Petition is allowed and the substantive sentence of imprisonment alone is suspended pending disposal of the appeal with the following directions:

(i) The petitioner shall be enlarged on bail provided the petitioner pays the fine amount of Rs.1,00,000/- within a period of two weeks from today.

(ii) the petitioner is directed to be enlarged on bail on condition that the petitioner shall execute a bond for a sum of Rs.10,000/- (Rupees Ten Thousand only) with two sureties, within a period of 10 days from the date of receipt of a copy of this order, each for a like sum to the satisfaction of the Special Court for Exclusive Trial of Cases under POCSO Act, Dindigul.

(iii) the sureties shall affix their photographs and Left Thumb Impression in the surety bond and the learned Trial Judge may obtain a copy of any valid identity proof to ensure their identity ;

(iv) The petitioner shall appear before the trial Court every Monday at 10.30 a.m., until further orders.

22.01.2026

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Note: Issue order copy on 23.01.2026

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TO

- 1.The Special Court for Exclusive
Trial of Cases under POCSO Act, Dindigul.
- 2.The Inspector of Police,
Chinnalapatti Police Station,
Dindigul District.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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N.MALA,J

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