



Crl.MP(MD) No.18619 of 2025 in
Crl.A(MD) No.1283 of 2025

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED :07.04.2026

CORAM:

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

Crl.MP(MD) No.18619 of 2025

in

Crl.A(MD) No.1283 of 2025

Nesamani

... Petitioner

Vs

The State of Tamilnadu,
Rep. by the Inspector of Police,
All Women Police Station,
Marthandam,
Kanyakumari District.
Crime No.39 of 2020

... Respondent

Prayer :- This Criminal Miscellaneous Petition is filed under Section 430(1) of BNSS, 2023 to suspend the sentence imposed on the petitioner in Spl.S.C.No.71 of 2020, dated 07.11.2025, on the file of the Special Court for trial of cases under POCSO Act, Kanyakumari District, Nagercoil and enlarge him on bail pending disposal of the criminal appeal.



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For Petitioner : Mr.K.Prabhu
For Respondent : Mr.A.S.Abul Kalaam Azad
Government Advocate (Crl.side)

ORDER

The petitioner is the sole accused in Spl.S.C.No.71 of 2020, on the file of the Special Court for trial of cases under POCSO Act, Kanyakumari District, Nagercoil. He was tried for the offence under Section 9(1), 9(m) r/w 10 of POCSO Act, 2012 that he has made a bad touch on the victim girl, aged about 7 years. The trial Court has found the petitioner guilty, convicted and sentenced as under:-

Sl.No	Sections	Punishment	Fine amount	Default
1.	9(1), 9(m) r/w 10 of POCSO Act, 2012	5 years Rigorous imprisonment	Rs.5000/-	Six months simple imprisonment

As against the conviction and sentence imposed by the trial Court in Spl.S.C.No.71 of 2020, dated 07.11.2025, the petitioner has filed a Criminal Appeal in Crl.A(MD) No.1283 of 2025 and the same was



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admitted by this Court, by order, dated 27.11.2025. Along with the appeal, the petitioner has also moved this application to suspend the sentence imposed on him by the trial Court.

2.The learned senior counsel appearing for the petitioner submits that the complaint is a foisted one. According to him, the father of the victim child is a drunkard. He purchased certain goods from the petitioner's shop by giving Rs.2000/-. The mother of the victim child has asked for the balance amount, however, the petitioner has returned the same to her husband and therefore, there was a quarrel. According to the petitioner, out of this motive, the complaint has been lodged. He further submits that there was some delay in reporting the incident. The occurrence was taken place on 04.10.2020, however the complaint was lodged on 08.10.2020 with a delay of four days. The learned Senior Counsel has pointed out that Section 9(1) of POCSO Act has not been made out, as there is no repeated sexual assault, even according to the prosecution. Therefore, the petitioner



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may be considered for grant of suspension of sentence.

3.The learned Government Advocate (Crl.side) appearing for the respondent submits that this petitioner is aged about 61 years. He was running a grocery shop in the Village. The victim child aged about seven years went to the petitioner's shop for buying eggs and at that time, this petitioner, with a sexual intent has touched her breast. According to him, the prosecution has established their case by examining the victim child and her mother. Therefore, this petitioner is not entitled for suspension of sentence.

4.This Court considered the rival submissions made and also perused the materials placed on record.

5.This is a case of bad touch. The complaint has been lodged after four days from the date of incident. The petitioner has raised certain grounds during the question under Section 313 of Cr.P.C., and



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has also examined defence witnesses. The petitioner has raised certain arguable points, which can be considered only during the final hearing of the criminal appeal. However the appeal could not be taken up immediately, for want of time. The petitioner is languishing in jail from the date of conviction. Considering the period of incarceration and that the appeal could not be taken up immediately, this Court is inclined to suspend the sentence imposed on him. However, considering the objection raised by the learned Government Advocate (Crl.side), this Court imposes certain stringent conditions on the petitioner.

6.Accordingly, the substantive sentence of imprisonment alone is suspended pending disposal of the criminal appeal and the petitioner is ordered to be enlarged on bail on the following conditions:-



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- i. The petitioner shall execute a bond for a sum of Rs.1,00,000/- (Rupees One Lakh) with two sureties each for a like sum to the satisfaction of the learned Judge, Special Court for trial of cases under POCSO Act, Kanyakumari District, Nagercoil
- ii. The persons, who are offering surety to the petitioner must file an affidavit of undertaking before the respondent police, ensuring that the petitioner would not visit the occurrence village pending the appeal, would not disturb the victim child and her family and also he would be available during the final hearing of the appeal. The petitioner shall also file an affidavit to that effect.
- iii. The petitioner shall stay at Madurai and report before the Inspector of Police, Thallakulam Police Station, Madurai daily at 10.30 a.m, until further orders.



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iv. If the petitioner violates any of the above conditions, it is open to the respondent police to file an application to cancel the bail granted to him.

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Index : Yes/No
Internet : Yes/No
vrn



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To

- 1.The Special Court for trial of cases under POCSO Act,
Kanyakumari District, Nagercoil
- 2.The Inspector of Police,
All Women Police Station,
Marthandam,
Kanyakumari District.
- 3.The Inspector of Police,
Thallakulam Police Station, Madurai
- 4.The Superintendent,
Central Prison,
Palayamkottai.

Copy to

The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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B.PUGALENDHI, J.,

vrn

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