



Crl.MP(MD) No.716 of 2026 in  
Crl.A(MD) No.53 of 2026

**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

DATED :08.04.2026

CORAM:

**THE HONOURABLE MR.JUSTICE B.PUGALENDHI**

Crl.MP(MD) No.716 of 2026

in

Crl.A(MD) No.53 of 2026

Bagavathiyappan

... Petitioner

Vs

1.The State of Tamilnadu,  
Rep. by the Inspector of Police,  
Kanyakumari All Women Police Station,  
Nagercoil District.  
Crime No.12/2015.

2.Manikandan

... Respondents

**Prayer :-** This Criminal Miscellaneous Petition is filed under Section 430(1) of BNSS, 2023 to suspend the sentence imposed on the petitioner in Spl.SC.No.14 of 2016, dated 13.02.2025 on the file of the Special Court for exclusive trial of cases under POCSO Act, Nagercoil and enlarge him on bail.



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Crl.MP(MD) No.716 of 2026 in  
Crl.A(MD) No.53 of 2026

For Petitioner : Mr.A.Naresh Prabu  
For R1 : Mr.A.S.Abul Kalaam Azad  
Government Advocate (Crl.side)

### **ORDER**

The petitioner is the sole accused in Spl.SC.No.14 of 2016, on the file of the Special Court for exclusive trial of cases under POCSO Act, Nagercoil. He was tried for the offence under Section 4 r/w 5(m) r/w 6 of POCSO Act that he has sexually abused the victim child, aged about 10 years. The trial Court has found the petitioner guilty, convicted and sentenced as under:-

| Sl.No | Sections                                          | Punishment                           | Fine amount | Default                              |
|-------|---------------------------------------------------|--------------------------------------|-------------|--------------------------------------|
| 1.    | Section 4<br>r/w 5(m)<br>r/w 6 of<br>POCSO<br>Act | 20 years<br>Rigorous<br>imprisonment | Rs.5,000/-  | Six months<br>simple<br>imprisonment |



Crl.MP(MD) No.716 of 2026 in  
Crl.A(MD) No.53 of 2026

As against the conviction and sentence imposed by the trial Court in Spl.SC.No.14 of 2016, dated 13.02.2025, the petitioner has filed a Criminal Appeal in Crl.A(MD) No.53 of 2026 and the same was admitted by this Court, by order, dated 19.01.2026. Along with the appeal, the petitioner has also moved this petition seeking suspension of sentence.

2.The learned counsel appearing for the petitioner has raised the following grounds for grant of suspension of sentence:-

- i. As per the prosecution case, the victim girl has reported the incident to her aunty/PW 2 for the first time, however, PW 2 has deposed in her evidence that the victim girl has not stated anything about the incident and turned hostile.
- ii. The doctor evidence has not supported the case of the prosecution.
- iii. The trial Court has failed to consider that without medical proof, conviction under Section 4 r/w 5 (m) r/w 6 of POCSO



Crl.MP(MD) No.716 of 2026 in  
Crl.A(MD) No.53 of 2026

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Act is not sustainable.

- iv. The trial Court has failed to appreciate the motive behind the complaint.
- v. There are several contradictions in the prosecution evidence, however, the same has not been properly appreciated by the trial Court.

3.The learned Government Advocate (Crl.side) appearing for the respondent submits that the victim child/PW 6 was aged about 10 years at the time of occurrence. She was playing along with her friends/PW 7 and PW 8. The doll, with which, they have played was worn out. At that time, the petitioner /accused has suggested them that he is having a needle to stitch the doll. Therefore, all the three girls went to his house, wherein, the accused has helped the children to stitch the worn out doll and thereafter, he sent PW 7 and PW 8 out and retained the victim girl and also sexually abused her. The learned Government Advocate has pointed out that the Government doctor,



Crl.MP(MD) No.716 of 2026 in  
Crl.A(MD) No.53 of 2026

who examined the victim child has given her report without even ascertaining as to whether the hymen was intact or not. Since the doctor has not provided proper evidence, that doesn't mean that the prosecution has not established its case. According to him, the prosecution has substantiated its case through the evidence of the victim child and the same has been corroborated by the evidence of PW 7 and PW 8/the other children played along with the victim child on the date of occurrence. Therefore, according to the learned Government Advocate, this petitioner has committed an aggravated sexual assault as against the victim child aged about 10 years.

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

5.The victim child aged about 10 years was playing along with her friends/ PW 7 and PW 8. They were playing with the doll and the doll was worn out. At that time, the petitioner, who came there



Crl.MP(MD) No.716 of 2026 in  
Crl.A(MD) No.53 of 2026

suggested them that he is having a needle to correct the same.

Believing the words of the petitioner, the children went along with him to his house. The petitioner helped the children and thereafter sent PW 7 and PW 8 out and abused the victim child. The victim child has narrated the incident in a cogent manner in her statement recorded under Section 164 of Cr.P.C., However, the doctor, who has examined the victim child has not even noted whether the hymen was intact or not. It is very unfortunate that the medical evidence has been recorded in this case in such a negligent manner. Since the doctor has acted in an irresponsible manner, that doesn't mean that the prosecution has not proved its case. The fact remains that this petitioner has taken the the victim child along with PW 7 and PW 8, who were playing along with victim child to help them to stitch the doll and thereafter send out PW 7 and PW 8, who were playing along with the victim child and abused the victim child. The same has been established by the evidence of PW 7 and PW 8. Therefore, the piece of evidence of PW 7 and PW 8 that the children were taken to the petitioner's house and



Crl.MP(MD) No.716 of 2026 in  
Crl.A(MD) No.53 of 2026

PW 7 and PW 8 were let off and the victim child alone was retained by the petitioner in his house itself has proved the case of the prosecution. The victim child claimed that she was subjected to sexual harassment. The complaint was also lodged immediate to the occurrence by her parents.

6.Considering the grave nature of offence committed by the petitioner, this Court is not inclined to entertain this petition. Accordingly, this Criminal Miscellaneous Petition is dismissed.

7.Registry is directed to mark a copy of the order to the Dean, Government Medical College Hospital, Kanniyakumari and the Dean shall enquire into the manner, in which, the evidence has been adduced by the doctor, namely, Dr.R.Devika in Spl.SC.No.14 of 2016, on the file of the Special Court for exclusive trial of cases under POCSO Act, Nagercoil, on 04.07.2019 and to take necessary action as against the doctor, who has deposed in such an irresponsible manner,



Crl.MP(MD) No.716 of 2026 in  
Crl.A(MD) No.53 of 2026

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even without ascertaining the nature of injuries, if any, sustained by the victim girl. It is very unfortunate that the doctor has not stated about the condition of the hymen, when she has examined the victim child in sexual harassment case.

**08.04.2026**

Index : Yes/No  
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To

- 1.The Inspector of Police,  
Kanyakumari All Women Police Station,  
Nagercoil District.
- 2.The Superintendent,  
Central Prison,  
Palayamkottai.

Copy to

The Dean, Government Medical College Hospital, Kanniyakumari.



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Crl.MP(MD) No.716 of 2026 in  
Crl.A(MD) No.53 of 2026

**B.PUGALENDHI, J.,**

vrn

**Order made in**  
**Crl.MP(MD) No.716 of 2026**  
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**Crl.A(MD) No.53 of 2026**

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