



CrI.MP.(MD).Nos.18636 & 19559/2025

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

WEB COPY

Dated : 03.02.2026

CORAM :

THE HONOURABLE Mrs. JUSTICE N.MALA

CrI.MP.(MD).Nos.18636 & 19559/2025

in

CrI.A.(MD).Nos.1284 & 1331/2025

Kumar @ Sujin Kumar

... Petitioner in
CrI.MP.(MD).No.18636/2025

Selvadoss

... Petitioner in
CrI.MP.(MD).No.19559/2025

Vs.

The State of Tamil Nadu rep.by
The Inspector of Police
All Women Police Station
Kuzhithurai, Kanyakumari District.

... Respondent
in both the petitions

Prayer: Criminal Miscellaneous Petitions filed under Section 389[1] Cr.P.C., r/w Section 430[1] of BNSS to suspend the sentence and grant bail imposed on the petitioners in SC.No.2/2017 dated 14.08.2015 on the file of the Special Court for Trial of Cases under POCSO Act, Nagercoil, Kanyakumari District, pending disposal of the appeals.



CrI.MP.(MD).Nos.18636 & 19559/2025

For Petitioner in
CrI.MP.(MD).No.18636/2025 : Mr.Issac Mohanlal
Senior Counsel for M/s.Isaac
Chambers

For Petitioner in
CrI.MP.(MD).No.19559/2025 : Mr.s.Karthikeyan

For Respondent in both
Petitions : Mr.K.Sanjai Gandhi, GA [CrI.Side]

COMMON ORDER

- (1)The petitions are filed by the accused 1 and 2 to suspend the sentence imposed on them in SC.No.2/2017, dated 14.08.2025, on the file of the Special Court for Trial of Cases under POCSO Act, Nagercoil, Kanyakumari District, pending disposal of the criminal appeals.
- (2)The prosecution case, in brief is that all the accused, on various dates and in various places, committed aggravated penetrative sexual assault on the victim girl, a school student. Based on the complaint, an FIR in Crime No.34/2015 for the offences punishable under Section 3 read with Section 4 of POCSO Act in respect of A1, A2 and A4 and for the offences punishable u/s.5[l], 5[m], 5[n] read with Section 6 of the POCSO Act, as against A3 was filed. On completion of investigation, charge sheet was filed and the same was taken on file in SC.No. 2/2017 by the learned Sessions Judge, Special Court for Trial of Cases under POCSO Act, Nagercoil, Kanyakumari District.



Crl.MP.(MD).Nos.18636 & 19559/2025

(3)Before the Trial Court, on the side of the prosecution, 41 witnesses were examined as PW1 to PW41 and 81 documents were filed. One material object was marked as MO1. On the side of the defence, no witness was examined and no document was marked.

(4)The Trial Court, on completion of Trial, convicted the petitioners/A1 and A2 for the offence punishable u/s.3 read with 4 of POCSO Act and sentenced them to undergo 10 years rigorous imprisonment, along with a fine of Rs.2,000/- and in default, to undergo 6 months simple imprisonment. A1 and A2 have filed the above criminal appeals along with the petitions for suspension of sentence.

(5)Mr.Isaac Mohanlal, learned Senior counsel appearing for the 2nd accused/petitioner in Crl.MP.(MD).No.18636/2025 submitted that even though the foundational issue regarding the age of the victim girl was raised before the Trial Court, it failed to consider properly the evidence on record in this regard. The learned Senior counsel submitted that the failure to record a categorical finding on the age of the victim, goes to the root of the prosecution case and hence, the prosecution has failed to prove its case beyond reasonable doubt. The learned Senior counsel submitted that insofar as the 2nd accused is concerned, two issues were relevant, one, with regard to the age of the victim and the other, with regard to the place of incident. The learned Senior counsel submitted that the



Crl.MP.(MD).Nos.18636 & 19559/2025

Trial Court failed to appreciate the evidence of PW37-the doctor, who first examined the victim girl and who stated that the victim girl admitted before him that she had consensual sex with other persons over a period of two days. The learned Senior counsel submitted that the statement of the victim girl coupled with the lack of clarity on the exact age, falsified the prosecution's case that the victim girl was a child falling within the definition in Section 2[d] of the POCSO Act. The learned Senior counsel submitted that the Trial Court failed to note that as against A2, only one incident was alleged and the evidence of the victim girl in that regard, is wavering and inconsistent. The learned Senior counsel submitted that the evidence of the victim girl about the place of occurrence was inconsistent and contradictory. The learned Senior counsel further submitted that A2 had a good case in appeal and that, there was every possibility of him getting acquitted. Under the circumstances, the learned Senior counsel prayed that the application for suspension of sentence pending appeal, be allowed

(6)Mr.S.Karthikeyan, learned counsel appearing for A1/petitioner in Crl.MP. (MD).No.19559/2025 submitted that even in the case of A1, the evidence of the victim girl was full of contradictions regarding the place of occurrence and therefore, he prayed for suspension of sentence for A1.



Crl.MP.(MD).Nos.18636 & 19559/2025

(7)The learned Additional Public Prosecutor submitted that the Trial Court, based on Ex.P31, issued by PW36 and Ex.P32, found the victim girl was born on 16.05.1999 and therefore, she was a child falling within the definition of 'child' u/s.2[d] of the POCSO Act. The learned Additional Public Prosecutor, on the contradictions and inconsistencies in the evidence of the victim, regard the place of occurrence, submitted that they are matters to be argued at the time of final disposal of the appeal. The learned Additional Public Prosecutor, therefore prayed that the petitions be dismissed as meritless.

(8)This Court has given its anxious consideration to the submissions made by the learned counsels and carefully perused the materials available on record.

(9)The Trial Court relying on the evidence of PW6-Headmistress of the victim girl's school and Ex.P31 issued by her along with Ex.P32, P33 and P69, found that the victim girl was a child. Ex.P31, is the handwritten certificate issued by the Headmistress regarding the age, religion and caste of the victim girl. Ex.P32 is the Extract of the School Admission Register. Ex.P33 is the Wound Certificate, wherein the statement of the victim that she was studying 9th standard, was recorded. In Exs.P31 and P32, the date of birth of the victim girl is given as 16.05.1999. It is to be noted here that the Date of Birth of the victim girl given in Ex.P31, is corroborated by the Date of Birth given in Ex.P.32, the School



CrL.MP.(MD).Nos.18636 & 19559/2025

Admission Register. Therefore, even though Ex.P31 is a handwritten Certificate issued by PW6-Headmistress, it is corroborated by the Date of Birth recorded at the time of admission. Therefore, this Court at this stage of suspension of sentence, cannot undertake indepth enquiry into the correctness of the documents relied on by the learned Trial Judge as this would amount to retrial. This Court, at this stage, is only called upon to take a *prima facie* view on the age of the victim as determined by the Trial Court on appreciation of the evidence by it.

(10)I am fortified in my view by the judgment of the Hon'ble Supreme Court, in the case of ***State of Uttar Pradesh Vs. Anurudha and Others [2026 SCC OnLine SC 40]***. The Hon'ble Supreme Court, in paragraph No.18 of the judgment, held as follows:-

"18.....The determinatoin of the age of the victim is a matter for trial, and the presumption which is accorded to the documents enumerated under the Section, has to be rebutted there, for that is the appropriate forum to do so, not the bail Court. It the question of age is raised at the stage of bail, it is only open for the Court to, from the perusal of the documents, take a prima facie view as to the age of the victim, not one on the correctness of the documents since that would amount to a mini trial."



Crl.MP.(MD).Nos.18636 & 19559/2025

(11) Though the Apex Court considered the issue with reference to the bail application, this Court is of the view that the ratio laid therein, squarely applies to an application for suspension of sentence also.

(12) As regards the contention of the learned counsels on the place of occurrence and the inconsistencies and contradictions in the victim girl's statements before the authorities and the vidence of the other prosecution witnesses, this Court on a cursory consideration of the material evidence on record, finds that the victim has clearly deposed that she was sexually assaulted by A1 in a lodge and by A2 in the Banana Farm. Here also this Court is of the view that the inconsistencies and contradictions in the prosecution witnesses' evidence, are best left to be considered at the time of final disposal of the appeals. At this stage, this Court cannot enter into a roving enquiry or conducting mini trial to evaluate the contradictions in the prosecution case.

(13) The Apex Court in ***Om Prakash Sahni Vs. Jaishankar Chaudhary and Another [2023 [6] SCC 123]***, has laid the law with regard to the appreciation of an application u/s.389 of CrPC. The Apex Court in paragraph No.33 has held as follows:-

"33. Bearing in mind the aforesaid principles of law, the endeavour on the part of the court, therefore, should be to see as to whether the case presented by the prosecution and accepted by the



CrL.MP.(MD).Nos.18636 & 19559/2025

trial court can be said to be a case in which, ultimately the convict stands for fair chances of acquittal. If the answer to the abovesaid question is to be in the affirmative, as a necessary corollary, we shall have to say that, if ultimately the convict appears to be entitled to have an acquittal at the hands of this Court, he should not be kept behind the bars for a pretty long time till the conclusion of the appeal, which usually takes very long for decision and disposal. However, while undertaking the exercise to ascertain whether the convict has fair chances of acquittal, what is to be looked into is something palpable. To put it in other words, something which is very apparent or gross on the face of the record, on the basis of which, the court can arrive at a prima facie satisfaction that the conviction may not be sustainable. The appellate court should not reappreciate the evidence at the stage of Section 389 CrPC and try to pick up a few lacunae or loopholes here or there in the case of the prosecution. Such would not be a correct approach."

(14) In view of the above discussions, this Court finds no merit in these applications and hence, the same are **dismissed**. It is made clear that the observations made herein are only for the limited purpose of deciding the above applications and the same shall not affect either party at the time of final disposal of the appeal.

(15) Since the original records are before this Court, the Registry is directed to post the Criminal appeals for final hearing during 3rd week of March, 2026.

03.02.2026

Index : Yes/No
Internet : Yes/No

CM/AP



WEB COPY



Crl.MP.(MD).Nos.18636 & 19559/2025

To

- 1.The Sessions Judge
Special Court for Trial of Cases under
the POCSO Act, Nagercoil at
Kanyakumari District.
- 2.The The Inspector of Police
All Women Police Station
Kuzhithurai, Kanyakumari District.
- 3.The Additional Public Prosecutor
Madurai Bench of Madras High Court
Madurai.



WEB COPY



Crl.MP.(MD).Nos.18636 & 19559/2025

N.MALA., J.

AP

Crl.MP.(MD).Nos.18636 & 19559/2025

in

Crl.A.(MD).Nos.1284 & 1331/2025

03.02.2026