



Crl.MP.(MD).Nos.19947, 19948, 19951 & 19952/2025

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Dated : 19.01.2026

CORAM

THE HONOURABLE MRS. JUSTICE N.MALA

Crl.MP.(MD).Nos.19947, 19948, 19951 & 19952/2025

in

CRL A(MD)No.1348/2025

Dinesh

... Petitioner in
Crl.MP.(MD).
No.19947/2025

Esakkimuthu

... Petitioner in
Crl.MP.(MD).
No.19948/2025

Stalin

... Petitioner in
Crl.MP.(MD).
No.19951/2025

I Court Durai

... Petitioner in
Crl.MP.(MD).
No.19952/2025

Vs

State of Tamilnadu through
The Inspector of Police,
Kulasekarapattinam Police Station,
Thoothukudi District.

... Respondent in
all the petitions

[Crime No.188/2015]



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COMMON PRAYER :- Petitions filed under Section 430 of BNSS to suspend the sentence delivered in SC.No.56/2019 dated 26.11.2025 on the file of the Special Court for Exclusive Trial of Cases under POCSO Act, Thoothukudi, Thoothukudi District, till the disposal of the main appeal and enlarge the petitioners on bail.

For Petitioners in
all the petitions : Mr.Ka.Raamakrishnan

For Respondent in
all the petitions : Mr.B.Nambiselvan, APP

COMMON ORDER

These Criminal Miscellaneous Petitions have been filed to suspend the sentence imposed on the petitioners by the learned Sessions Judge [FAC], Special Court for Exclusive Trial of Cases under POCSO Act, Thoothukudi, in Spl.SC.No.56/2019 dated 26.11.2025, and enlarge the petitioners on bail pending disposal of the appeal.

2. There are totally four accused, arrayed as A1, A2, A3 and A4. The gist of the prosecution case is that, on 13.08.2015, at about 3.00 a.m., while the victim girl was sleeping in front of the Kulasekarapattinam Mutharamman Temple, the petitioners/A1 to A4, went to the place of occurrence in two motorcycles and with the common intention of committing sexual assault, tried to abduct the victim girl. The prosecution's further case was that A1 caught hold of the hands

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of the victim girl and attempted to drag her while A2, A3 and A4, surrounded her. On an alarm raised by the victim girl, the accused pushed her down, causing her simple injuries. Hence, the complaint.

3.The Inspector of Police, Kulasekarapattinam Police Station, filed the Final Report for the alleged offences under Sections 294[b], 323, 506[ii] and 34 of IPC and under Sections 12, 9[m], 11[1] of the POCSO Act. The case was taken up on file in Spl.SC.No.56/2019 by the Special Court for Exclusive Trial of Cases under POCSO Act, Thoothukudi.

4.Before the Trial Court, on the side of the prosecution, 18 witnesses were examined as P.W.1 to P.W.18 and 11 documents were marked as Ex.P.1 to Ex.P.11. Two material objects were marked as M.O.1 and M.O.2. On the side of the accused, neither any witness was examined nor document was marked.

5.The learned Sessions Judge [FAC], Special Court for Exclusive Trial of Cases under POCSO Act, Thoothukudi, upon considering the evidence both oral and documentary and on hearing the arguments on both the sides, passed the impugned judgment dated 26.11.2025, convicting the petitioners as follows:



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S.No.	Offence	Sentence
1	Section 10 of POCSO Act	Each of the accused was sentenced to undergo 10 years rigorous imprisonment and to pay a fine of Rs.2,500/- each and in default, to undergo 3 months Simple imprisonment.

6.Challenging the above said conviction and sentence, the petitioners/appellants have preferred the present Criminal Appeal along with the above Miscellaneous Petitions seeking suspension of sentence.

7.The respondent police filed a counter affidavit, wherein the facts leading to the appeal were narrated. The respondent stated that the Trial Court, on proper appreciation of the evidence on record, rightly convicted the accused. The respondent further stated that the evidence of the prosecution witnesses corroborated the prosecution case and therefore, the Trial Court was justified in imposing the sentence aforesai. The respondent also stated that no plausible grounds were made out for suspending the sentence.

8.The learned counsel appearing for the petitioners would submit that there are several incongruities in the prosecution case and further there are contradictions in material particulars in the evidence of the prosecution witnesses. He would further submit that the Trial Court



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failed to consider that the admitted case of the prosecution was that the victim girl was only pulled by her hands and that none of the accused touched any part of the body of the victim girl. None of the overt acts as stipulated in Section 7 of the POCSO Act, were established and hence, neither Section 7 nor Section 9 were not attracted. The learned counsel further submitted that in the absence of any finding, that any of the overt acts stipulated under Section 7 of the POCSO Act, were committed, the Trial Court ought not to have convicted the petitioners under Section 10 of the POCSO Act, to undergo imprisonment for five years with fine amount of Rs.2,500/- each, and in default to undergo 3 months simple imprisonment. The learned counsel hence prayed for suspension of sentence.

9.The learned Additional Public Prosecutor, appearing for the State submitted that there are enough materials available on record against the petitioners and hence, he strongly opposed the grant of suspension of sentence. The learned Additional Public Prosecutor submitted that all the grounds raised by the petitioners were vexatious and that, based on the factual matrix of the case, the learned Trial Judge had rightly convicted the accused for the offences committed by them.



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The learned Additional Public Prosecutor, therefore prayed for dismissal of the petitions.

10.This Court has carefully considered the rival contentions put forward by either side and also perused the materials available on record.

11.The case of the prosecution was that, while the victim girl was sleeping in front of Kulasekarapattinam Mutharamman Temple, at about 3.00 a.m., on 13.08.2015, the accused 1 to 4 came in two motorcycles to the scene of crime and with the common intention of committing sexual assault on the victim girl attempted to abduct her. The prosecution's further case was that while A2, A3 and A4 surrounded the girl, A1 caught hold of the hand of the victim girl, attempted to drag her., however, as she raised an alarm, he dropped her resulting in simple injuries to her. The learned counsel for the petitioners submits that for conviction for the offences under Sections 7 and 9 of the POCSO Act, the overt acts mentioned therein have to be proved. Section 7 of the POCSO Act, speaks of sexual assault and Section 9 of the Act, speaks of aggravated sexual assault. Admittedly, Section 9, on the facts of the case, is not applicable. As far as Section 7 is concerned, none of the overt acts mentioned in the said section, are spoken to by the victim girl.



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She only states that one of the accused lifted her and when she raised alarm, the accused dropped her and fled away from the scene of occurrence. It is pertinent to mention here that the Trial Court found it unnecessary to impose separate punishment for the offences under Sections 323 read with 34 of IPC and also found the accused not guilty of the offences under Sections 294[b] and 506[ii] of IPC.

12.A *prima facie* consideration of the materials on record, indicates that none of the overt acts mentioned in Section 7 are spoken to by the victim girl. Whether an alleged attempt to abduct the victim girl, in the absence of any overt act as contemplated under Section 7 of the POCSO Act being spoken to by the victim girl, would be sufficient to attract the said provision, is an arguable issue requiring consideration in the appeal. Hence, without expressing any opinion on the merits of the case, and keeping in view the limited scope of the enquiry under Section 389 of Cr.P.C., I am of the considered view that the said contention raises a debatable point. Also, since the criminal appeal is not likely to be taken up for final hearing in the near future, I am inclined to suspend the sentence imposed on the petitioners, pending appeal subject to the following conditions:-



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(i) the petitioners are directed to pay the total fine amount of Rs. 10,000/- within a period of two weeks from today ;

(ii) upon payment of the fine amount, the petitioners shall be enlarged on bail on condition that each of them shall execute a bond for a sum of Rs.10,000/- (Rupees Ten Thousand only) with two sureties, each for a like sum, within a period of 10 days from the date of receipt of a copy of this order, to the satisfaction of the learned Sessions Judge [FAC], Special Court for Exclusive Trial of Cases under POCSO Act, Thoothukudi ;

(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 petitioners shall appear before the jurisdictional Police Station, viz., Kulasekarapattinam Police Station, daily at 10.30 a.m., pending disposal of the appeal.

19.01.2026

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TO

- 1.The Inspector of Police,
Kulasekarapattinam Police Station
Thoothukudi District.
- 2.The Sessions Judge [FAC],
Special Court for Exclusive Trial of
Cases under POCSO Act, Thoothukudi.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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N.MALA,J

AP

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