



CrIMP(MD)No.809 of 2026

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 15.06.2026

CORAM:

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

**CrIMP(MD)No.809 of 2026
in
Crl A(MD)No.323 of 2026**

Ganesan

...Petitioner

Vs

**The State of Tamil Nadu
rep by the Inspector of Police,
Pudukottai All Women Police Station,
Pudukottai District.
[Crime No.17 of 2022]**

... Respondent

PRAYER: Petition filed under Section 430 of Bharatiya Nagarik Suraksha Sanhita, to suspend the sentence imposed on the petitioner in Spl.SC.No.55 of 2022, dated 21.03.2025 passed by the Judge Mahila Court, Pudukottai and enlarge him on bail pending disposal of the above appeal.

For Petitioner : Mr.R.Vignesh

**For Respondent : Mr.V.Shathurthi Raja
Government Advocate**



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ORDER

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The petitioner is the sole accused in Spl.SC No.55 of 2022, on the file of the Mahila Court, Pudhukottai. He was tried for the offence under Section 450 IPC r/w 4 (2) & 12 of POCSO Act, 2012 that he has committed aggravated penetrative sexual assault on the victim child, aged about 14 years. The trial Court has found the petitioner guilty, convicted and sentenced as under:-

S.No.	Sections	Punishment	Fine in Rs.	Default class
1	450 IPC	10 Years RI	50,000/-	1 year RI
2	4(2) of POCSO Act	20 Years RI	1,50,000/-	1 year RI
3	12 of POCSO Act,	3 years RI	20,000/-	6 months SI

2.The learned counsel appearing for the petitioner submits that the specific case of the prosecution is that it is a case of penetrative sexual assault, however, the victim girl has not stated anything about the factum of penetrative sexual assault either in her statement recorded under Section 164 of Cr.P.C or in her statement recorded under Section 161 of Cr.P.C., According to the learned counsel, the factum of penetrative sexual assault has been stated by the victim girl for the first



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time during her chief examination. The prosecution has failed to prove the age of the victim as per Section 94 of the Juvenile Justice (Care and Protection of Children) Act, 2015. According to the learned counsel, when the First Information Report and the Charge sheet disclose the offence of sexual assault, the trial Court has framed charges for the offence of penetrative sexual assault, without any prima facie material. The evidence of PW 1/the mother of the victim girl was relied upon by the trial Court to convict this petitioner, however, PW1 is a hearsay witness and therefore, her evidence cannot be relied on. He further submits that before examining the victim girl, *no voir dire* test has been conducted by the trial Court to ensure the credibility of the victim to testify. The petitioner is in jail for more than three years. Therefore, he may be considered for grant of suspension of sentence.

3.The learned Government Advocate appearing for the respondent submits that the *voir dire* test is not mandatory. In this case, the victim child was 15 years when she was examined, before the trial Court and she was 14 years at the time of occurrence and when she was examined under Section 164 Cr.P.C., the necessary procedure have been



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followed by the concerned Magistrate. However, during the trial, the trial Court has not followed certain procedure and that by itself is not a ground to disbelieve the case of the prosecution. The victim child was 15 years at the time of trial and she was capable of giving evidence during the trial. In this regard, the learned Government Advocate has relied upon Section 118 of Indian Evidence Act, which reads as under:

“118 of Indian Evidence Act: All persons shall be competent to testify unless the Court considers that they are prevented from understanding the questions put to them, or from giving rational answers to those questions, by tender years, extreme old age, disease, whether of body or mind, or any other cause of the same kind.”

4.The learned Government Advocate, by referring to the statement of the victim girl, recorded under Section 164 of Cr.P.C submits that the victim girl has narrated the incident in a cogent manner and that could not be shattered by the defence. The petitioner is aged about 50 years and he is a lorry owner. The father of the victim child was working with him. Taking advantage of the same, the petitioner/ accused



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has abused the victim child when her parents were away from their house. Therefore, this petition is liable to be dismissed.

5.Heard the learned counsel on either side.

6.The trial court found the petitioner guilty that this petitioner has abused the victim girl, who was aged about 14 years at the time of occurrence on 06.06.2022. He was found guilty, convicted by the trial court based on the statement of the victim girl / PW2. According to the prosecution, the victim child was 14 years and the same is not disputed. The only contention of the petitioner is that the *voire dire* test has not been conducted during the trial.

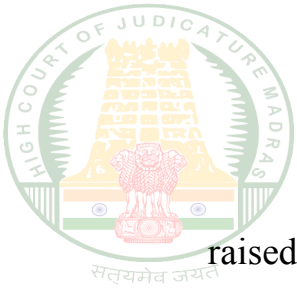
7.The *Voir Dire* Test [meaning Oath to tell the truth] is precursor test conducted by the court to determine the capability and competency of a child witness to testify before the court. In this test, the court ascertains the competency of the child by asking some questions unrelated to the case on hand, before testifying the child witness as a part of trial proceedings. In this case the victim girl was examined at the



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initial stage immediate to the registration of FIR while recording the statement under Section 164 of the CrPC, by the learned Judicial Magistrate, Additional Mahila Court, Pudukottai. The learned Judicial Magistrate, who examined the victim child /PW2 has raised necessary questions to the victim and thereafter recorded the statement. However, this procedure was not followed during the trial and therefore, it is contented by the learned counsel for the petitioner that the testimony of the victim lacks credibility. However, it is relevant to note that the Hon'ble Supreme Court in ***Himmat Sukhadeo Wahurwagh vs. State Of Maharashtra [2009 (3) SCC (CRI) 1]*** has held that mere non compliance of *Voir Dire* Test would not *ipso facto* lead to the whole sale rejection of the evidence of child witness when it inspires the confidence and trust of the court. In the present case, the trial was conducted in the year 2023 and PW2/ the victim was examined on 16.02.2022 and the victim was 15 years old by that time. The victim was examined by following the procedures under the POCSO Act, in a separate room and by raising questions through the court. The victim herself has testified in detail in the examination in chief and also underwent cross-examination and the evidence of the victim is cogent and reliable. Therefore, the ground



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raised by the petitioner cannot be accepted.

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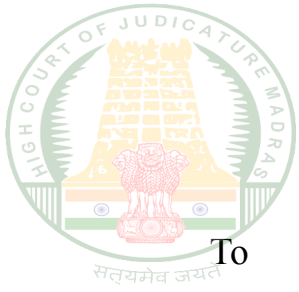
8.The allegation of penetration was not mentioned in the first information report and also in the statement recorded under Section 164 CrPC. However, with this contradiction, this court cannot disbelieve the evidence of the victim in toto.

9.This application is filed for suspending the sentence. Registry has prepared the typed set of papers and therefore, the appeal could be taken up for final disposal. The allegation as against the petitioner is that he is a neighbour / lorry owner, taken advantage of the loneliness of the victim child on the particular day went and abused the child. Since the evidence of the PW2 is cogent and convincing, this court is not inclined to suspend the sentence. Accordingly, this petition is dismissed.

10.The Registry shall list the main appeal for hearing under the caption 'accused in jail cases'.

15.06.2026

DSK



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To

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1.The Judge Mahila Court,

Pudukottai.

2.The Inspector of Police,
Thiruppuvanam Police Station,
Sivagangai District.

Copy to

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



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B.PUGALENDHI.J.,

DSK

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