



Crl.M.P.No.19859 of 2022 in  
Crl.A.No.1309 of 2022

WEB COPY IN THE HIGH COURT OF JUDICATURE AT MADRAS

**DATED: 01.03.2023**

**CORAM**

**THE HONOURABLE MR. JUSTICE V.SIVAGNANAM**

**Crl.MP No.19859 of 2022 in**  
**Crl.A No.1309 of 2022**

Sathish

... Petitioner

Vs.

State rep. by the Inspector of Police,  
All Women Police Station,  
Salem Town,  
Salem District.  
(Crime No.8/2018)

... Respondent

**PRAYER:** Criminal Miscellaneous Petition filed under Section 389(1) of Cr.P.C. to suspend the sentence imposed on the petitioner in Spl S.C.No.207 of 2019, vide order dated 14.08.2021 passed by the learned Special Court for Exclusive Trial of cases under POSCO Act, Salem, pending disposal of the Criminal Appeal.

For Petitioner

: Mr.W.Camyles Gandhi for  
Mr.S.Surthy Sowarnam

For Respondent

: Mr.C.E.Pratap  
Govt. Advocate (Crl.Side)



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## **ORDER**

This petition has been filed to suspend the sentence imposed on the petitioner, in Spl S.C.No.207 of 2019, vide order dated 14.08.2021 passed by the learned Judge, Special Court for Exclusive Trial of cases under POSCO Act, Salem, pending disposal of the Criminal Appeal.

2. The learned Trial Judge, vide order dated 14.08.2021 passed in Spl S.C.No.207 of 2019, convicted and sentenced the petitioner, as extracted hereunder.

| <i>provision<br/>under which<br/>convicted</i>        | <i>Sentence</i>                                                                                                      |
|-------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------|
| Sec.5(m), 5(n),<br>5(1) r/w.6 of<br>POSCO Act<br>2012 | 20 years rigorous imprisonment and to pay a fine of Rs.10000/-, in default, to undergo 3 months simple imprisonment. |
| Sec.506(i) IPC                                        | 2 years rigorous imprisonment and to pay a fine of Rs.5000/-, in default, to undergo 1 month simple imprisonment.    |

3. Aggrieved by the judgment of conviction passed by the Trial Court, the petitioner filed the above Criminal Appeal along with the instant petition,



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WEB COPY seeking to suspend the sentence of imprisonment.

4.The learned counsel for the petitioner submitted that in this case, the accused was not given an opportunity to cross examine the prosecution witnesses, and without the prosecution witnesses being cross-examined by the accused, the learned trial Judge, relied upon the prosecution evidence, found guilty and convicted the petitioner. The learned counsel further submitted that there are arguable points and fair chances of getting success in the Criminal Appeal. The trial Court, based upon the untested prosecution witnesses by cross-examination, convicted the petitioner and he has been in judicial custody from 28.12.2018 and hence, the learned counsel prayed for suspension of sentence.

5. Mr.C.E.Pratap, learned Government Advocate(Crl.side) has fairly conceded that in this case, the prosecution witnesses were not cross-examined by the accused/petitioner.



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**WEB COPY** 6.Heard the learned counsel for the petitioner and the learned Government Advocate(Crl. side) appearing for the respondent and perused the impugned judgment and the materials placed on record.

7.I have considered the submissions of the learned counsel on either side and the facts would reveal that the petitioner is the accused in Spl S.C.No.207 of 2019, on the file of the learned Judge, Special Court for Exclusive Trial of cases under POSCO Act, Salem. The respondent Police registered a case against the accused/petitioner for the alleged offences committed under Sections 9(1) & 10 of POCSO Act, 2012 & 506 (ii) IPC altered under Sections 9(1) (m) r/w. 10 of POCSO Act 2012 & 506(ii) IPC. The trial Court, after examining the prosecution witnesses and based upon their evidence, found the petitioner guilty of the charges and convicted and imposed sentence on the petitioner for the offences under Sections Sec.5(m), 5(n), 5(1) r/w.6 of POSCO Act 2012 & Sec.506(i) IPC. Further, it is noticed that all the prosecution witnesses were not cross examined by the accused/petitioner. So, without testing the prosecution witnesses on the cross

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WEB COPY examination, the trial Court relied upon the evidence let in by the witnesses in their chief-examination and found the petitioner guilty and convicted him. Therefore, Taking into consideration of the submission of the learned counsel appearing on either side, this Court finds that, the petitioner has substantial grounds in this Criminal Appeal, which require a detailed appraisal and also the fact that the petitioner has been in judicial custody from 28.12.2018 onwards, this Court is of the view that the petitioner is entitled to the relief of suspension of sentence.

8. Accordingly, it is ordered as follows.

(i) The substantive sentence of imprisonment alone is suspended and the petitioner is directed to be enlarged on bail on condition that the petitioner shall execute a bond for a sum of Rs.25,000/- (Rupees twenty five thousand only) with two sureties each for a like sum to the satisfaction of the learned Judge, Special Court for Exclusive Trial of cases under POSCO Act, Salem.



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**WEB COPY** (ii) The petitioner and the sureties shall affix their photographs and Left Thumb Impression in the surety bond and the afore said Court may obtain a copy of their Aadhar card or Bank pass Book to ensure their identity.

(iii) The petitioner shall appear before the Trial Court, as and when required.

**01.03.2023**  
**(2/2)**

**dn**

**To**

1. The Judge, Special Court for Exclusive Trial of cases under POSCO Act, Salem.
2. The Inspector of Police,  
All Women Police Station,  
Salem Town,  
Salem District.  
(Crime No.8/2018)
3. The Superintendent, Central Prison, Salem.
4. The Public Prosecutor, High Court of Madras, Chennai.



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**V.SIVAGNANAM, J.,**

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