* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Reserved on: 01.09.2026
Pronounced on: 17.11.2026
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\# **CNR No. DLHC014761502017**
\+ W.P.(CRL) 3053/2017 & CRL.M.A. 17911/2017

JITENDRA @ JITU NAINSINGH GEHLOT .....Petitioner
Through: Mr.Rajshekar Rao, Sr Adv. with Ms.Shreya Rastogi, Mr.Mihir Samson, Ms.Moulika Diwakar, Ms.Tavleen Kaur Saluja, Ms.Vishaka Gupta, Ms.Anandita Rana, Advs.

versus

UNION OF INDIA & ANR .....Respondents
Through: Mr.Vikram Jetly, CGSC with Ms.Shreya Jetly, Adv. for UOI.
Mr.Sunil Kumar Singh, Under Secretary, MHA.

CORAM:
HON'BLE MR. JUSTICE NAVIN CHAWLA
HON'BLE MR. JUSTICE RAVINDER DUDEJA

J U D G M E N T

NAVIN CHAWLA, J.

1. The present Writ Petition has been filed under Article 226 of the Constitution of India read with Section 482 of the Code of Criminal Procedure, 1973 (hereinafter referred to as, Cr.P.C.), seeking, *inter alia*, the following reliefs:

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"a. Issue an appropriate writ declaring the condition imposed by the order of the President of India barring further remission by any authority to be unconstitutional and bad in law;
b. Commute the sentence imposed upon the Petitioner to life imprisonment subject to remission powers available to the appropriate government under the Criminal Procedure Code, 1973 and relevant provisions of the applicable prison rules and the Constitution of India;
c. Quash letter dated 15.10.2016 issued by the Superintendent, Nagpur Central Jail in so far as it imposes a condition barring the possibility of remission upon the Petitioner
d. Quash aside letter bearing no. 14/7/2004 (Judicial Cell) dated 5.10.2016 issued by the Ministry of Home Affairs in so far as it bars the possibility of remission to the Petitioner"

BACKGROUND OF FACTS

2. The challenge of the petitioner is to the decision dated 18.09.2016 of the Hon'ble President of India, commuting the death sentence of the petitioner to one of life imprisonment, with a caveat that "*prisoner, Jeetendra alias Jitu Nainsingh Gehlot shall remain in prison for the whole of the remainder of his natural life and there shall be no further remission of the term of his imprisonment for life by any authority".* The said decision was communicated to him *vide* letter dated 15.10.2016, issued by the Superintendent, Nagpur Central Jail.

3. The petitioner, along with the co-accused, namely, Narayan Chetanram Chaudhary, faced trial for the ghastly murders of five innocent women, one of whom was pregnant, and two children, aged one and a half years and two and a half years, respectively. The case of

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the prosecution was summarized by the Supreme Court in its judgment in ***Narayan Chetanram Chaudhary & Anr. v. State of Maharashtra,*** (2000) 8 SCC 457, as under:

> *"4. The prosecution case, as revealed from the investigation and official report filed in the Court, is that complainant Sanjay Rathi (PW1) along with his father Keshrimal Rathi, his mother, deceased Meerabai Rathi, his younger sister, deceased Km Preeti, his wife, deceased Babita and his son, deceased Chirag were residing in Flat No.6 on the second floor of Himanshu Apartment, Shilavihar Colony, Puad Phata, Kothrud, Pune. One of the daughters of Keshrimal Rathi, deceased Hemlata was married to Shri Shrikant Navandhar, PW15 in the year 1992 and had come to her parents' house along with her son on the fateful day. Raju Rajpurohit who was Accused 3 and later after becoming approver appeared as PW2, a resident of Muklava District, Ganganagar, Rajasthan after passing 11th standard examination in the year 1993-94 came to his elder brother Kalyan Singh at Pune for the purposes of getting further education while working or serving there. He was employed in Bombay Vihar situated at Laxmi Road, Pune since June 1994. Accused 1 and Accused 2 were also working at the said Bombay Vihar during the aforesaid period as Cook and Counter Salesman respectively. After being acquainted with each other, all the three became friends. Raju, PW2 was removed from Bombay Vihar on 8-6-1994 whereafter he got the service at Sagar Sweet Mart owned by Keshrimal Rathi and his son Sanjay Rathi (complainant). In the course of his employment he used to go to the house of Rathis to bring chappatis for servants of the shop daily and thus acquainted himself with the family members of the complainant as also their maidservant. Raju worked with the Rathis for about two to two and a half months.*

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When his request for enhancement of salary was declined by the Rathis, he left their service. At this time Accused 2 went to him and informed that he too has left the job at Bombay Vihar and, therefore, Raju should talk to his employer to keep Jitu in their service. Raju requested Sanjay Rathi to employ Accused 2 but as he demanded a salary of Rs 1200, Sanjay Rathi expressed his inability to provide him the job. Meanwhile Raju learnt that Accused 1 has also left the job at Bombay Vihar. Thereafter all the three went to a room in Nagpur Chawl in which Accused 1 was residing and started living there.

5. After being rendered jobless and the limited amount they had with them being spent, they started thinking about their future. They hatched a conspiracy and made up a plan of robbing the house of some "seth" i.e. a businessman. On the night of 23-08-1994 they decided to commit theft/robbery at the house of Rathis. Accused 1 told the other accused that before committing the theft/robbery they have to make some further preparations. He suggested to purchase a knife because all the inmates of the house were to be killed so that no one could depose anything against them. They also decided to sprinkle chilly powder in the mouth and eyes of their victims to immobilise them for easy killings by the accused. On 24-08-1994 all the accused persons discussed the details of the plan to commit the theft and killings at the house of Rathis. Accused 2 agreed to sell his silver anklet and out of its sale proceeds to purchase a new knife. They went to the shop of Shrinagar Jewellers on 24-08-1994 in the evening. Accused 2 requested the proprietor of the shop to purchase his said silver anklet. As Accused 2 was not having the purchase receipt of his anklet, the shopkeeper refused to purchase it. However, as the accused persons were then residing at Nagpur Chawl which was adjacent to the Shrinagar Jewellers' shop, the anklet was kept as pledge and they were

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given a sum of Rs. 90 as loan. They went to the shop of Jaswant (PW5) and purchased one utility knife of Fiscer-make (art. 147) for Rs 55.

6. On 25-08-1994 at about 11 a.m. to 12 noon, the accused persons went towards the house of Rathis to observe the situation. They stayed and surveyed the said area and found that the area remained isolated during 2.00 p.m. to 4.00 p.m. They decided to commit the act of theft after killing all the persons, whosoever were found at the house of Rathis during the aforesaid period only.

7. On 26-08-1994 at about 8.45 a.m. the complainant Sanjay Rathi is stated to have left his house for his shop. Thereafter Hemlata, deceased with her husband and son arrived at the house of Rathis in connection with tying rakhi to her brother PW1 as she had not come for the said purpose on the day of Rakhi, Poornima Festival on 21-08-1994. Sanjay Rathi, PW1 came to his house at about 1 p.m. to 1.30 p.m. on his motorcycle. Sanjay and his brother-in-law Shri Shrikant Navandhar, PW15 took their meals and went to the complainant's shop. Accused persons left their room at about 12 noon for going to the house of Rathis. Accused 1 was armed with the new knife and Accused 2 with the old one. They had taken with them chilli powder regarding which decision had already been taken, as according to them its throwing in the eyes of victims would have facilitated the commission of the crime. They reached near the house of Rathis at about 2 p.m. They saw one motorcycle kept near the said building which was identified by Raju, PW2 as belonging to Sanjay Rathi, PW1. Realising that Sanjay Rathi, PW 1 was at his house, they returned to the main road and watched. After about one hour they again returned near the building of Rathis. After noticing that the motorcycle of Sanjay Rathi was not there, they decided to execute their plan. Accused 1 told Accused 3 (PW2) to go ahead into the house of Rathis and start

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talking with the family members in respect of his service and by that time they would reach there after chaining the doors of other flats in the said building from outside. After the doors of all other flats were chained from outside, Raju (PW2) went to the flat of Rathis. He found that the door of the flat was half-open and when he peeped into the said flat he saw the maidservant, deceased Satyabhamabai Sutar cleaning the floor with the water. He entered the flat and the appellants followed him. Appellant Jitu closed the door from inside.

8. Accused 2 Jitu threw chilli powder on the inmates of the flat who had collected into the hall on hearing the call made by the maidservant. All the inmates were wade to keep quite and surrender to the orders of the accused persons lest they may be deprived of their lives with the knives which the appellants had in their hands. The family members of Rathis were taken to different rooms in the flat.

9. Realising that the middle-aged woman Meerabai, who had raised her voice, was the lady of the house, Accused 1 promptly asked her about the valuables. Seeing a knife in his hand and realising the danger to her life as also the lives of the rest of the members of the family she immediately pointed out a finger towards an almirah inside the room. Accused 1 and 2 took her to the said room. Accused 2 handed over the packet containing the remaining chilli powder to Raju, PW2 and directed him to sprinkle it on the victims if they started shouting or made any other effort.

10. Smt. Meerabai was done to death with the knife-blows inflicted by Accused 1 and was left to lie on bed where she died. Thereafter Babita @ Nita was taken to another room, apparently for getting the valuables and was killed by Accused 1 by inflicting knife injuries on her person. Her son Chirag was also likewise killed by the aforesaid accused. Raju, PW2, took Preeti into the bathroom at the instance of Accused 1 who cut a length of wire

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of the washing machine and used it to choke her to death, who, however, survived. When they came out of the bathroom, they heard some noise from the bathroom which prompted Accused 1 to go again inside. In the bathroom he found Preeti alive and told his other colleagues that "she was still alive and had not died". To accomplish the conspiracy hatched he gave knife-blows to her which resulted in her death. Raju, PW2 took Satyabhamabai Sutar in the kitchen where the Accused 1 had already reached and was washing the bloodstained knife. Raju held Satyabhamabai Sutar and Accused 1 gave knife-blows resulting in her death. Thereafter Raju and Accused 1 went towards a room where the married daughter of Rathis was held up by Accused 2. Pratik, her son was tried to be taken from her, which she resisted. Accused 2 assured her that he will not kill the child but will give him to his grandmother and threatened that if the child was not given to him, he will kill the child. Hemlata was also killed by inflicting knife injuries. Accused 2 and Raju, PW2 took the child into the room where Meerabai was lying dead in the pool of blood. The child was suffocated by gagging and when his movements stopped, the Accused 2 put down the child on the floor saying he had died. Accused 2 and Raju, PW2 then came out and joined Accused 1 who was standing before Hemlata. Upon enquiry about the child she was told by Accused 2 that the child had been given to her grandmother. Accused 1 then caught hold of Hemlata who put up some resistance and in the process fell down. Accused 2 gave her blows by putting his knees on her stomach and when she was immobilised this way, Accused 1 gave her knife-blows on her neck with the result she also died.

11. Almirahs found in the flat were emptied to the extent the accused could put articles and other cash and valuables in the air bag obtained from the said flat. Before leaving the scene of occurrence Accused 1 changed his

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pant which was bloodstained and also put on him khaki jerkin clothes which were available in the house. Accused 2 helped himself to a black shirt. Bloodstained clothes of Accused 2 were put in the air bag along with the stolen articles. At the time when they were about to leave the flat, the phone installed therein started ringing. Accused 1 cut the telephone wires with his knife. At this stage they heard the cries of child from the room where Meerabai was lying dead. All of them went inside and found that the child Pratik had not died. Despite the death spree caused, they did not think, even to leave that child alive. Accused 2 took the knife from Accused 1 and gave blows to the child and killed him.

12. After completing the crime of theft/robbery and murders, the accused persons came out of the house with the air bag in which they had kept the bloodstained clothes, knives and stolen property. Vishwajit Joshi, PW 9 saw accused persons coming out of the compound wall of the Himanshu Apartments concerned where the flat of the Rathis was located. On the road they boarded a rickshaw and came back to their room in Nagpur Chawl.

13. As noticed earlier, Sanjay Rathi, PW1, his brother-in-law Shrikant Navandhar (PW15) had left the flat before the accused attacked the victims. Both of them went back to the house of Rathis by 6.45 p.m. Sanjay Rathi, PW1 rang the doorbell and as nobody opened the door, he made inquiries from Smt Khara and Smt Dhade as to whether the key of the door of his flat was kept at their houses. On getting reply in the negative, Sanjay Rathi made inquiries from his relatives and family members by making phone calls from the house of Mrs Khara as to whether his family members had gone there and on receiving the information in the negative he telephoned his father at the shop. His father told him that nobody from the family members had come to the shop nor did he receive any message from

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them. Sanjay Rathi went to the shop and brought the duplicate key. Meanwhile Damu Sutar, the husband of the maidservant had also come there. Sanjay Rathi, PW1 opened the door with the duplicate key in the presence of Shrikant Navandhar PW15, Damu Sutar and Smt Sharmila Dhade. Upon entering in the flat they saw the maidservant Satyabhamabai Sutar lying dead in a pool of blood. They rushed out crying and saying that the police be called. On hearing the cries of the complainant Sanjay Rathi, the neighbours and passers-by got collected in front of the building. Two of the neighbours went to Kothrud Police Station and informed the police that several persons had gathered in front of the Apartment in which the flat of Rathis was situated. Entry about the information was recorded in the station diary whereafter PI Vikram Pawar along with his staff rushed to the Apartment building. The said Shri Vikram Pawar along with Sanjay Rathi, PW1 and Shrikant Navandhar, PW15 entered the flat and saw the maidservant Satyabhamabai Sutar, Preeti, Meerabai, Pratik, Babita, Hemlata and Chirag lying dead in pools of blood in the kitchen, bathroom, bedroom and the store of the flat of Rathis. The almirahs were found open. Sanjay Rathi was asked to verify the purportedly stolen articles. Sanjay Rathi was not in a condition to check the articles on account of the shock received after having seen the dead bodies all around in his flat. However, after the passage of sometime and consolation by Vikram Pawar, Sanjay Rathi told the police that cash of Rs 85,000 besides gold and silver ornaments was missing.

14. Meanwhile, after reaching Nagpur Chawl, where the accused persons were residing, Accused 2 asked PW 2 Raju to bring liquor and some edibles for which he was given Rs 200. The air bag was opened in which they had kept their bloodstained clothes, mouth organ, knives, camera, one bundle of

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Rs500 denomination currency notes, one bundle of Rs 100 denomination currency notes, one bundle of Rs 50 denomination currency notes and bundles of Rs 10 denomination, besides gold and silver ornaments. Raju kept for himself a mouth organ, camera and a ladies' wristwatch of Rico-make as also some coins of Nepal origin. Mangalsutra and one HMT watch was taken away by Accused 1. Golden chain, three golden bangles and one golden ring, having S.R. written on it, were taken away by Accused 2.

15. Raju, PW2 was asked by Accused 1 to wash the bloodstained clothes. While washing the pant of Accused 1 Raju found one gold ring in the pocket which he took out and kept with him. As he could not wash the bloodstained clothes of Accused 1 he put back the ring in the pocket of the pant which was later on concealed in the tin roof. The accused thereafter went to the jewellery shop where the silver anklet was pledged. After making the payment they got the silver anklet released. On reaching back in the room in the Nagpur Chawl, they consumed the liquor brought by PW2 and moved around the area for about an hour or so. Again coming back to the said room, Accused 1 declared that he will go and hide the knives. He went away and on his return, upon inquiry, he told that the knives were hidden near the latrine.

16. On the next day at the instance of Accused 1 Raju brought newspapers Prabhat and Aaj ka Anand wherein the incident of murders and dacoity was reported without indicating the identity of the accused persons. In the afternoon they purchased the evening newspaper Sandayanad which carried further details of the incident and mentioned the name of Accused 2 being probably responsible for the crime. After reading such news-item they agreed to part company and to meet at Ahmedabad on 29-8-1994. They met at Ahmedabad and again dispersed. Accused 1 was arrested on 5-9-1994, Accused 2 on 21-

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11-1994 and Raju, PW2 on 15-10-1994 from different places in Rajasthan. They made disclosure statements consequent to which various articles were recovered vide panchanamas prepared in accordance with law. In the identification parades they were identified by various witnesses."

4. In the above narration of the case of the prosecution, the petitioner herein is the Accused No. 2.

5. The petitioner was charged with the offences punishable under Sections 120-B; Section 302 read with Section 120-B and, in the alternative, under Section 302 read with Section 34; under Sections 302 and 342 read with Section 120-B and, in the alternative, under Section 342 read with 34; under Section 397 read with Section 120-B and, in the alternative, under Section 397 read with Sections 392 and 34; under Section 449 read with Section 120-B and, in the alternative, under Section 449 read with Section 34 of the Indian Penal Code (hereinafter referred to as, 'IPC').

6. The petitioner was thereafter convicted by the learned Additional Sessions Judge, Pune (hereinafter referred to as, 'Trial Court'), *vide* the judgment of conviction dated 19.02.1998 passed in Sessions Case no. 462/1994, for the offences under Sections 302, 302/120-B, 120-B, 397/120-B, 449/120-B and 342/34 of the IPC.

7. The order on sentence dated 23.02.1998 was then passed by the learned Trial Court. Finding no mitigating circumstances in favour of the petitioner, noting the absence of any remorse on the part of the petitioner for committing the offences, and taking into consideration the aggravating circumstances, the learned Trial Court observed that

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the petitioner was not entitled to any concession on account of his age, and imposed the following sentences on the petitioner, with a direction that the sentences were to run concurrently:

Sr. No.	*Offence*	*Substantive Sentence*	*Fine*	*Sentence in default of payment of fine*
1.	*Section 302, Section 302 read with 120-B and Section 120-B of the IPC*	*Death*	*Rs. 10,000/-*	*Rigorous Imprisonment for 3 years*
2.	*Section 397 read with Section 120-B of the IPC*	*Rigorous Imprisonment for 7 years*	*Rs. 5,000/-*	*Rigorous Imprisonment for 2 years*
3.	*Section 449 read with Section 120-B of the IPC*	*Rigorous Imprisonment for 7 years*	*Rs. 5,000/-*	*Rigorous Imprisonment for 2 years*
4.	*Section 342 read with Section 34 of the IPC*	*Rigorous Imprisonment for 1 year*	*Rs. 500/-*	*Rigorous Imprisonment for 1 month*

8. The petitioner, along with the co-accused, thereafter preferred appeals before the Bombay High Court, being Criminal Appeal Nos. 415 and 462 of 1998, challenging the said judgment of conviction and the order on sentence passed by the learned Trial Court. However, *vide* the judgment dated 22.07.1999, that is, ***The State of Maharashtra v. Narayanram Chetanram Chaudhary & Ors.,*** 1999 SCC OnLine Bom 859, the Bombay High Court dismissed the said appeals. The High Court also answered in the affirmative the reference by the learned Trial Court for confirmation of the petitioner's death sentence, observing as under:

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> *"231. In the background of the last two cases, if the case before us is considered, in our opinion, none of the circumstances noted in those cases are to be found here. The evidence has been thoroughly discussed by the Trial Court. While considering the aspect of the corroboration, we too have done so to the extent necessary. The circumstances that have been narrated above clearly suggest that the crime was definitely for gain.*
> *232. The Accused did gain out of It. Whatever little that the Police have recovered is before the Court by way of articles. For the rest, there is nothing on record. Killing of adult as possible witnesses can be explained away by the Accused but the manner in which each of them were dealt with several blows coupled with cruelty done to the children which was totally wanton and senseless, and blows given in the stomach of a pregnant woman, who has been inflicted a fatal wound, if all taken together along with the position culled out from the various judicial pronouncements referred to above, in our opinion, there is no escape from coming to the conclusion that they fall in the category of the rarest of rare case.*
> *233. We, therefore, answer the reference for confirmation in the affirmative and direct that the sentence be carried out in accordance with law. Both the appeals filed by the respective Accused are dismissed."*

9. Aggrieved thereby, the petitioner, along with the co-accused, filed appeals before the Supreme Court, being, Criminal Appeal nos. 25-26/2000, however, the said appeals were dismissed by the Supreme Court *vide* order dated 05.09.2000, thereby upholding the conviction and sentence awarded by the learned Trial Court and confirmed by the High Court of Bombay. The Supreme Court in ***Narayan Chetanram Chaudhary*** (supra), held as under:

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> *"45. After going through whole of the evidence, perusing the record, thoughtfully considering the submissions made before us and before the Trial Court as well as the High Court, we have come to an unmistakable conclusion that the present case is one of the rarest of rare cases warranting the extreme penalty imposable by law. The case of the appellant 2 Jitu is not distinguishable. But for his active participation in the conspiracy and its execution, Accused 1 could not have succeeded in committing the murder of six persons including a pregnant woman and a teenaged child. The manner in which Jitu, Appellant 2 committed the murder of Pratik is not only ghastly but reflects his beast-like mental attitude. The appellants do not deserve any sympathy from the law and the society."*

10. The petitioner, along with the co-accused, then filed a Review Petition, being, Review Petition (Criminal) Nos. 1139-1140/2000, before the Supreme Court. The same was also dismissed by the Supreme Court *vide* the order dated 24.11.2000, observing therein that no ground existed to review the imposed sentence.

11. A Mercy Petition dated 27.06.2001 was then submitted by the petitioner before the Hon'ble President of India through the Yerawada Central Prison, Pune, Maharashtra. However, no response was received by the petitioner on his Mercy Petition, accordingly, he sent a letter dated 02.11.2004 through one advocate, Mr. Vikramaditya Rai, to the Hon'ble President, again seeking mercy and commutation of his death sentence to life imprisonment.

12. The said letter was received by the Ministry of Home Affairs (hereinafter referred to as, 'MHA') through the President Secretariat *vide* Note No. 15(9)/2004-CA II dated 10.11.2004, and was forwarded

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to the Home Department, Government of Maharashtra, *vide* letter No.F.Dy No. 1245/2004-JUDL. CELL, dated 23.12.2004, asking whether the Mercy Petition of the petitioner had been considered by the Hon'ble Governor of the State under Article 161 of the Constitution of India and, if so, requesting that the decision thereon, along with the details, be communicated to the MHA.

13. On 18.03.2006, the Home Department, Government of Maharashtra informed the MHA that the petitioner has not submitted any Mercy Petition under Article 161 of the Constitution of India to the Hon'ble Governor or to the State Government.

14. In response thereto, by a letter No. 14/7/2004-Jud.Cell, dated 23.03.2006, the MHA informed the State Government that a Mercy Petition is required to be first considered by the Hon'ble Governor under Article 161 of the Constitution of India and, in the event of rejection of the Mercy Petition by the Hon'ble Governor, the same is to be forwarded to the MHA along with the necessary records of the case, for consideration and decision of the Hon'ble President. Taking a note of the fact that the Mercy Petition of the petitioner herein had been directly addressed to the Hon'ble President, the MHA forwarded it to the Government of Maharashtra for consideration by the Hon'ble Governor. It was also requested that the decision of the Hon'ble Governor be conveyed to the MHA urgently, so as to avoid any undue delay.

15. Subsequently, reminders dated 10.07.2006, 06.05.2008, 24.09.2009 and 20.03.2013 were also sent by the MHA to the State Government in this regard.

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16. Thereafter, on 26.02.2013, a letter was issued by the Government of Maharashtra to the MHA, informing it that, due to a fire in the Ministry on 21.06.2012, the documents and files relating to certain prisoners, including the petitioner herein, were destroyed, and requesting for copies of the records of such prisoners.

17. On 01.04.2013, a letter was issued by the Government of Maharashtra to the Additional Director General of Police, and Inspector General Prisons, seeking copies of all the relevant documents pertaining to the petitioner's Mercy Petition.

18. Subsequently, on 14.02.2014, another letter was issued by the MHA to the Government of Maharashtra regarding the petitioner's Mercy Petition, highlighting therein that a delay of about 10 years had already been caused by the State Government without any justification. It was also requested that the decision of the Governor of Maharashtra, along with the judgments, nominal report, health reports and other records of the petitioner be forwarded to the Ministry, within 21 days of the receipt of the letter, for submission of the case to the Hon'ble President.

19. It is at this stage that the Hon'ble Governor of Maharashtra rejected the petitioner's Mercy Petition on 15.03.2014. The Government of Maharashtra, on 02.04.2014, informed the MHA that the Hon'ble Governor had rejected the Mercy Petition of the petitioner, and requested the Ministry to communicate the same, along with the file, to the Hon'ble President for a decision.

20. It is the case of the petitioner that no intimation of the same was provided to him at the time of such rejection. He, in fact, became

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aware of the same only by the letter dated 22.11.2016, received in response to an application filed by him under the Right to Information Act, 2005 on 03.11.2016, wherein he was informed that the Hon'ble Governor had rejected his Mercy Petition as the Deputy IGP and Minister for Home had recommended that the petitioner's Mercy Petition be rejected and the said recommendation had also been endorsed by the Hon'ble Chief Minister.

21. Coming back to passing of the buck taking place between the MHA and the State Government, on 21.05.2014, the MHA asked the State Government to convey the decision of the Government on the Mercy Petition of the co-convict, namely, Narayan Chetanram Chaudhary, so that the two cases may be considered together. Reminders were also sent in July, August and September, 2014 in this regard, however, MHA claims that to avoid further delay, the Mercy Petition of the petitioner herein was processed further.

22. On 14.07.2015/23.07.2015, the Hon'ble Home Minister recommended rejection of petitioner's Mercy Petition, observing that it was devoid of merits and that the petitioner did not deserve any compassion warranting commutation of his death sentence. A detailed note in this regard was directed to be sent to the Hon'ble President for consideration.

23. The OSD to the Hon'ble President, however, sought a clarification on the applicability of the criteria of delay, as laid down by the Supreme Court in its judgment in ***Shatrughan Chauhan & Anr. v. Union of India & Ors.,*** (2014) 3 SCC 1. Accordingly, on 12.08.2015, the State Government was again asked by the MHA to

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clarify the reasons for the delay in consideration of the petitioner's Mercy Petition. Response dated 29.09.2015 was received thereto by the MHA, whereafter only the file with comments of the MHA was sent to the Hon'ble President for his opinion.

24. Hon'ble President, *vide* letter dated 01.01.2016 of the OSD to the President, desired that in view of the delay in deciding the Mercy Petition of the petitioner herein, the MHA should obtain the opinion of the Attorney General of India regarding the applicability of the ratio of the judgment of the Supreme Court in ***Shatrughan Chauhan & Anr.*** (supra) and to thereafter re-submit the file. The file was, accordingly, referred to the Ministry of Law and Justice on 07.01.2016 for the opinion of the learned Attorney General.

25. The learned Attorney General tendered his opinion on 11.02.2016, stating that there was '*huge unexplained delay in the instant case, at every stage*'. In view of the judgment of the Supreme Court in ***Shatrughan Chauhan*** (supra), it was recommended that a case for commutation of the death sentence to life imprisonment was made out. The Hon'ble Home Minister, however, disagreed with the opinion and recommended rejection of the Mercy Petition, *vide* office noting dated 07.03.2016.

26. The Mercy Petition, along with the two differing opinions, was thereafter submitted to the President's Secretariat on 18.03.2016.

27. The Hon'ble President of India, on 18.09.2016, disposed of the Mercy Petition of the petitioner, commuting the death sentence of the petitioner to life imprisonment, however, with a condition that the petitioner *"shall remain in prison for the whole of the remainder of his*

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natural life and there shall be no further remission of the term of his imprisonment for life by any authority". The decision was communicated to the petitioner *vide* the letter dated 15.10.2016, issued by the Superintendent, Nagpur Central Jail.

28. Aggrieved by the said conditional acceptance of his Mercy Petition, the petitioner has filed the present Writ Petition.

SUBMISSIONS OF THE LEARNED SENIOR COUNSEL FOR THE PETITIONER

29. As an objection on the territorial jurisdiction of this Court to adjudicate on the present Writ Petition has been taken by the respondents, Mr. Rajshekhar Rao, the learned Senior Counsel for the petitioner, at the outset, submits that as the Mercy Petition of the petitioner was decided by the Hon'ble President, a substantial cause of action has arisen within the territorial jurisdiction of this Court. He submits that this Court would, therefore, have the jurisdiction to hear the present petition. In support, he relies on the judgment of this Court in ***Sonu Sarda v. State of Chhattisgarh,*** 2017 SCC OnLine Del 8928.

30. On merits, he submits that the powers of this Court under Article 226 of the Constitution of India are wide and include the power to review an order of the Hon'ble President of India on the ground of arbitrariness. The learned Senior Counsel distinguishes the present petition from the decision of the Supreme Court in the case of ***Ramasrey @ Fakkad v. State of Uttar Pradesh***, 2026 INSC 764, wherein the Court upheld an order of the Hon'ble President under Article 72 of the Constitution, commuting death sentence to life

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imprisonment without remission, on the ground of delay, non-application of mind, and other supervening circumstances not being considered. He submits that the said judgment does not oust the jurisdiction of this Court from exercising its power of judicial review of the decision of the Hon'ble President.

31. He relies on the judgment of the Supreme Court in ***Shatrughan Chauhan*** (supra), to submit that the gravity of the offence is an aggravating circumstance to be considered while considering imposition of a death sentence, however, it cannot be a factor to disregard the consideration of supervening circumstances like the delay in the very consideration of the Mercy Petition and the long pending sword of death penalty. In support of his submissions, he also places reliance on ***Epuru Sudhakar & Anr. v. Govt. of Andhra Pradesh & Ors.,*** (2006) 8 SCC 161; ***Triveniben v. State of Gujarat,*** (1989) 1 SCC 678; and, ***Navneet Kaur v. State (NCT of Delhi) & Anr.,*** (2014) 7 SCC 264.

32. He submits that the petitioner's Mercy Petition dated 27.06.2001 was not considered, and the subsequent Mercy Petition filed on 02.11.2004 was decided and the decision thereon communicated only on 05.10.2016, that is, after an unexplained delay of 11 years and 11 months and a cumulative delay of 15 years and 3 months. Such inexplicable delay in consideration of the petitioner's Mercy Petition amounts to torture, is in violation of the Fundamental Rights of the petitioner under Article 21 of the Constitution, and entails as a ground for commutation of the petitioner's sentence. In support, he relies on the judgments of the Supreme Court in

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Shatrughan Chauhan (supra) and ***State of Maharashtra & Ors. v. Pradeep Yashwant Kokade & Anr.,*** 2024 SCC OnLine SC 3662.

33. He submits that the petitioner is also entitled to unconditional commutation of his sentence on the ground of illegal solitary confinement. He submits that the petitioner has been in custody for over 31 years, that is, since his arrest on 21.11.1994, and has also spent over 18 years in solitary single-cell confinement, that is, since imposition of Death Sentence upon him by the learned Sessions Court on 23.02.1998. He submits that this circumstance, itself, entitles the petitioner to unconditional commutation of sentence. In support, he places reliance on the judgments of the Supreme Court in ***Shatrughan Chauhan*** (supra); ***Ajay Kumar Pal v. Union of India & Anr.***, (2015) 2 SCC 478; and, ***Sunil Batra v. Delhi Administration & Ors.***, (1978) 4 SCC 494.

34. He submits that a claim of privilege attaching to the advice tendered to the Hon'ble President or Hon'ble Governor under Article 74(2) and Article 164(3) of the Constitution, respectively, does not extend to underlying material and the file notings on which that advice was based. He further submits that once such material is produced, the Court examines the record itself rather than accepting the assertion of due consideration. In support, he places reliance on ***Epuru Sudhakar*** (supra), ***Swaran Singh v. State of U.P. & Ors.,*** (1998) 4 SCC 75; ***Satpal & Anr. v. State of Haryana & Ors.,*** (2000) 5 SCC 170; and ***Sonu Sarda*** (supra).

35. He submits that the Hon'ble President's decision is not based upon a consideration of the petitioner's Mercy Petition filed on

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27.06.2001, which included a detailed account of his family and socio-economic background, offence details, and the role of the petitioner and the approver. Instead, only the Mercy Petition filed by one advocate, namely, Mr. Vikramaditya Rai, on 02.11.2004, has been considered. He submits that, in contravention with the principles expounded in ***Shatrughan Chauhan*** (supra) and the Guidelines regarding Clemency of Death Row Convicts of the Union of India, information regarding the age of the petitioner, his personality, his family history, socio-economic background, history of confinement in different prisons and conditions of incarceration, his jail conduct, mental and physical health record were not sought by the Hon'ble President. He submits that there is strong evidence of the petitioner's reformation and rehabilitation in the form of the multiple educational and vocational qualifications acquired by him during the period of his incarceration.

36. He submits that despite the opposing opinions received from the Hon'ble Home Minister and the learned Attorney General, the Hon'ble President has, without any basis, imposed the impugned condition on the petitioner. The condition leaves the petitioner to face slow death with no ray of hope to ever rehabilitate into the society, and therefore, is contrary to the very objective of clemency powers under Article 72 of the Constitution. In support, he relies on the judgment of the Supreme Court in ***Union of India v. V. Sriharan alias Murugan & Ors.***, (2016) 7 SCC 1.

37. The learned Senior Counsel further contends that imposition of such a condition by the Hon'ble President is unconstitutional and

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illegal. He submits that the power of the Hon'ble President is a constitutional responsibility and the absence of a non-obstante clause implies that it cannot oust the authority of the Governor or override the constitutional or statutory power to suspend, remit, or commute a death sentence, and must be read harmoniously with them. In support, he places reliance on the judgments of the Supreme Court in ***Kehar Singh & Anr. v. Union of India & Anr.***, (1989) 1 SCC 204; ***Epuru Sudhakar*** (supra); ***G. Krishta Goud & Anr. v. State of Andhra Pradesh & Ors.,*** (1976) 1 SCC 157; and, ***Maru Ram v. Union of India & Ors.***, (1981) 1 SCC 107.

38. He submits that even in cases where the Courts have imposed life imprisonment with prohibition on remission, the Supreme Court, in ***V. Sriharan*** (supra), has held that the right to claim remission, commutation, etc., will continue to be available as per constitutional remedies.

SUBMISSIONS OF THE LEARNED COUNSEL FOR THE RESPONDENTS

39. Mr. Vikram Jetley, the learned Central Government Standing Counsel appearing for the Union of India, on the other hand, submits that the power of the Hon'ble President of India to grant remission under Article 72 of the Constitution is a constitutional power lying within the exclusive domain of the Hon'ble President. The power of clemency must be exercised as per the constitutional mandate and the law laid down in judicial precedents. He submits that this constitutional power is uninfluenced by the judicial decision regarding

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the quantum of punishment to a convict. He submits that the clemency powers of the Hon'ble President and Governor are absolute and cannot be fettered or altered by any statutory provisions. In support, he places reliance on the judgment of the Supreme Court in the case of ***State of Punjab & Ors. v. Joginder Singh & Ors.***, (1990) 2 SCC 661.

40. The learned counsel submits that though the President's power of clemency is not immune from judicial review, the scope of such review is limited to only exceptional cases. He places reliance on the judgment of the Supreme Court in ***Epuru Sudhakar*** (supra) to contend that the limited grounds on which judicial review of the Hon'ble President's order may be entertained are not met in the present case.

41. He submits that a convict, who has already been benefitted from an order of commutation reducing his sentence from Death Sentence to Life Imprisonment, cannot question the condition attached to such commutation. Such condition has been imposed by the Hon'ble President in the exercise of his *sui generis* powers. The order reducing the sentence has to be accepted as a whole. It is not open to the convict to accept it to the extent it favors him and challenge it to the extent he finds it unfavorable.

42. He submits that the Supreme Court has, *vide* order dated 13.11.2017 passed in SLP (Crl.) 8357/2017, titled "***Union of India v. Sonu Sardar & Anr.",*** issued notice in a petition challenging the power of this Court to review the decision of the Hon'ble President or the Governor. The said SLP challenges the order of this Court in ***Sonu Sardar v. The Union of India & Anr***., 2017:DHC:3193-DB, wherein

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this Court allowed a petition seeking quashing of the orders of the Hon'ble President and the Hon'ble Governor of Chhattisgarh rejecting the Mercy Petition of the petitioner therein. He submits that in view of the above and the fact that the said petition is still pending adjudication before the Supreme Court, the present petition deserves to be dismissed.

ANALYSIS AND FINDINGS

43. We have considered the submissions made by the learned counsels for the parties.

44. As far as the challenge to the territorial jurisdiction of this Court to adjudicate on the present petition is concerned, the same is only to be stated to be rejected.

45. The petitioner is challenging the Order dated 15.10.2016 issued by the Superintendent, Nagpur Central Jail, by which the petitioner was informed that his Mercy Petition has been partially allowed by the Hon'ble President and that his sentence has been commuted to life imprisonment from death sentence, with a condition that he shall remain in prison for the whole of his remaining life and there shall be no further remission of the term of his imprisonment by any Authority. As the Impugned Order arises from the decision dated 18.09.2016 passed by the Hon'ble President of India under Article 72 of the Constitution of India, the office of the President of India being situated at Delhi, and the cause of action having arisen in Delhi, there can be no merit in the objection to the territorial jurisdiction of this Court.

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46. Coming to the merits of the challenge of the petitioner, we shall first consider the limited jurisdiction of this Court to entertain and adjudicate on such a challenge.

47. In ***Shatrughan Chauhan*** (supra), the Supreme Court held that while entertaining a challenge to an order passed by the Hon'ble President of India under Article 72 of the Constitution of India or by the Governor of a State under Article 161 of the Constitution of India, where the challenge is laid by the petitioner on the ground of violation the fundamental right under Article 21 of the Constitution of India, a Writ under Article 32 of the Constitution of India shall be maintainable. Equally, therefore, a Writ Petition under Article 226 of the Constitution of India shall also be maintainable where such a challenge is made by the petitioner to an order passed by the Hon'ble President of India under Article 72 of the Constitution of India or by the Hon'ble Governor of a State under Article 161 of the Constitution of India.

48. Examining the scope of exercise of the power vested in the Hon'ble President/Governor under Article 72/161 of the Constitution of India, the Supreme Court emphasized that it is not a matter of grace or privilege, but is a matter of constitutional responsibility reposed by the people in the highest authority.

49. It further emphasized on the limited scope of judicial review of the Order so passed by the Hon'ble President of India/Hon'ble Governor of a State, by first emphasizing that there is always a presumption that a constitutional authority acts with application of mind and there can be no specific guidelines laid down for the

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exercise of such power by the Hon'ble President of India/Hon'ble Governor of a State. At the same time, the Supreme Court took note of certain criteria in form of circulars that have been laid down by the Union Government itself for deciding the mercy petitions, as under:

> *"55. Though guidelines to define the contours of the power under Article 72/161 cannot be laid down, however, the Union Government, considering the nature of the power, set out certain criteria in the form of circular as under for deciding the mercy petitions:*
> *55.1. Personality of the accused (such as age, sex or mental deficiency) or circumstances of the case (such as provocation or similar justification);*
> *55.2. Cases in which the appellate Court expressed doubt as to the reliability of evidence but has nevertheless decided on conviction;*
> *55.3. Cases where it is alleged that fresh evidence is obtainable mainly with a view to see whether fresh enquiry is justified;*
> *55.4. Where the High Court on appeal reversed acquittal or on an appeal enhanced the sentence;*
> *55.5. Is there any difference of opinion in the Bench of High Court Judges necessitating reference to a larger Bench;*
> *55.6. Consideration of evidence in fixation of responsibility in gang murder case;*
> *55.7. Long delays in investigation and trial etc."*

50. The Supreme Court held that decision taken by the Hon'ble President or the Hon'ble Governor shall, therefore, be subject to limited judicial review on the principle that while the decision itself may not be judicially reviewable, the manner of exercise of the power is certainly subject to judicial review. Such power should, therefore,

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not be exercised *mala fide* or for political consideration and must be passed considering all the relevant materials, including the supervening events before arriving at a conclusion. Delay is one of the primary grounds for limited judicial review. The Supreme Court also culled out the events which may fall within the scope of supervening circumstances other than delay.

51. As far as the delay in taking the decision is concerned, the Supreme Court emphasized as under:

> *"**44**. In view of the above, we hold that undue long delay in execution of sentence of death will entitle the condemned prisoner to approach this Court under Article 32. However, this Court will only examine the circumstances surrounding the delay that has occurred and those that have ensued after the sentence was finally confirmed by the judicial process. This Court cannot reopen the conclusion already reached but may consider the question of inordinate delay to decide whether the execution of sentence should be carried out or should be altered into imprisonment for life.*
>
> ***45.** Keeping a convict in suspense while consideration of his mercy petition by the President for many years is certainly an agony for him/her. It creates adverse physical conditions and psychological stresses on the convict under sentence of death. Indisputably, this Court, while considering the rejection of the clemency petition by the President, under Article 32 read with Article 21 of the Constitution, cannot excuse the agonizing delay caused to the convict only on the basis of the gravity of the crime.*
>
> ***46.** India has been a signatory to the Universal Declaration of Human Rights, 1948 as well as to the United Nations Covenant on Civil and Political Rights, 1966. Both these conventions contain provisions outlawing*

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cruel and degrading treatment and/or punishment. Pursuant to the judgment of this Court in Vishaka v. State of Rajasthan, international covenants to which India is a party are a part of domestic law unless they are contrary to a specific law in force. It is this expression ("cruel and degrading treatment and/or punishment") which has ignited the philosophy of Vatheeswaran and the cases which follow it. It is in this light, the Indian cases, particularly, the leading case of Triveniben has been followed in the Commonwealth countries. It is useful to refer the following foreign judgments which followed the proposition: i) Pratt v. Attorney General for Jamaica, ii) Catholic Commission for Justice & Peace in Zimbabwe v. Attorney General, iii) Soering v. United Kingdom, iv) Attorney General v. Susan Kigula, v) Herman Mejia v. Attorney General.

47. *It is clear that after the completion of the judicial process, if the convict files a mercy petition to the Governor/President, it is incumbent on the authorities to dispose of the same expeditiously. Though no time-limit can be fixed for the Governor and the President, it is the duty of the executive to expedite the matter at every stage, viz. calling for the records, orders and documents filed in the court, preparation of the note for approval of the Minister concerned, and the ultimate decision of the constitutional authorities. This Court, in Triveniben, further held that in doing so, if it is established that there was prolonged delay in the execution of death sentence, it is an important and relevant consideration for determining whether the sentence should be allowed to be executed or not.*

48. *Accordingly, if there is undue, unexplained and inordinate delay in execution due to pendency of mercy petitions or the executive as well as the constitutional authorities have failed to take note of/consider the relevant aspects, this Court is well within its powers under Article 32 to hear the*

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grievance of the convict and commute the death sentence into life imprisonment on this ground alone however, only after satisfying that the delay was not caused at the instance of the accused himself. To this extent, the jurisprudence has developed in the light of the mandate given in our Constitution as well as various Universal Declarations and directions issued by the United Nations.

49. *The procedure prescribed by law, which deprives a person of his life and liberty must be just, fair and reasonable and such procedure mandates humane conditions of detention preventive or punitive. In this line, although the petitioners were sentenced to death based on the procedure established by law, the inexplicable delay on account of executive is unexcusable. Since it is well established that Article 21 of the Constitution does not end with the pronouncement of sentence but extends to the stage of execution of that sentence, as already asserted, prolonged delay in execution of sentence of death has a dehumanizing effect on the accused. Delay caused by circumstances beyond the prisoners' control mandates commutation of death sentence. In fact, in Vatheeswaran, particularly, in para 10, it was elaborated where amongst other authorities, the minority view of Lords Scarman and Brightman in the 1972 Privy Council case of Riley v. Attorney General of Jamaica, by quoting: (Vatheeswaran case, SCC p. 72)*

"10. '...Sentence of death is one thing: sentence of death followed by lengthy imprisonment prior to execution is another'." (riley case, AC p. 735 B)

(emphasis supplied)

The appropriate relief in cases where the execution of death sentence is delayed, the Court held, is to vacate the sentence of death. In para 13, the Court made it clear that Articles 14, 19 and 21 supplement one another and the right which was spelled out from the Constitution was a substantive right of the

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> *convict and not merely a matter of procedure established by law. This was the consequence of the judgment in Maneka Gandhi v. Union of India which made the content of Article 21 substantive as distinguished from merely procedural."*

52. The Court further noted the conflict between commutation of the death sentence on the ground of undue delay in its execution and the rights of the victim, and held as under:

> *"57. Another vital aspect, without mention of which the present discussion will not be complete, is that, as aforesaid, Article 21 is the paramount principle on which rights of the convict are based, this must be considered along with the rights of the victims or the deceased's family as also societal consideration since these elements form part of the sentencing process as well. It is the stand of the respondents that the commutation of sentence of death based on delay alone will be against the victim's interest.*
>
> *58. It is true that the question of sentence always poses a complex problem, which requires a working compromise between the competing views based on reformative, deterrent and retributive theories of punishments. As a consequence, a large number of factors fall for consideration in determining the appropriate sentence. The object of punishment is lucidly elaborated in Ram Narain v. State of U.P. in the following words: (SCC p. 91, para 8)*
>
> *"8. ...the broad object of punishment of an accused found guilty in progressive civilized societies is to impress on the guilty party that commission of crimes does not pay and that it is both against his individual interest and also against the larger interest of the society to which he belongs. The sentence*

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to be appropriate should, therefore, be neither too harsh nor too lenient."

59. The object of punishment has been succinctly stated in Halsbury's Laws of England, (4th Edn. Vol. 11, Para 482) thus:

"482. Object of punishment.- The aims of punishment are now considered to be retribution, justice, deterrence, reformation and protection and modern sentencing policy reflects a combination of several or all of these aims. The retributive element is intended to show public revulsion to the offence and to punish the offender for his wrong conduct. The concept of justice as an aim of punishment means both that the punishment should fit the offence and also that like offences should receive similar punishments. An increasingly important aspect of punishment is deterrence and sentences are aimed at deterring not only the actual offender from further offences but also potential offenders from breaking the law. The importance of reformation of the offender is shown by the growing emphasis laid upon it by much modern legislation, but judicial opinion towards this particular aim is varied and rehabilitation will not usually be accorded precedence over deterrence. The main aim of punishment in judicial thought, however, is still the protection of society and the other objects frequently receive only secondary consideration when sentences are being decided."

(emphasis supplied)

60. All these aspects were emphatically considered by this Court while pronouncing the final verdict against the petitioners herein thereby upholding the sentence of death imposed by the High Court. Nevertheless, the same accused (the petitioners herein) are before us now under Article 32 petition seeking commutation of sentence on the basis of undue delay caused in execution of their levied death sentence, which amounts to torture and henceforth violative of Article 21

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> *of the Constitution. We must clearly see the distinction under both circumstances. Under the former scenario, the petitioners herein were the persons who were accused of the offence wherein the sentence of death was imposed but in latter scenario, the petitioners herein approached this Court as a victim of violation of guaranteed fundamental rights under the Constitution seeking commutation of sentence. This distinction must be considered and appreciated.*
>
> *61. As already asserted, this Court has no jurisdiction under Article 32 to reopen the case on merits. Therefore, in the light of the aforesaid elaborate discussion, we are of the cogent view that undue, inordinate and unreasonable delay in execution of death sentence does certainly attribute to torture which indeed is in violation of Article 21 and thereby entails as the ground for commutation of sentence. However, the nature of delay i.e. whether it is undue or unreasonable must be appreciated based on the facts of individual cases and no exhaustive guidelines can be framed in this regard."*

53. The Court further held that unexplained delay is one of the grounds/supervening circumstances for commutation of sentence of death into life imprisonment and the said supervening circumstance is applicable to all types of cases, including the offences under the then existing Terrorist and Disruptive Activities (Prevention) Act, 1987.

54. The Court also considered insanity/mental illness/schizophrenia as one of the supervening circumstances that warrants commutation of death sentence to life imprisonment.

55. In ***Pradeep Yashwant Kokade*** (supra), the Supreme Court after examining the precedents on the issue, summarized the law applicable to a challenge to rejection of a Mercy Petition as under:

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"22. ....We have carefully perused several other decisions of this Court which have been rendered in the facts of the case before this Court. The propositions laid down in these decisions can be summarized as under:

(i) Undue, unexplained and inordinate delay in execution of the sentence of death will entitle the convict to approach this Court under Article 32. But this Court will only examine the nature of the delay caused and circumstances that ensued after the judicial process finally confirmed the sentence and will have no jurisdiction to reopen the conclusions reached by the court while finally maintaining the sentence of death. This Court, however, may consider the question of inordinate delay in the light of all circumstances of the case to decide whether the execution of sentence should be carried out or should be altered into imprisonment for life. No fixed period of delay could be held to make the sentence of death inexecutable.

(ii) Keeping a convict sentenced to death in suspense while considering his mercy petitions by the Governor or the President for an inordinately long time is certainly agony for him/her. It creates adverse physical conditions and psychological stress on the convict under sentence of death. Therefore, this Court, while considering the delay in the disposal of clemency petitions by the highest constitutional authorities, while exercising its jurisdiction under Article 32 read with Article 21 of the Constitution, cannot excuse the agonising delay caused to the convict only based on the gravity of the crime; and

(iii) It is well established that Article 21 of the Constitution does not end with the pronouncement of the sentence but extends to the execution stage of that sentence. An inordinate delay in the execution of the sentence of death has a dehumanising effect on the accused. An inordinate delay caused by circumstances beyond the prisoners' control

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mandates the commutation of a death sentence."

56. The Supreme Court in the above judgment, summarized the law applicable to the consideration of a challenge to the rejection of a Mercy Petition, as under:

> *"**OUR CONCLUSIONS***
> ***42.*** *We hold that:-*
> *(i) Undue, unexplained and inordinate delay in execution of the sentence of death will entitle the convict to approach this Court under Article 32. However, this Court will only examine the nature of the delay caused and circumstances that ensued after the judicial process finally confirmed the sentence and will have no jurisdiction to reopen the conclusions reached by the Court while finally maintaining the sentence of death. This Court, however, may consider the question of inordinate delay in the light of all circumstances of the case to decide whether the execution of sentence should be carried out or should be commuted to imprisonment for life;*
> *(ii) Keeping a convict in suspense while considering his mercy petitions by the Governor or the President for an inordinately long time will certainly cause agony to him/her. It creates adverse physical conditions and psychological stress on the convict. Therefore, this Court, while exercising its jurisdiction under Article 32 read with Article 21 of the Constitution, must consider the effect of inordinate delay in disposal of the clemency petition by the highest Constitutional authorities and cannot excuse the agonising delay caused only on the basis of the gravity of the crime;*
> *(iii) It is well established that Article 21 of the Constitution does not end with the pronouncement of the sentence but extends to the stage of execution of that sentence. An inordinate delay in the execution of the*

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sentence of death has a dehumanising effect on the accused. An inordinate and unexplained delay caused by circumstances beyond the prisoners' control mandates the commutation of a death sentence;

(iv) The above principles will also apply to a case where there is a long and unexplained delay on the part of the Sessions Court in issuing the warrant of execution in accordance with Section 413 or Section 414 of CrPC. After the order of rejection of mercy petitions is communicated to a convict, the sword of Damocles cannot be kept hanging on him for an inordinately long time. This can be very agonising, both mentally and physically. Such inordinate delay will violate his rights under Article 21 of the Constitution. In such a case, this Court will be justified in commuting the death penalty into life imprisonment;

(v) No hard and fast rule can be laid down as regards the length of delay, which can be said to be inordinate. It all depends on the facts of the case. The terms "undue" or "inordinate" cannot be interpreted by applying the rules of mathematics. The Courts, in such cases, deal with human issues and the effect of the delay on individual convicts. What delay is inordinate must depend on the facts of the case;

(vi) A convict can invoke even the jurisdiction of a High Court under Article 226 of the Constitution in the event there is an inordinate and unexplained delay in the execution of the death sentence, post-confirmation of the sentence. The same principles will be applied by the High Court, which are summarised above; and,

(vii) It is the duty of the Executive to promptly process the mercy petitions invoking Articles 72 or 161 of the Constitution and forward the petitions along with requisite documents to the concerned constitutional functionary without undue delay.

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57. The Supreme Court also issued the following directions for consideration of the Mercy Petitions:

> ***"OPERATIVE DIRECTIONS***
>
> ***43.*** *Hence, we pass the following order:*
>
> *i. The impugned judgment and order, by which the death sentence of the convicts has been commuted to a fixed sentence of thirty-five years of imprisonment, is upheld, and Criminal Appeals are dismissed;*
>
> *ii. As regards the mercy petitions, we issue the following directions to all the State Governments and Union Territories:*
>
> *A. A dedicated cell shall be constituted by the Home Department or the Prison Department of the State Governments/Union Territories for dealing with mercy petitions. The dedicated cell shall be responsible for the prompt processing of the mercy petitions within the time frame laid down by the respective governments. An officer-in- charge of the dedicated cell shall be nominated by designation who shall receive and issue communications on behalf of the dedicated cell;*
>
> *B. An official of the Law and Judiciary or Justice Department of the State Governments/Union Territories should be attached to the dedicated cell so constituted;*
>
> *C. All the prisons shall be informed about the designation of the officer-in-charge of the dedicated cell and his address and email ID;*
>
> *D. As soon as the Superintendent of Prison/officer-in-charge receives the mercy petitions, he shall immediately forward the copies thereof to the dedicated cell and call for the following details/information from the officer-in-charge of the concerned Police Station and/or the concerned investigation agency;*
>
> *a. The criminal antecedents of the convict;*

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b. Information about family members of the convict;

c. Economic condition of the convict and his/her family;

d. The date of arrest of the convict and the period of incarceration as an undertrial; and,

e. The date of filing charge sheet and a copy of the committal order, if any.

On receipt of the request made by the jail authorities, the officer-in-charge of the concerned police station shall be under an obligation to furnish the said information to the jail authorities immediately;

E. On receipt of the said information, without any delay, the jail authorities shall forward the following documents to the officer-in-charge of the dedicated cell and the Secretary of the Home Department of the State Government:

a. Information furnished as aforesaid by the concerned Police Station with its English translation;

b. Copy of the First Information Report with its English translation;

c. Details, such as date of arrest of the convict, date of filing of chargesheet and actual period of incarceration undergone by the convict;

d. A copy of the committal order, if any, passed by the learned Judicial Magistrate;

e. A copy of charge-sheet with its English translation;

f. Report about the conduct of the convict in prison;

g. Copies of the notes of evidence, all exhibited documents in the trial and copies of statements of convicts under Section 313 of the CrPC with its English translation;

h. Copies of the judgments of the Sessions Court (with its English translation, if it is in vernacular language), High Court and this Court;

F. As soon as mercy petitions are received by the dedicated cell, copies of the

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mercy petitions shall be forwarded to the Secretariats of the Hon'ble Governor of the State or the Hon'ble President of India, as the case may be so that the Secretariat can initiate action at their end;

G. All correspondence, as far as possible, be made by email, unless confidentiality is involved; and,

H. The State Government shall issue office orders/executive orders containing guidelines for dealing with the mercy petitions in terms of this judgment.

iii. The Registry of this Court shall forward copies of this judgment to the Secretaries of the Home Department of the respective State Governments/Union Territories for its implementation. The Secretaries shall report compliance within three months from today to the Registrar (Judicial) of this Court;

iv. The Sessions Court shall endeavour to follow the following guidelines:

a. As soon as the order of the High Court confirming or imposing the death sentence is received by the Sessions Court, a note thereof must be taken, and the disposed of case shall be listed on the cause list. The proceedings can be numbered as Misc. Application depending upon the applicable Rules of the procedure. The Sessions Court shall immediately issue notice to the State Public Prosecutor or the investigating agency calling upon them to state whether any appeal or special leave petition has been preferred before this Court and what is the outcome of the said petition/appeal;

b. If the State Public Prosecutor or the investigating agency reports that the appeal is pending, as soon as the order of this Court confirming or restoring the death sentence is received by the Sessions Court, again, the disposed of case or miscellaneous applications should be listed on the cause list and notice be issued to the State Public Prosecutor or the investigating agency to ascertain whether any review/curative petitions or mercy petitions

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are pending. If information is received regarding the pendency of review/curative petitions or mercy petitions, the Sessions Court shall keep on listing the disposed of case after intervals of one month so that it gets the information about the status of the pending petitions. This will enable the Sessions Court to issue a warrant for the execution of the death sentence as soon as all the proceedings culminate;

c. However, before issuing the warrant, notice should be issued to the convict, and the directions issued by the Allahabad High Court in the case of People's Union for Democratic Rights (PUDR), and as elaborated above, shall be implemented by the Sessions Court;

d. The Sessions Courts shall consider what is held in Paragraph 25 above;

e. Copies of the order issuing the warrant and the warrant shall be immediately provided to the convicts, and the Prison authorities must explain the implications thereof to the convicts. If the convict so desires, legal aid be immediately provided to the convicts by the Prison authorities for challenging the warrant. There shall be a gap of fifteen clear days between the date of the receipt of the order as well as warrant by the convict and the actual date of the execution; and,

f. It shall also be the responsibility of the concerned State Government or the Union Territory administration to apply to the Sessions Court for the issuance of a warrant immediately after the death penalty attains finality and becomes enforceable.

v. A copy of this judgment shall be forwarded to both the convicts through the Jail Superintendent of the concerned jail.

vi. A copy of this judgment shall be forwarded to the Registrar Generals of all the High Courts, who in turn shall forward the copies thereof to all the Sessions Courts.

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vii. These disposed of appeals shall be listed on 17th March 2025 for considering compliance."

58. Recently in ***Ramasrey @ Fakkad*** (supra), the Supreme Court again summarized the principles to be kept in consideration by the Hon'ble President of India/Hon'ble Governor of a State while considering a Mercy Petition, and the limited scope of judicial review of a decision so taken, as under:

"6. On a perusal of various judgments, where the scope of the President's or the Governor's power has arisen, the following principles, inter alia, can be noticed:

*6.1 The powers under these two articles are construed in the widest possible terms since there are no words limiting the scope thereof used in the Articles; (**Epuru Sudhakar v. Govt. of A.P.**).*

*6.2 Both the President and the Governor, in exercise of these powers must act with the aid and advice of Council of Ministers; (**Maru Ram v. Union of India**)*

*6.3 Governor's power cannot be exercised to suspend a sentence while a particular case is subjudice before this Court; (**K.M. Nanavati v. State of Bombay**)*

*6.4 The President under Article 72 can examine the merits of the matter. The exercise of this power is executive in character. (**Kehar Singh v. Union of India**)*

*6.5 The powers under Articles 72/161 are separate and distinct from statutory power of remission under CrPC. (**Union of India v. V. Sriharan**)*

6.6 The scope of judicial review is limited to the following grounds:

(a) that the order has been passed without application of mind;

(b) that the order is mala fide;

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(c) that the order has been passed on extraneous or wholly irrelevant considerations;
(d) that relevant materials have been kept out of consideration;
(e) that the order suffers from arbitrariness.
*(**Epuru Sudhakar (supra); Pyare Lal v. State of Haryana**)"*

59. In the said case, the Supreme Court also considered the power to impose a sentence of imprisonment for remainder of natural life and held as under:

*"**10**. In **Swamy Shraddananda (2) v. State of Karnataka**, a Bench of three judges while dealing with the question of sentence made elaborate discussions and concluded that there is a subset of cases where life imprisonment which actually amounts to only 14 years of imprisonment may be disproportionately light and also that it may not meet the standard of rarest of rare cases as enunciated in **Bachan Singh v. State of Punjab**, for these cases it was observed as follows:*

*"**91**. The legal position as enunciated in Pandit Kishori Lal [(1944-45) 72 IA 1 : AIR 1945 PC 64], Gopal Vinayak Godse [AIR 1961 SC 600 : (1961) 3 SCR 440], Maru Ram [(1981) 1 SCC 107 : 1981 SCC (Cri) 112], Ratan Singh [(1976) 3 SCC 470 : 1976 SCC (Cri) 428] and Shri Bhagwan [(2001) 6 SCC 296 : 2001 SCC (Cri) 1095] and the unsound way in which remission is actually allowed in cases of life imprisonment make out a very strong case to make a special category for the very few cases where the death penalty might be substituted by the punishment of imprisonment for life or imprisonment for a term in excess of fourteen years and to put that category beyond the application of remission.*

92. *The matter may be looked at from a slightly different angle. The issue of sentencing has two aspects. A sentence may be*

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excessive and unduly harsh or it may be highly disproportionately inadequate. When an appellant comes to this Court carrying a death sentence awarded by the trial court and confirmed by the High Court, this Court may find, as in the present appeal, that the case just falls short of the rarest of the rare category and may feel somewhat reluctant in endorsing the death sentence. But at the same time, having regard to the nature of the crime, the Court may strongly feel that a sentence of life imprisonment subject to remission normally works out to a term of 14 years would be grossly disproportionate and inadequate. What then should the Court do? If the Court's option is limited only to two punishments, one a sentence of imprisonment, for all intents and purposes, of not more than 14 years and the other death, the Court may feel tempted and find itself nudged into endorsing the death penalty. Such a course would indeed be disastrous. A far more just, reasonable and proper course would be to expand the options and to take over what, as a matter of fact, lawfully belongs to the Court i.e. the vast hiatus between 14 years' imprisonment and death. It needs to be emphasised that the Court would take recourse to the expanded option primarily because in the facts of the case, the sentence of 14 years' imprisonment would amount to no punishment at all.

93. Further, the formalisation of a special category of sentence, though for an extremely few number of cases, shall have the great advantage of having the death penalty on the statute book but to actually use it as little as possible, really in the rarest of rare cases. This would only be a reassertion of the Constitution Bench decision in Bachan Singh [(1980) 2 SCC 684 :1980 SCC (Cri) 580 : AIR 1980 SC 898] besides being in accord with the modern trends in penology."

(emphasis supplied)

(See: ***Shahjad Ali v. State of Uttarakhand****;* ***Ramesh A. Naika v. Registrar General****)*

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11. *Subsequently, in* ***Union of India v. V. Sriharan****, a Constitution Bench was dealing inter-alia with this special category of sentence i.e., imprisonment for remainder of natural life without remission. A majority of three judges found the special category of sentence to be justified and well founded. The minority held that placing sentences that are for the remainder of natural life, beyond the scope of remission to be unconstitutional. On the question of meaning of the term 'life imprisonment' however, all five judges were ad idem. The relevant discussion on this aspect is as follows:*

On the meaning of life imprisonment, it was held:

F.M. Ibrahim Kalifulla J. *speaking for Dattu, C.J., himself and Ghose, J*

*"****177.*** *Imprisonment for life in terms of Section 53 read with Section 45 of the Penal Code only means imprisonment for the rest of the life of the convict. The right to claim remission, commutation, reprieve, etc. as provided under Article 72 or Article 161 of the Constitution will always be available being constitutional remedies untouchable by the Court."*

...

Uday U.Lalit J. *(as he then was) speaking for himself and Sapre J.*

*"****257.*** *Section 53 IPC envisages different kinds of punishments while Section 45 IPC defines the word "life" as the life of a human being unless the contrary appears from the context. The life of a human being is till he is alive that is to say till his last breath, which by very nature is one of indefinite duration. In the light of the law laid down in Godse [Gopal Vinayak Godse v. State of Maharashtra, AIR 1961 SC 600 :(1961) 1 Cri LJ 736 : (1961) 3 SCR 440] and Maru Ram [Maru Ram v. Union of India, (1981) 1 SCC 107 : 1981 SCC (Cri) 112 : (1981) 1 SCR 1196], which law has consistently been followed the sentence of life*

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imprisonment as contemplated under Section 53 read with Section 45 IPC means imprisonment for rest of the life or the remainder of life of the convict. The terminal point of the sentence is the last breath of the convict and unless the appropriate Government commutes the punishment or remits the sentence such terminal point would not change at all. The life imprisonment thus means imprisonment for rest of the life of the prisoner.

…

260. *The sentence of life imprisonment means imprisonment for the rest of the life or the remainder of the life of the convict. Such convict can always apply for obtaining remission either under Articles 72 or 161 of the Constitution or under Section 432 CrPC and the authority would be obliged to consider the same reasonably."*

On the special category of sentence, it was observed by ***F.M. Ibrahim Kalifulla J****. for the majority in para 178 as under:*

"Question 52.1 : Whether imprisonment for life in terms of Section 53 read with Section 45 of the Penal Code meant imprisonment for rest of the life of the prisoner or a convict undergoing life imprisonment has a right to claim remission and whether as per the principles enunciated in paras 91 to 93 of Swamy Shraddananda (2) [Swamy Shraddananda (2) v. State of Karnataka, (2008) 13 SCC 767 : (2009) 3 SCC (Cri) 113], a special category of sentence may be made for the very few cases where the death penalty might be substituted by the punishment of imprisonment for life or imprisonment for a term in excess of fourteen years and to put that category beyond application of remission?

Answer

…

178. We hold that the ratio laid down in Swamy Shraddananda (2) [Swamy

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Shraddananda (2) v. State of Karnataka, (2008) 13 SCC 767 : (2009) 3 SCC (Cri) 113] that a special category of sentence; instead of death can be substituted by the punishment of imprisonment for life or for a term exceeding 14 years and put that category beyond application of remission is well founded and we answer the said question in the affirmative."

Uday U.Lalit J. *(as he then was) for the minority, answers the reference in para 287:*

...

"Sub-question (b). Whether as per the principles enunciated in paras 91 to 93 of Swamy Shraddananda (2) [Swamy Shraddananda (2) v. State of Karnataka, (2008) 13 SCC 767 : (2009) 3 SCC (Cri) 113], a special category of sentence may be made for the very few cases where the death penalty might be substituted by the punishment for imprisonment for life or imprisonment for a term in excess of fourteen years and to put that category beyond application of remission?

Answer

287. In our view, it would not be open to the Court to make any special category of sentence in substitution of death penalty and put that category beyond application of remission, nor would it be permissible to stipulate any mandatory period of actual imprisonment inconsistent with the one prescribed under Section 433-A CrPC."

12. *Given the conclusion of the majority as extracted above, we only wonder how the petitioners have raised this contention. A five-judge Bench has said that sentences for the remainder of natural life are valid. Where does the scope arise for it to be contended that such sentences are invalid/unconstitutional or trample upon statutorily granted rights in the form of Section 432 CrPC, that too before a Bench of two judges? We can only say that*

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> *such an endeavour is a misuse, if not the abuse of process of law. This is even more so in view of the fact that the ground under CrPC that is raised has also been answered by the Constitution Bench. The paragraphs reproduced by us above clearly stipulate that when a sentence awarded is for imprisonment for life without the categorical addition of 'without remission', the power of the State under Section 432 Cr.PC is unaffected and such an application would be maintainable. In those select few cases where the 'without remission' condition is utilised, which is obviously done so, in the attending facts of that case keeping in view the gravity of crime, nature of offence and the fact that reduction of the sentence therein to an 'ordinary sentence' would be unjust, the statutory right being denuded, cannot be termed to be offensive to the Constitution."*

60. Considering the present petition on the above parameters of limited scope of judicial review, in the present case, there can be no dispute that there has been an inordinate delay in deciding the Mercy Petition of the petitioner. From the facts which have been narrated by us hereinabove, it would be evident that the Mercy Petition filed by the petitioner on 27.06.2001 came to be decided only on 18.09.2016 and communicated to him *vide* the letter dated 15.10.2016, that is, after a delay of more than 15 years. In the meantime, the proverbial sword of death kept hanging on the head of the petitioner. The petitioner has also contended that he was kept in solitary confinement during this period.

61. The above may have been a sufficient ground to commute the death sentence of the petitioner to one of life, however, from a perusal of the file produced by the learned Central Government Standing

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Counsel, it is also evident that the Hon'ble President was aware of this period of delay. It was for this reason that the Hon'ble President expressly asked for the advice of the then Attorney General regarding the applicability of the ratio of the judgment of the Supreme Court in ***Shatrughan Chauhan*** (supra). The learned Attorney General, in fact, advised in favour of the petitioner and recommended commutation of his death sentence to life imprisonment. The Hon'ble President then had the benefit of the inputs from the Ministry of Home Affairs which, in fact, recommended the rejection of the petitioner's Mercy Petition. The Hon'ble President proceeded to consider both these views and finally passed the Impugned Order whereby, while the death sentence of the petitioner has been commuted, a sentence for the remainder of the natural life with no remission has been directed against the petitioner. We have already noted hereinabove that such power does exist and vest with the Hon'ble President.

62. We have also noted hereinabove the limited scope of judicial review that this Court can exercise over the order passed by the Hon'ble President. It is not the order passed by the Hon'ble President or the Hon'ble Governor which can be made a subject of judicial review, but only the manner of exercise of such power that can be considered by the Court.

63. Once we find that the Hon'ble President of India had all the relevant inputs and took into consideration all the relevant factors before passing the Impugned Order, this Court cannot substitute the opinion of the Hon'ble President of India only on the ground that it itself may have decided the Mercy Petition in a different manner. The

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power exercised by this Court is not of appeal but of judicial review, and the Court must remain alive to the distinction between the two concepts and their scope.

64. Keeping in view the above, we find no merit in the present petition. The same is, accordingly, dismissed. The pending application also stands disposed of as infructuous.

65. The record relating to consideration of the petitioner's mercy petition retained by us on the last date, be returned by the Court Master to Mr. Sunil Kumar Singh, Under Secretary (Judicial), MHA forthwith.

66. There shall be no orders as to costs.

NAVIN CHAWLA, J

RAVINDER DUDEJA, J

NOVEMBER 17, 2026/sg/Yg

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