

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CWP No. 7436 of 2013 (O&M)

DATE OF DECISION : 21.04.2015

Dharam Pal

.... PETITIONER

Versus

State of Haryana and others

.... RESPONDENTS

CORAM :- HON'BLE MR. JUSTICE SATISH KUMAR MITTAL

HON'BLE MR. JUSTICE HARINDER SINGH SIDHU

Present : Mr. Navkiran Singh, Mr. Harjeet Singh,
Mr. Chitresh Sharma and Mr. B.S. Gill, Advocates,
for the petitioner.

Mr. Sandeep Moudgil, Addl. A.G., Haryana.

* * *

SATISH KUMAR MITTAL, J.

1. Petitioner Dharam Pal, who has been awarded death sentence and has been in solitary confinement in various jails for the last about 18 years, has filed this petition under Articles 226/227 of the Constitution of India, seeking direction to the respondents that in the facts and circumstances of the case his death sentence be commuted to life imprisonment.

2. The brief facts of the case are that initially, vide judgment dated 04.07.1992 passed by the court of Additional Sessions Judge, Sonapat, the petitioner was convicted under Sections 376/452 IPC in case FIR No. 11

dated 17.01.1991 registered at Police Station Sadar Sonapat, and was sentenced to undergo rigorous imprisonment for 10 years. On 10.06.1993 at about 3.30 AM, when the petitioner was on bail in the aforesaid case, he along with his brother Nirmal Singh committed murder of five members of the family, who were related to the prosecutrix, for whose rape the petitioner was convicted. The petitioner and his brother Nirmal Singh were tried in case FIR No. 187 dated 10.06.1993 under Section 302/34 IPC, registered at Police Station Sadar Sonapat, for commission of multiple murders. Vide judgment dated 05.05.1997, the petitioner and his brother Nirmal Singh were convicted and awarded death sentence by the trial court. Vide judgment dated 29.09.1998 (Annexure P-1), passed by this court, the murder reference made by the trial court was answered in affirmative, whereas the appeal filed by the petitioner and his brother Nirmal Singh was dismissed, and their death sentence was confirmed.

3. Against the above said judgment, the petitioner and his brother Nirmal Singh filed appeal before the Apex Court. The Hon'ble Supreme Court, vide judgment dated 18.03.1999 (Annexure P-2), while taking into consideration the fact that the petitioner was convicted in rape case and had committed murder of members of the family of the prosecutrix, upheld the death sentence awarded to the petitioner. However, the death sentence awarded to his brother Nirmal Singh was commuted to life imprisonment, because he was not an accused in the rape case.

4. Thereafter, the petitioner filed a mercy petition before the President of India on 02.11.1999. The said mercy petition remained pending in the office of the President of India for about 13 years and 5 months and was rejected by the President of India vide order dated 28.03.2013. In the meanwhile, vide judgment dated 19.11.2003 (Annexure P-4), the petitioner was acquitted by this court in the rape case. It is the case of the petitioner that this fact was never brought to the notice of the President of India either by the jail authorities or by the State Government.

5. When the death sentence of the petitioner was going to be executed in the month of April, 2013, he filed the instant petition under Articles 226/227 of the Constitution of India, praying that in the facts and circumstances of the case as well as the changed circumstances that he has been acquitted in the rape case, it will be unjust and unreasonable, and violative of his fundamental right, to execute the death sentence at this stage, and his death sentence be commuted to life imprisonment.

6. In this petition, the petitioner is praying for commutation of his death sentence to life imprisonment, on the following four grounds :-

(i) That there is an unexplained and inordinate delay on the part of the office of the President of India, which took about 13 years and 5 months to decide the mercy petition of the petitioner. Due to this inordinate delay in disposal of the mercy petition, his death sentence was not executed for a long time, and thus has

resulted violation of his fundamental right under Articles 21, 14, 19 and 20 (1) of the Constitution of India;

- (ii) That the petitioner throughout remained in solitary confinement in various jails since the date of his conviction and sentence by the trial court. He has suffered a lot due to painful solitary confinement for the last about 18 years, and was living alone in sub human conditions in a small room;
- (iii) That the factum of the petitioner being acquitted of rape charge by this court vide judgment dated 19.11.2003 was not put up before the President of India along with the mercy petition of the petitioner. Thus, all the relevant materials were not placed before the President of India, which could have a great bearing on the issue of pardon, as his conviction in the rape case was the ground of upholding his death sentence; and
- (iv) That rejection of the mercy petition of the petitioner was conveyed to his father by the Superintendent, Central Jail, Ambala, vide letter dated 08.04.2013 (Annexure P-3), and it was informed that on 15.04.2013, death sentence of the petitioner would be executed. Thereafter, the petitioner filed the instant petition, in which execution of his death sentence was stayed vide interim order dated 06.04.2013. Now, at this belated stage, execution of the death sentence of the petitioner

would be highly unjust and unreasonable, and violative of his fundamental right.

7. In its reply, the Union of India has tried to explain the delay in disposal of the mercy petition filed by the petitioner and execution of his death sentence. In this regard, paragraphs 9 to 25 of the reply are relevant, which read as under :-

“9. That a letter dated 05.11.1999 of the Superintendent, Central Jail, Ambala was received in the Ministry of Home Affairs on 08.11.1999 with the mercy petition, decision of the Hon'ble Governor of Haryana under Article 161 of the Constitution and related documents of the case.

10. That the Ministry of Home Affairs vide letter dated 17.11.1999 addressed to the Financial Commissioner, Jails Department, Government of Haryana, stayed the execution of Dharampal till the decision of the Hon'ble President of India on the mercy petition.

11. That the mercy petition received for clemency of Dharampal was examined in details in the Ministry of Home Affairs and submitted to the then Home Minister for consideration. The Home Minister approved the rejection of mercy petition and signed the Summary for the President on 04.02.2000. Accordingly, the Summary for the President with the entire file of mercy petition was submitted to the President's Secretariat on 07.02.2000 for a decision of the Hon'ble President of India. Within a period of 3 months of the receipt of the mercy petition, the case was submitted to the President's Secretariat for a decision of the Hon'ble President.

12. That Superintendent, Central Jail, Ambala vide letter dated 14.03.2000 had forwarded another mercy petition of Dharampal. The mercy petition was examined and an additional Summary for the

President, signed by the then Home Minister on 31.03.2000, was submitted to the President's Secretariat. The entire file of the mercy petition of Dharampal remained in the President's Secretariat till 21.07.2004.

13. *That the file with the Summary for the President was returned by the President's Secretariat vide letter dated 21.07.2004 (which was received on 22.07.2004 with other 10 files) with comments that "The President had occasion to discuss eleven files relating to mercy petition with the Home Minister a few days ago. As discussed with the Home Minister, these files are being returned to the Ministry of Home Affairs with the request to resubmit them for consideration of the President alongwith the advice of the Home Minister."*

14. *That on consideration of a somewhat similar matter, the Hon'ble Home Minister sought clarification as to inter-alia the meaning and scope of life imprisonment etc. on 11.11.2004, which was referred to the Ministry of Law & Justice on 01.12.2004 for having a legal opinion/advice in the matter. All the mercy petition cases were put on hold till the advice was received from the Ministry of Law & Justice.*

15. *That the Ministry of Law & Justice rendered its advice on 24.01.2005 which was received in the Ministry of Home Affairs on 28.01.2005. Ministry of Law & Justice was inter-alia of the view that imprisonment for life means imprisonment for whole life unless the appropriate Government remits the sentence by special order. Thereafter, all the cases on hold were processed one by one in the Ministry of Home Affairs and submitted to the President's Secretariat.*

16. *That the case of Dharampal was processed in the Ministry of Home Affairs and was placed for the consideration of the then Home Minister. The Home Minister approved the advice for rejection of mercy petition on 07.07.2005 and signed the Summary accordingly. The Summary for the President with entire file of mercy petition of*

Dharampal was submitted to the President's Secretariat for decision of Hon'ble President.

17. *That the mercy petitions, thereafter, remained pending in the President's Secretariat for consideration of the then Hon'ble President of India. After the new Government was formed in May, 2009, it was decided in September, 2009 to recall the cases pending with the President's Secretariat for review in the Ministry of Home Affairs, to assist in expediting a decision by the President of India in each case. The cases were recalled from President's Secretariat one-by-one, on the basis of the date of Trial Court judgment and were resubmitted to the President's Secretariat after review. The cases were recalled on account of an administrative decision to ensure a fair and equal treatment of all cases and to assist in expediting a decision by the Hon'ble President. Hence, a request was made by the Ministry of Home Affairs vide Office Memorandum dated 16.08.2010 to return the file of the mercy petition case of Dharampal.*

18. *That consequent upon the above request of the Ministry of Home Affairs, the President's Secretariat returned the file of the mercy petition of Dharampal. The file was received in the Ministry of Home Affairs on 24.08.2010.*

19. *That after return of the file from the President's Secretariat, the matter was placed before the Home Minister for consideration & review of the case. The Home Minister considered the matter and tendered his advice on 06.09.2010 to reject the mercy petition. Accordingly, the Summary for President was signed by the Home Minister on 08.09.2010. The entire file of mercy petition of Dharampal alongwith Summary for the President was re-submitted to the President's Secretariat on 09.09.2010 for a decision of Hon'ble President.*

20. *That on 31.07.2012 the present Home Minister took charge of his office.*

21. *That on 29.10.2012, the President's Secretariat returned the file of Dharampal (alongwith other six files of mercy petition cases) stating that Hon'ble President has desired that since a new Home Minister has taken over charge, his views may also be ascertained before a decision is taken on the mercy petitions.*

22. *That the above mentioned file was received in the Ministry of Home Affairs on 30.10.2012.*

23. *That the matter was processed one-by-one and placed before the Hon'ble Home Minister for his view. On 16.01.2013, the Hon'ble Home Minister considered the matter and decided to advise the Hon'ble President to reject the mercy petition of Dharampal having found no ground to disagree with the earlier recommendation. Accordingly, the file was re-submitted to the President's Secretariat on the same day.*

24. *That on 25.03.2013, the Hon'ble President of India after duly considering the mercy petition along with the judgment of the Hon'ble Supreme Court and the recommendations of the Ministers of Home Affairs and after considering all facts of the case rendered a decision to reject the mercy petition of the condemned prisoner Dharampal.*

25. *That the file was received back in the Ministry of Home Affairs and accordingly decision of the Hon'ble President communicated to the Chief Secretary, Government of Haryana vide letter dated 28.03.2013."*

8. In the written statement filed on behalf of the State of Haryana, it has been admitted that throughout the period after his conviction by the trial court vide judgment dated 05.05.1997, the petitioner remained in solitary confinement in various jails. Further, it has not been disputed that the judgment dated 19.11.2003 passed by this court, acquitting the petitioner

in the rape case, was not placed before the President of India along with the mercy petition of the petitioner.

9. In the light of the aforesaid facts, we have examined the issue raised in this petition, and have considered the question as to whether an inordinate delay of about 13 years and 5 months in disposal of the mercy petition was sufficiently and reasonably explained.

10. After going through the aforesaid paragraphs of the reply filed on behalf of the Union of India, we are of the opinion that in the present case, the long and inordinate delay in taking decision on the mercy petition has not been sufficiently and reasonably explained. In our opinion, the mercy petition has not been expeditiously dealt with by the authorities, whereas it has to be expedited at every stage. From the facts stated above and the stand taken by the respondents in their separate written statements, it is not the case of the respondents at all that the delay in disposal of the mercy petition and execution of death sentence is attributed to the petitioner.

11. It has been held in various judgments of the Supreme Court that undue and inordinate delay in disposal of mercy petition violates the fundamental right of death convict. In this regard, reference can be made to the latest decision of the Supreme Court in **Shatrughan Chauhan versus Union of India and others**, (2014) 3 Supreme Court Cases 1, where it has been held that prolonged delay in execution of a sentence of death has a dehumanising effect and this has the constitutional implication of depriving

a person of his life in an unjust, unfair and unreasonable way so as to offend the fundamental right under Article 21 of the Constitution. Articles 14, 19 and 21 supplement each other and right to commutation of death penalty due to undue and inordinate delay in execution of mercy petition is a substantive right of convict and not merely a procedural right.

12. The inordinate delay in disposal of the mercy petition in the present case, which has been caused by the authorities without any reasonable ground, is beyond the control of the petitioner. The inordinate, unreasonable and unexplained delay is a ground, which confers a right on condemned prisoner to get his death sentence commuted to life imprisonment, by seeking appropriate remedy under the law.

13. The second ground, on which the petitioner is praying for not executing his death sentence at this stage and for commuting the same to life imprisonment is that the authorities did not place the material with regard to his acquittal in the rape case, before the President of India. This fact also violates the fundamental rights of the petitioner. It has been held in **Shatrughan Chauhan's case** (supra) that when a mercy petition of a condemned prisoner is placed before the President of India or the Governor of the State, it is incumbent on the part of Ministry concerned to place all the materials such as judgment of the trial court, High Court and the final court as well as any other relevant material connected with the conviction all together and at once and not call for the documents piecemeal. In the

present case, admittedly, the judgment of acquittal of petitioner in the rape case, passed by this court on 19.11.2003, was not placed before the President of India along with the mercy petition. The said judgment might have had a great bearing on the decision of the mercy petition, particularly keeping in view the fact that the Hon'ble Supreme Court commuted the death sentence of brother of the petitioner to life imprisonment, while taking into consideration the fact that he was not involved in the rape case. The fact that the petitioner was acquitted in the rape case could have been considered at the time of disposal of his mercy petition and on the same analogy, the President of India could have commuted the death sentence of the petitioner to life imprisonment. This procedural illegality, which could have gone to the root of the matter, has caused serious prejudice to the petitioner and violated his fundamental right to get his mercy petition considered in its right perspective.

14. Thirdly, in the present case, undisputedly, the petitioner has remained in solitary confinement in a single Cell in various jails, after his conviction in the murder case by the trial court on 05.05.1997. He has spent about 18 years in solitary confinement. During the pendency of his mercy petition, only execution of his death sentence was stayed, but throughout the said period, he remained in solitary confinement. It has been held in **Shatrughan Chauhan's case** (supra) that if the condemned prisoner is kept in solitary confinement prior to rejection of his mercy petition, that itself

amounts to violation of his fundamental right under Article 21 of the Constitution, as solitary confinement prior to disposal of the mercy petition is unwarranted and would amount to separate and additional punishment not authorised by law. Hence, this court can entertain the instant petition under Article 226 of the Constitution, in case it is established that the fundamental right of the condemned prisoner has been violated.

15. During the course of arguments, learned counsel for the respondents did not raise the argument of maintainability of the instant writ petition. However, it has been contended by the learned State counsel that in the instant case, since the petitioner has committed murder of five members of the family of the rape victim, who had deposed against him, the death sentence awarded to him should not be commuted to life imprisonment on the ground of inordinate delay in disposal of his mercy petition and keeping him in solitary confinement during the pendency of the mercy petition. This contention, in our opinion, cannot be accepted. It has been held by the Supreme Court in *Shatrughan Chauhan's case* (supra) that when there is undue and unexplained delay in disposal of the mercy petition, it will be unjust and unreasonable to execute the death sentence at the belated stage, irrespective of the gravity or seriousness of the offence, as long as the delay was not caused at the instance of the condemned prisoner. In the present case, delay in disposal of the mercy petition is highly inordinate, which is about 13 years and 5 months. The Hon'ble Apex Court as well as Delhi High

Court [***Khem Chand versus State***, 1990 (1) RCR (Criminal) 68] and Madras High Court [***Haja Mohideen versus Government of India***, 1991 (2) RCR (Criminal) 465] have commuted death sentence to life imprisonment in cases, where the delay was even less than 5 to 8 years. In addition to the long inordinate and unexplained delay, there are other circumstances, like solitary confinement of the petitioner for about 13 years and 5 months during the pendency of his mercy petition, and non-placing of the material fact before the President of India, which in our opinion make out the present case as a fit case where this court, in exercise of its powers under Article 226 of the Constitution, may allow the writ petition as ordering the execution of death sentence will be highly unjust and unreasonable, and violative of the fundamental right of the condemned prisoner.

16. For the reasons recorded above, the instant writ petition is allowed, and the death sentence awarded to the petitioner is commuted to life imprisonment. Jail authorities be informed accordingly.

(SATISH KUMAR MITTAL)
JUDGE

April 21, 2015
ndj

(HARINDER SINGH SIDHU)
JUDGE