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

+ **W.P.(CRL.) 769/2020**

PAWAN KUMAR GUPTA & ORS. Petitioners

Through: Dr. A.P. Singh, Advocate with
Ms. Geeta Chauhan, Mr. V.P. Singh,
Mr. P.K. Tripathy, Mr. Shams Khwaja,
Ms. Pratima Rani, Mr. M.P. Singh,
Mr. Braamjeet Singh, Mr. Nishant,
Mr. Pawan Prakashh Pathak, Mr. Alok
Singh, Mr. Vinay Ahrodia and
Mr. Bhavtosh Sharma, Advocates.

versus

STATE

..... Respondents

Through: Mr. Rahul Mehra, Standing counsel
(Crl.) with Chaitanya Gosain,
Advocate for State.
Mr. Raj Kumar, AIG, Mr. Rajesh
Chopra, DIG and Mr. Prashant Kr.
Verma, OIC Legal Tihar.
Mr. Jitendra Kumar Jha and Ms. Seema
Samridhi, Advocates for Nirbhaya's
Parents.
Insp. Ravi Shankar, P.S. Vasant
Vihar/SHO, Insp. Somnath, SHO
PS Greater Kailash, SI Ranveer Singh,
PS S.J. Enclave and Insp. Ram Sahay
SHO/Metro.

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Date of Decision: 19th March, 2020

CORAM:

HON'BLE MR. JUSTICE MANMOHAN

HON'BLE MR. JUSTICE SANJEEV NARULA

J U D G M E N T

MANMOHAN, J (Oral):-

1. Present writ petition has been listed upon special mentioning being allowed by the Hon'ble Chief Justice. With consent of the parties, the matter was taken up for hearing at 9.50 p.m.
2. It is pertinent to mention that the present writ petition has been filed under Articles 226, 14 and 21 of the Constitution of India read with Section 482 Cr.P.C. praying for quashing of the death sentence and staying of the death warrants executable at 5.30 a.m. on 20th March, 2020.
3. Dr. A.P. Singh, learned counsel for the petitioners states that a number of petitions/proceedings filed by or against the petitioners are *sub judice* and/or pending as on date. According to him, if the death warrants are executed, the said proceedings including the divorce petition filed by the wife of Akshay Kumar as well as the petition before the National Human Rights Commission by Pawan Kumar Gupta and Criminal Complaint No.10/2020 titled as Pawan Kumar Gupta vs. Anil Kumar Constable under Section 308 I.P.C. shall become infructuous. He emphasises that Mr. Pawan Kumar Gupta had sustained serious injuries on his head while he was in custody.
4. He further states that in an interview given by Mr. Ajit Anjum, Chief Managing Editor of NEWS24 and India TV, it has been stated that star eyewitness Mr. Awninder Pratap Pandey had taken a lot of money to 'frame' the accused-petitioners.
5. He also states that a Tihar Jail official in his book "Black Warrant" has opined that there was a serious miscarriage of justice in the case of the

petitioners.

6. He lastly states that petitioner-Pawan Kumar Gupta was a juvenile on the date of commission of crime. In support of his contention, he relies upon the School Leaving Certificate issued by Gayatri Bal Sanskar Shala, Narayanpur, District Ambedkar Nagar, U.P.

7. Mr. Shams Khwaja, learned counsel who supplemented the arguments of Dr. A.P. Singh, contends that the President of India has acted with patent prejudice as he has publicly stated that institution of mercy petitions should be abrogated or abolished in cases of rape accused, who had traumatised young lives.

8. He also submits that the relief of *pari passu* in grant of mercy petition was most unfairly denied to the petitioners inasmuch as the Government of India has commuted the death sentence of a terrorist who had assassinated the former Chief Minister of the State of Punjab.

9. He lastly submits that in the present case the Trial Court has failed to consider the applicability of Sections 120B and 34 I.P.C. He emphasises that the Trial Court has also failed to examine and tabulate the findings against each individual accused and in the present case culpability has not even been assigned in a graded manner.

10. Per contra, Mr. Rahul Mehra, learned Standing counsel for the State submits that the plea of juvenility has been rejected by the Trial Court vide order dated 21st December, 2018, by the High Court in revision jurisdiction vide order dated 19th December, 2019 and by the Supreme Court vide orders dated 20th January, 2020, 31st January, 2020 and 19th March, 2020 in Special Leave Petition, Review Petition as well as Curative Petition respectively.

11. He also contends that the allegation that one of the petitioners had sustained injuries during the stay in jail has been rejected by the Supreme Court vide order dated 19th March, 2020 in W.P.(Crl.) 121/2020.

12. He further states that in the earlier writ petition being W.P.(Crl.)65/2020, the petitioners had made allegations of bias and malice against Ministers of both Union and State on similar grounds as now sought to be canvassed against the Hon'ble President of India. He points out that the Apex Court has rejected the said plea of malice against the Ministers of the Delhi State Government as well as the Union of India vide order dated 14th February, 2020 in W.P.(Crl.) 65/2020.

13. Having heard learned counsel for the parties, this Court is of the view that once the Supreme Court has dismissed the petitioners' criminal appeal challenging the confirmation of the death sentence as well as the review and curative petitions and the Hon'ble President of India has dismissed the mercy pleas, the petitioners cannot challenge the Additional Sessions Judge's order dated 19th March, 2020 by which the applications seeking stay of execution of the death sentences have been dismissed as the said order is nothing, but carrying the orders passed by the Apex Court to its logical conclusion.

14. The present writ petition has been filed without any index, list of dates, memo of parties, annexures and/or affidavits. Some annexures and list of dates of another case were handed over during the course of hearing.

15. Further, neither the interview given by a former Jail official nor by a journalist can be considered in the present writ petition as no factual foundation has been laid for the same in the writ petition.

16. This Court is also of the view that an opinion of a Jail official as well as that of a journalist can be considered only if the interview and the book had been placed on record and the said individuals had subjected themselves to cross-examination in the trial. After all in the present case there was a full trial and the matter has been considered repeatedly by the Trial Court, the High Court as well as the Supreme Court and the Hon'ble President of India.

17. As far as the plea of juvenility is concerned, this Court is in agreement with the contention of learned Standing counsel for the State that the said plea has been rejected by the Trial Court, the High Court, the Supreme Court and the same cannot be re-agitated in the present writ petition.

18. The contention of learned counsel for the petitioners that a number of *sub judice* proceedings would become infructuous and/or abate if the death warrants are executed is untenable in law. This Court is of the view that the Trial Court after analysis of the Delhi Prison Rules, 2018 has correctly held as under:-

“17. Perusal of the relevant rules reveals that Rule 836 or Rule 838 cannot be read in isolation to understand the true import of word ‘Appeal or Application’. Evidently, one has to necessarily refer to Rule 834 to understand the scope of the word ‘Appeal or Application’. As per Rule 834, the word ‘Appeal or Application’ mainly refers to statutorily appeal or special leave to appeal under the provision of Constitution of India. The word ‘Appeal or Application’ thereafter cannot be expansively interpreted to include any other petition pending before any authority including the Hon’ble Supreme Court of India. Any other interpretation would render the execution of death sentence impossible as any death row convict would mischievously continue moving applications/representations before innumerable authorities simply to stall the execution of death sentence.”

(emphasis supplied)

19. This Court is also of the opinion that the submission with regard to applicability of Sections 120B and 34 I.P.C. cannot be considered at this belated stage inasmuch as it is an argument on merits and the judgment of the Apex Court convicting the petitioners has attained finality.

20. This Court is in agreement with the submission of learned Standing counsel for the State that the basis for attributing malice/bias to the President of India is the same that was used to attribute malice and bias to the Ministers of the Delhi State Government as well as the Union of India in an earlier petition. However, the said submission has been rejected by the Supreme Court vide order dated 14th February, 2020 in the case of Vinay Sharma. The relevant portion of the said order is reproduced hereinbelow:-

“29. Bias Order was passed on irrelevant considerations:-.

Another ground argued by the learned counsel for the petitioner is the alleged bias caused to the case of the petitioner because of the statements made by the Ministers in the Delhi Government as well as in the Union Government which have led to pre-judging the outcome of the petitioner’s mercy petition even before it was placed before the President of India for consideration. The petitioner has referred to the various statements made by the Ministers to the effect that the death sentence be awarded to the convicts to contend that such public statements had the effect of influence “aid and advice” tendered by the Council of Ministers of Delhi to the Lieutenant Governor or by Council of Ministers in the Central Government to the President and the order of rejection is vitiated by bias. As discussed earlier, note put up before the President is a detailed one and all the relevant materials were placed before the President and upon consideration of the same, the mercy petition was rejected. The public statements said to have been made by the Ministers, cannot be said to have any bearing on the “aid and advice” tendered by the Council of Ministers of Delhi to the Lieutenant Governor or by Council of Ministers in the Central Government to the President.

30. The petitioner filed curative petition before the Supreme Court and the same was dismissed on 14.01.2020. The petitioner filed mercy petition on 29.01.2020 and the same was forwarded by NCT of Delhi to the Ministry of Home Affairs on 30.01.2020. The President of India rejected the mercy petition on 01.02.2020 and the same was communicated to the petitioner in Tihar Central Jail on 01.02.2020. As pointed out earlier, the case records, judgments of the trial court, High Court and the Supreme Court, clean copy of records of the case, Nominal Roll of the petitioner, medical report of the petitioner, Social Investigation Report and other relevant documents were forwarded to the Ministry of Home Affairs. The note put up before the President of India is a detailed one and all the relevant materials were placed before the President and upon consideration of same, the mercy petition was rejected.”

(emphasis supplied)

21. Further it is settled law that if allegations of malice / bias are made against any individual or any authority, then the said individual or authority has to be impleaded by name – which has not been done in the present case.

22. In any event, no proceeding against the President of India are maintainable.

23. The plea of *pari passu* also does not appeal to us. No documents with regard to the commutation of death sentence of assassin of Late Chief Minister of the State of Punjab have been placed on record. This Court is not in a position to compare whether the said convict was on the same pedestal as that of the present petitioners.

24. Even otherwise Article 14 is a positive concept and cannot be enforced in a negative manner. Irregularity and illegality cannot be perpetuated on the ground that illegal benefits have been extended to others. It has been held by the Supreme Court that if some similarly situated persons

have been granted some relief inadvertently or by mistake, such an order does not confer any legal right on others to get the same relief as well. [See: *Union of India & Ors. vs. M.K. Sarkar*, (2010) 2 SCC 59 and *Basawaraj & Anr. vs. Special Land Acquisition Officer*, (2013) 14 SCC 81].

25. Keeping in view the aforesaid findings, the present petition being bereft of merits, is dismissed.

Order dasti under the signature of the Court Master.

MANMOHAN, J

SANJEEV NARULA, J

MARCH 19, 2020

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