

IN THE SUPREME COURT OF INDIA
(CRIMINAL ORIGINAL JURISDICTION)

CRL.MP No...../2020

IN

WRIT PETITION(CRL) NO. 55/ 2013

IN THE MATTER OF:

SHATRUGHAN CHAUHAN & ANR.PETITIONER

VERSUS

UNION OF INDIA & ORSRESPONDENT/APPLICANT

WITH

CRL.MP NO. /2020:

APPLICATION SEEKING
CLARIFICATION/MODIFICATION
OF THE GUIDELINES PASSED IN
THE COMMON FINAL
JUDGEMENT AND ORDER DATED
^A 21.01.2014^B AND FOR FURTHER
DIRECTIONS

WITH

PAPER BOOK

(FOR INDEX KINDLY SEE INSIDE)

ADVOCATE FOR THE APPLCIANT/ RESPONDENT: B.V BALRAM DAS

INDEX

S. No.	Particulars	Pg. Nos.
1.	Application seeking clarification of the guidelines passed in common final judgment and order dated 21.01.2014 and further directions in Writ Petition(Crl) No. 55/ 2013 and other connected matters on the behalf of Union of India through Ministry of Home Affairs("MHA")	

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**APPLICATION SEEKING CLARIFICATION AND MODIFICATION OF THE
GUIDELINES PASSED IN COMMON FINAL JUDGMENT AND ORDER DATED
21.01.2014 AND PRAYING FOR FURTHER DIRECTIONS IN WRIT
PETITION(CRL) NO. 55/ 2013 AND OTHER CONNECTED MATTERS ON THE
BEHALF OF UNION OF INDIA THROUGH MINISTRY OF HOME
AFFAIRS("MHA")**

To

The Hon'ble Chief Justice of India B O U T L A W
And his Companion Justices of the
Hon'ble Supreme Court of India

The humble Application of
the Applicant/respondent
above named:-

MOST RESPECTFULLY SHOWETH :-

1. That this Hon'ble Court *vide* a common judgment and order dated 21.01.2014 (hereinafter referred as the "said judgment") passed in WP(Crl.) No. 55/2013 and other connected matters, filed either by the convicts, who were awarded death sentence or by their family members or by others like People's Union for Democratic Rights (PUDR), laid down certain guidelines with respect to the procedure to be followed for filing mercy petitions and the execution of the death sentence thereafter, keeping in account the interest of the death row convicts.

2. That the Applicant/Union of India through the Ministry of Home Affairs (“MHA”) is filing the present Application praying for appropriate clarification/modification and directions in furtherance of the said judgement passed by this Hon’ble Court in the aforesaid batch of writ petitions also reported as “*Shatrughan Singh Chauhan and another Vs Union of India & ors. [(2014) 3 SCC 1]*”
3. That the Applicant states and submit that the country is facing a menace of certain offences which are punishable with death sentence. Such offences include offences relating to terrorism, rape, murder etc.
4. It is submitted that the offence of rape is not only a criminal offence defined in the penal code of the country but is the most horrific and unpardonable offence in any civilized society. The offence of rape is not only an offence against an individual and society but is an offence against humanity. There are various instances of such heinous and horrific offences of rape accompanied by an equally horrible and horrific offence of murder of the victim which shakes the collective conscience of the nation.
5. That this Hon’ble Court in the aforesaid case of Shatrughan Singh Chauhan [*Supra*] was pleased to lay down guidelines in para 241.1 to 241.15. The said directions are issued by this Hon’ble Court essentially keeping the rights of the convict in mind as it is apparent from the guidelines themselves.
6. It is submitted that while taking care of the rights of the convicts, it is more important and need of the hour to lay down guidelines in the interest of the victims, their families and in larger public interest, lest the convicts found to be guilty of such horrible, and dreadful, cruel, abominable, ghastly, gruesome and heinous offences would be permitted to play with the majesty of law and prolonged the execution of the sentence awarded to them in accordance with the law.

7. At the outset, it may be pointed out that under the scheme of the criminal justice delivery system in our country, the nation has ensured a full proof judicial regime providing for various stages of judicial scrutiny to ensure that an accused is punished with an appropriate punishment strictly in accordance with the law and only after being judicially scrutinized at several stages before judicial forums. Even in case of a persons accused of rape and murder, a detailed trial takes place before a Sessions judge and after recording of conviction even such an accused gets an opportunity to persuade the Hon'ble Court not to impose punishment for death.
8. It is submitted that when a death sentence is awarded to an accused after the aforesaid judicial scrutiny, the procedure established by law ensures that the said decision is mandatorily tested by the highest court of the State namely the High Court. Under section 366 of the CrPC, it is mandatory not to execute the sentence of death unless the same is confirmed by the Hon'ble High Court. The relevant provisions contained in section 366 to 368 of CrPC reads as under:-

“366. Sentence of death to be submitted by Court of session for confirmation.

(1) When the Court of Session passes a sentence of death, the proceedings shall be submitted to the High Court, and the sentence shall not be executed unless it is confirmed by the High Court.

(2) The Court passing the sentence shall commit the convicted person to jail custody under a warrant.

“367. Power to direct further inquiry to be made or additional evidence to be taken.

(1) If, when such proceedings are submitted, the High Court thinks that a further inquiry should be made into, or additional evidence taken upon, any point bearing upon the guilt or innocence of the convicted person, it may make such inquiry or take such evidence itself, or direct it to be made or taken by the Court of Session.

(2) Unless the High Court otherwise directs, the presence of the convicted person may be dispensed with when such inquiry is made or such evidence is taken.

(3) When the inquiry or evidence (if any) is not made or taken by the High Court, the result of such inquiry or evidence shall be certified to such Court.”

“368. Power of High Court to confirm sentence or annul conviction. In any case submitted under section 366, the High Court-

(a) may confirm the sentence, or pass any other sentence warranted by law, or

(b) may annul the conviction, and convict the accused of any offence of which the Court of Session might have convicted him, or order a new trial on the same or an amended charge, or

(c) may acquit the accused person: Provided that no order of confirmation shall be made under this section until the period allowed for preferring an appeal has expired, or, if an appeal is presented within such period, until such appeal is disposed of.”

9. It is again relevant to note that considering the nature of the offence and the nature of the sentence, section 369 of CrPC mandates that the confirmation of sentence should be signed by at least two Judges of the Hon'ble High Court. This is one more stage at which an elaborate scrutiny takes place with respect to the execution of death sentence.
10. It is submitted that in furtherance of protecting the right of a convict, he has a right to approach the highest court of the country i.e. this Hon'ble Court and file an appeal. This Hon'ble Court also not only examines the entire judicial decision making afresh but also permits the accused to satisfy this Hon'ble Court about any mitigating circumstances which the accused wants to be taken into consideration before conforming/annulling/modifying the sentence awarded and confirmed.
11. That even after this Hon'ble Court confirming the death sentence, there is a remedy of filing a review petition. Though in other cases, review before this Court is decided in a chamber hearing, it is mandatory to place the review

for open court hearing in cases where this Hon'ble Court has confirmed / awarded the death sentence.

12. It is respectfully submitted that even after the aforesaid elaborate scrutiny at more than one judicial level and in more than one stages, this Hon'ble Court was pleased to lay down certain guidelines in the said judgment which imposes further restrictions on the execution of death sentence.

All the guidelines provided in para 241.1 to 241.15 are accused-centric. These guidelines, however, do not take into account an irreparable mental trauma, agony, upheaval and derangement of the victims and their family members, the collective conscience of the nation and the deterrent effect which the capital punishment intends to make. It is found several years before and after the judgment in the *Shatrugan* [supra] that convicts of even such heinous crimes under the garb of Article 21 take the judicial process for a ride.

13. It is submitted that while this Hon'ble Court is pleased to lay down guidelines to protect the interest of the accused, it is high time that this Hon'ble Court, in its inherent jurisdiction as custodial of fundamental rights of every citizen redresses the grievances of the victims, their family and that of the society whose conscience gets shaken as a result of such horrific offences and reinforces their faith in the judicial process.
14. It is humbly submitted that the same can be achieved by this Hon'ble Court laying down the guidelines with regard to –
 - (a) A time limit within which the convict of death sentence should file curative petition, if he so chooses to file.

- (b) Curtailing the time limit provided in para 214.7 from 14 days to 7 days;
- (c) In case of multiple convicts of such horrific crimes who are awaiting death sentence, mandating the issuance of warrant by competent Court within seven days of rejection of mercy petition and execution of death sentence within seven days thereafter irrespective of the proceeding, if any, taken by his co-convicts.

15. It is submitted that one of the fundamental grounds which weighed with this Hon'ble Court in the judgment of Shatrugan Singh Chauhan[*supra*] in laying down the aforesaid guidelines is the “de-humanising effect of delay in execution of death sentence” upon the death convicts. This is recorded by this Hon'ble Court in para 49 of the said judgment. In other words, this Hon'ble Court has already laid down that once the convict comes to know of his ultimate fate, it is de-humanising to delay the execution of the death sentence.

16. It is submitted that in case of multiple accused being awarded death penalty in the same case, it often happens that one accused files the Review Petition/mercy petition which gets rejected and the other co-convicts are either advised to or independently chose not to file any further application or initiate other proceedings. This is for the simple reason that though many jail manuals or prison rules do not prohibit execution of death sentence of co-convicts, one by one, there may be some States where the execution of death sentence with regard to all the co-convicts may be simultaneous.

This has a de-humanising effect as held by this Hon'ble Court in Shatrugan case [*supra*]. Once the mercy petition of one of the co-convict

is rejected, he knows about his fate. However he would still have to wait till the proceedings with respect to other co-convict are pending. It is submitted that there are instances where the death sentence is not executed because the co-convicts either by default or by design choose to file review/curative/mercy petition one after the other, even at a belated stage, causing delay in the execution of the sentence of other co-convicts whose mercy petition has already been rejected. It is submitted that this de-humanising effect can be removed only by mandating the competent Courts and State prisons in the country to issue death warrant within seven days of dismissal of his mercy petition, and to execute the death sentence within seven days thereafter irrespective of the proceedings pending / anticipated with regard to his co-convicts.

17. It is submitted that aforesaid guidelines of this Hon'ble Court would be in furtherance of the guidelines laid down in *Shatrugan Singh Chauhan [supra]* which is essentially accused centric. It is respectfully submitted that as an institution, this Hon'ble Court would consider laying down guidelines from the point of view of victims, their family and the society as well.
18. It may be noted that the Union of India preferred Review Petition (Crl) Nos. 190-202/2014 in the aforesaid Writ Petition No. 55/2013 and other connected matters, however the same were dismissed *vide* order dated 21.03.2014 by this Hon'ble Court. The Union of India thereafter, also filed Curative Petitions No. 4-16/2017 in the aforesaid writ petitions, however, the same were also dismissed *vide* order dated 09.02.2017. It may however be noted, that the relief sought in the present application were not sought before this Hon'ble Court either in the said review petitions or the curative petitions.

19. It is further submitted that this Application is being filed *bonafide* with a view to pray before this Hon'ble Court to lay down further guidelines without prejudice to implementation of execution of death sentence in all pending cases in the country in accordance with the law.

PRAYER

In view of the aforesaid facts and circumstances, this Hon'ble Court may be pleased to clarify / modify its common final judgement and dated 21.01.2014 passed in WP(Crl) No. 55/2013 and other connected matter and be pleased to direct as under –

- (i) It would be permissible for the death convicts to file curative petition after rejection of review petition only within a time to be stipulated by this Hon'ble Court and not thereafter;
- (ii) to clarify and direct that if the convict of death sentence wants to file mercy petition, it would be mandatory for a convict of death sentence to do so only within a period of seven days from the date of receipt of death warrant issued by the competent court; and
- (iii) to mandate all the competent courts, State Governments, prison authorities in the country to issue death warrant of a convict within seven days of the rejection of his mercy petition and to execute death sentence within seven days thereafter irrespective of the stage of review petition/curative petition/mercy petition of his co-convicts

AND FOR THIS ACT OF KINDNESS THE RESPONDENT/APPLICANT SHALL
AS IN DUTY BOUND EVER PRAY.

FILED BY:

DRAFTED BY:

(B.V BALRAM DAS)

Advocate for the Applicant/Respondent

Place: New Delhi

Drawn on:

Filed on:



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AFFIDAVIT

I, Shri Prakash S/o Late Shri Brahma Shankar aged about ____ years presently working as Joint Secretary, Ministry of Home Affairs, North Block, New Delhi, do hereby solemnly affirm and declare as under:-

1. I say that I am posted as Joint Secretary in Ministry of Home Affairs and as such I am conversant with the facts of the case and competence to swear this short affidavit in my official capacity on the behalf of the Applicant/Respondent.
2. I state that I have read and understood the contents of the accompanying application seeking modification of the guidelines passed in common final judgment and order dated 21.01.2014 and further directions in Writ Petition(Crl) No. 55/ 2013 and other connected matters. I state that the facts mentioned therein are true and correct to my personal knowledge and belief and information derived from the records of the case as per the legal advice received from my lawyer and believed by me to be true.
3. I say that the Annexures filed along with the accompanying application are true copies of their originals.
4. I say that the statements made above are true and correct to my personal knowledge and belief.

DEPONENT

VERIFICATION:

I the above named deponent affirms that the contents of Para 1 to 4 of this affidavit are true and correct to my personal knowledge and belief based on the official records of the present case and no part of it is false and nothing material has been concealed there from.

Verified at New Delhi on this 22nd day of January, 2020.

DEPONENT

