

Sh. Dharmendra Singh

Additional Sessions Judge,
36, District Court, Patna,
33, Muzaffarpur, Bihar
Patna High Court,
94, Court,
New Delhi

To Jail Superd.
Tihar
Prison cells

SC No. 114/2013
FIR No. 413/12
PS Vasant Vihar
State vs. Ram Singh & Ors.

07.02.2020

Present: Sh. Irfan Ahmed, Ld. Spl. PP for the State.

Sh. Jitender Kumar Jha and Ms. Seema Kushwaha,
Ld. counsel for mother of victim.

Dr. A. P. Singh, Ld. counsel for convicts Pawan, Akshay and
Vinay.

Ms. Vrinda Grover, Ld. Amicus Curiae in the present matter,
also appearing as amicus for respondent /convict Mukesh.

Sh. Jorawar Singh, Law Officer and Sh. Prashant Kumar Verma
OIC(Legal) Prison Head Quarters, Tihar Jail are present.

Sh. S. Sunil, Superintendent, Central Jail no. 3, Tihar.

File taken up today on two separate applications moved on
behalf of State through Public Prosecutor and through Superintendent,
Central Jail no. 3, Tihar.

1. The summum bonnum of both the applications is identical and thus they are taken up together.
2. By way of applications under consideration, it is prayed that this court, acting u/s 413/414 CrPC, must fix the date for execution of death warrants issued by this court on 07.01.2020.
3. It is submitted by Ld. Addl. PP that the mercy petition of convict namely Akshay has also been dismissed by Hon'ble President of India on 05.02.2020. It is thus submitted that as on date, there is no legal impediment to fix the date for execution of death warrants as neither any appeal nor any application/petition is pending before any competent authority qua the condemned convicts.
4. It is argued that taking into consideration the seven days period granted by Hon'ble Delhi High Court in Crl. Revision Petitions no. 104/2020

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to 106/2020 vide order dated 05.02.2020 this court must fix 20.02.2020 as the date for execution of death warrants.

5. It is vehemently argued by Sh. Jitender Kumar Jha, Ld. counsel for victim that position today is exactly identical as on 07.01.2020 and 17.01.2020 when this court fixed the date of execution of warrants for 01.02.2020. It is argued that since as on date, there is no petition moved by any of the convicts, therefore this court should fix the date for execution of death warrants. It is further submitted that in case if this court fails to fix the date for execution of death warrants, the condemned convicts would unnecessarily and unjustifiably gain an excess period of six days. It is vehemently argued that not fixing any date is an unjustified delay in execution of death warrants and family of victim is not getting justice in the instant matter.

6. Ms. Seema Kushwaha, Ld. counsel for victim has additionally argued that the convicts herein are infact deliberately misusing the provisions of law. It is submitted that 'Delay' in itself is a ground for commutation of death sentence and consequently the condemned convicts are resorting to all sorts of tactics to unnecessary delay the execution and earn some brownie points. It is submitted that no one is going to suffer any loss in case this court fixes the date for execution of death warrants in terms of Rule 858 of Delhi Prison Rules.

7. On the contrary, Ms. Vrinda Grover, Ld. amicus for convict Mukesh has vehemently argued that application at hand is premature and deserves to be dismissed. It is further informed to the court that the order dated 31.01.2020 passed by this court has not only been upheld by the Hon'ble High Court in Crl. Revision Petitions No. 104/2020 to 106/2020 vide order dated 05.02.2020 but Hon'ble Delhi High Court has further granted seven days period to the convicts to exercise their legal remedies. Ld. counsel has drawn my attention to Para 68 of order dated 05.02.2020 (supra) arguing that Hon'ble High Court of Delhi while exercising its power under



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Mukesh
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Section 482 CrPC, in the interest of justice, has not only permitted any single convict but has allowed all the convicts to resort to their available legal remedies. It is further pointed out that Hon'ble Delhi High Court was further pleased to direct the authorities to initiate appropriate action as per law, without any further delay, in case if the convicts fails to exercise their legal remedies. It is argued that this seven days period is not only available to the convicts but is also binding upon the authorities including this court. It is further pointed out that applicants infact wants this court to presume certain things. It is submitted that to fix the date the court would have to presume that the convicts are not only going to exercise the legal remedies available to them but the court is further required to presume that the highest constitutional authorities shall decide it only in a particular manner. Not only that, the court is also required to compute the date fixed for execution merely on the basis of presuming the future course of events in a predisposed manner.

8. It is vehemently argued that the position today is not similar to the position as it existed on 07.01.2020 and 17.01.2020. It is submitted that Hon'ble Delhi High Court has permitted not only convict Pawan but also other convicts to exercise their legal remedies within seven days. Thus it is submitted that the application deserves to be dismissed as premature.

9. On the contrary, Sh. A. P. Singh, Ld. counsel for convicts Pawan, Akshay and Vinay has vehemently argued that the applications moved by the State and jail authorities deserves to be dismissed. It is submitted that the convicts deserves the protection under Article 21 of the Constitution of India till their last breath. It is further submitted that the Hon'ble Apex Court has not stayed or passed any directions upon the order dated 31.01.2020 whereby this court postponed the execution of death warrants till further orders. It is further argued that Criminal Appeal no. 77/2017 filed by convicts Akshay, Vinay and Pawan is still pending in Hon'ble Delhi High Court. Ld. counsel has accordingly prayed for dismissal of

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Ld. Counsel
A.P. Singh
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applications.

10. In rebuttal, it is pointed out by Ld. Addl. PP that Criminal Appeal no. 77/2017 does not pertain to this case and is not relevant for the purpose of deciding the present applications.

11. It is criminally sinful to execute the condemned convicts when the law permits them to live. Admittedly, Hon'ble Delhi High Court vide order dated 05.02.2020 has permitted the convicts, in the interest of justice, to exercise their legal remedies within one week of the said order. I concur with the Ld. amicus for the convict Mukesh that the date for execution of death warrant cannot be fixed merely on the basis of surmises and conjectures. Applications at hand are premature and thus deserves to be dismissed. However, the State is at liberty to move appropriate application as and when required.

12. Both the applications disposed of accordingly.

13. A copy of this order be given dasti to the Id. counsel for the convicts and also to the jail authorities.



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अतिरिक्त सत्र न्यायाधीश (02)
ASJ-02, NDD/RHG/New Delhi
07.02.2020
New Delhi

*Attended there by
Vankar
07/02/2020*