

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

02.03.2020

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.

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

1. The conundrum of executing the death sentence against the condemned convicts does not seem to be over. Within half an hour of dismissal of the application of the condemned convicts Pawan and Akshay, seeking postponement of execution of death sentence, which is scheduled for tomorrow i.e. 03.03.2020 at 6.00 a.m, Ld. Counsel for the convicts has filed another application on behalf of condemned convict Pawan Kumar Gupta intimating the court that condemned convict Pawan Kumar Gupta has now filed a mercy petition under Article 72 of the Constitution of India, before Hon'ble President of India.
2. Ld. Addl. PP accepts notice of the same and has informed the court that as per the telephonic information received from the jail authorities, he concedes that a mercy petition has been moved by condemned convict Pawan Kumar Gupta.

During the dictation of this order, an intimation has also been received from Superintendent, Central Jail No. 3 intimating the court that curative petition filed on behalf of convict Pawan Kumar Gupta

has been dismissed by the Hon'ble Apex Court. However, a mercy petition has also been filed on behalf of convict Vinay Sharma.

3. It is argued by the Ld. Counsel for the condemned convicts that pending the disposal of mercy petition of condemned convict Pawan Kumar Gupta, the convicts cannot be executed. He has drawn my attention to the Rule 836 of Delhi Prison Rules, 2018, contending that pending the orders of the Hon'ble President, the execution of the death sentence needs to be further postponed.
4. Ld. Addl. PP has vehemently opposed the said application contending that the application is not maintainable before this court. It is submitted that as per Rule 840, it is for the Government to decide whether to carry out the sentence or not. It is submitted that at this juncture, the courts cannot intervene as such intervention would be merely based upon presumptions and conjectures. Ld. Addl. PP further vehemently argues and is joined by the Ld. Counsel for the victim in the argument, that as per order dated 05.02.2020 in *Union of India & Anr v. Vinay Sharma & Ors CrI. Rev. Petition no. 104 and 105 of 2020*, Hon'ble Delhi High Court has unambiguously directed the convicts to take steps if they wish to make any type of petition before any institution/authority available under law within one week from the date of the order. It is submitted that having failed to avail that opportunity the applicant/convict cannot now seek the deferment of the death sentence. It is forcefully argued that it is only for the Hon'ble President of India to decide whether to stay the execution or not and the application under consideration is not at all maintainable before this court.
5. It would be axiomatic to state that the extreme penalty of capital punishment is irreversible in nature. Admittedly, the right enshrined under Article 72 of the Constitution of India is an important constitutional right which cannot be rendered otiose by adopting a

hyper technical approach.

6. Article 21 of the Constitution of India makes it clear that the procedure in criminal trials must, after the seminal decision in *Mrs. Maneka Gandhi v. Union of India & Anr (1978) 1 SCC 248* be right, just and fair and not arbitrary, fanciful or oppressive (*Vinubhai Haribhai Malaviya & Ors v. State of Gujarat & Anr, Crl. Appeal No. 478-479 of 2017 date of decision 16.10.2019*). Carrying out the death sentence during the pendency of the mercy petition would be nothing but negation of a valuable constitutional right of the convict.
7. Hon'ble Supreme Court of India in the matter of **Shabnam v. Union of India & Anr Writ Petition (Crl) no. 88 of 2015 date of decision 27.05.2015**, while setting aside the death warrants issued by the Ld. Sessions Judge, without waiting for the exhaustion of the legal remedies including the mercy petition on the part of the convicts, observed as under:
 

“..In the eternal words of Justice V R Krishna Iyer in the said judgment: And in our constitutional order it is axiomatic that the prison laws do not swallow up the fundamental rights of the legally unfree, and, as sentinels on the qui-vive, courts will guard freedom behind bars, tempered, of course, by environmental realism but intolerant of torture by executive echelons. The policy of the law and the paramountcy of the Constitution are beyond purchase by authoritarians glibly invoking 'dangerousness' of inmates and peace in prisons. It is so obvious that the aforesaid ageless message has its root in human dignity which has to be preserved even when a prisoner is sentenced to death. Thus, we hold that condemned prisoners also have a right to dignity and execution of death sentence cannot be carried out in a arbitrary, hurried and secret manner **without allowing the convicts to exhaust all legal remedies**”.
8. Therefore, I have no hesitation in holding that mercy petition is an

important constitutional legal remedy available to the convict and guided by the cherished legal principle *Ubi jus ubi remedium* i.e. where there is a right, there is a remedy, I am of the opinion that the application is very much maintainable. I therefore cannot but disagree with the Ld. Addl. PP and the counsel for the victim that the application at hand is not maintainable. I also cannot but disagree with the Ld. Counsel for the victim that as per Rule 840 of Delhi Prison Rules, this court is not competent to entertain the plea for postponement of the death sentence. Rule 840 merely warrants that the Jail Superintendent would carry out the sentence unless orders to the contrary are received by him. Rule 840, nowhere excludes this court out of picture. Perusal of Section 413 and Section 414 of CrPC reveals that a duty is cast upon the Sessions Court to cause the sentence to be carried into effect by issuing a warrant for taking such other steps as may be necessary. It has been observed by the Hon'ble Apex Court in the matter of **Vinubhai Haribhai Malaviya & Ors v. State of Gujarat & Anr, Crl. Appeal No. 478-479 of 2017** date of decision **16.10.2019** that :

"It is well settled that when a power is given to an authority to do something it includes such incidental or implied powers which would ensure the proper doing of that thing. In other words, when any power is expressly granted by the statute, there is impliedly included in the grant, even without special mention, every power and every control the denial of which would render the grant itself ineffective. Thus where an Act confers jurisdiction it impliedly also grants the power of doing all such acts or employ such means as are essentially necessary for its execution".

9. Even as per Rule 863 of Delhi Prison Rules, 2018, the Trial Court is required to fix the date of the execution of a prisoner sentenced to death if his mercy petition is rejected. Therefore, it is not correct to contend that execution of punishment is a matter in the hands of the

executive alone and the court has no control over the same. Reliance is placed upon **Swamy Shraddananda v. State of Karnataka, (2008) 3 SCC 767: (2008) Cri LJ 3911**. Therefore, the contention that this court is not competent to entertain the application of the convict holds no merit.

10. Further, even the submission that vide order dated 05.02.2020 in Crl. Rev. Petition no. 104-106 of 2020, Hon'ble Delhi High Court has directed the convict to exhaust his remedy within seven days, therefore, the application at hand deserves to be dismissed, also finds no merit. The Hon'ble Delhi High Court has directed the convict to exhaust his legal remedies within seven days failing which it was directed that the concerned authorities/institutions were required to deal as per the law applicable on delay, expeditiously.

Rule 837 of Delhi Prison Rules, 2018 desires that the mercy petition should be submitted within seven days of intimation regarding the dismissal of the appeal /SLP of the petitioner. However, Rule 840 lays down the procedure for dealing with the mercy petition, if the same is moved after the prescribed period, and it nowhere says that the mercy petition beyond the prescribed period deserves to be summarily rejected on account of limitation. Rule 836 warrants that the death sentence shall not be executed pending the orders of Hon'ble President thereon. Further, as per Rule 844, the death row convict is entitled as a matter of right to receive the copy of the rejection of the mercy petition by the Hon'ble President. Rule 858 warrants that a minimum period of 14 days, as stipulated by the Hon'ble Supreme Court (in the judgment of *Shatrughan Chauhan & Anr v. Union of India & Ors, Writ Petition (Crl) No. 55 of 2013 decided by the Hon'ble Supreme Court of India on 21.01.2014*), between the receipt of the communication of the rejection of the mercy petition and the scheduled date of execution is mandatory.

Despite stiff resistance from the victim's side, I am of the opinion that any condemned convict must not meet his Creator with a grievance in his bosom that the courts of this country has not acted fairly in granting him an opportunity to exhaust his legal remedies.

11. As a cumulative effect of the abovesaid discussion, I am of the opinion that the death sentence cannot be executed pending the disposal of the mercy petition of the convict. It is hereby directed that the execution of death warrants against all the convicts, scheduled for 03.03.2020 at 6.00 a.m, is deferred till further orders.
12. Copy of this order be served upon the convicts/condemned convicts as necessary information.
13. Copy of this order be also given dasti to the Ld. Counsel for the condemned convicts, Ld. Counsel for the victim and also to the jail authorities for necessary information and compliance.
14. File be consigned to Record Room.

(Dharmender Rana)  
ASJ-02, NDD/PHC/New Delhi  
02.03.2020