MAHENDRA NATH DAS
v.
UNION OF INDIA AND OTHERS
(Criminal Appeal No. 677 of 2013)

MAY 1, 2013

[G.S. SINGHVI AND SUDHANSU JYOTI MUKHOPADHAYA, JJ.]

Constitution of India, 1950 – Article 72 – Murder – Accused-appellant convicted and sentenced to death – He submitted mercy petition to the President under Article 72 of the Constitution and prayed for commutation of the death sentence into life imprisonment – Petition rejected after 12 years – Propriety of – Held: Not proper – 12 years delay in disposal of the mercy petition sufficient for commutation of the sentence of death into life imprisonment – Sentence of death awarded to appellant accordingly commuted into life imprisonment – Sentence / Sentencing – Commutation of sentence.

The appellant was convicted by the trial Court and sentenced to death on the premise that he committed the murder of a person in a most foul and gruesome manner. The conviction and sentence was confirmed by the High Court as also this Court.

Thereafter, the appellant submitted a mercy petition to the President under Article 72 of the Constitution and prayed for commutation of the sentence of death into life imprisonment. The petition was rejected after 12 years. Writ petition filed by the appellant questioning the rejection of his mercy petition was dismissed by the High Court.

The question which arose for consideration in the

A instant appeal was whether 12 years delay in the disposal of the mercy petition filed by the appellant under Article 72 of the Constitution was sufficient for commutation of the sentence of death into life imprisonment and the High Court committed an error by dismissing the writ petition B filed by him.

Allowing the appeal, the Court

HELD: 1. In the appellant's case, there was a long time gap of 12 years between the submission of the C petition under Article 72 of the Constitution and rejection thereof. The Union of India has tried to explain this time gap by citing correspondence between the Central Government and the Government of Assam, consideration of the matter in different levels in the D Ministry of Home Affairs etc. However, no explanation has been given for the time gap of three years between 20.6.2001, i.e., the date on which the then Home Minister made recommendation for rejection of the mercy petition filed by the appellant, and September, 2004, when the file E again started moving within the Ministry and five years between 30.9.2005, i.e., the date on which the President opined that the mercy petition of the appellant be accepted and September, 2010, when the file was actually summoned back by the Ministry of Home Affairs. That F apart, what is most intriguing is that even though in note dated 5.10.2010 prepared by the Joint Secretary, Ministry of Home Affairs, a reference was made to note dated 30.9.2005 of the then President Dr. A.P.J. Abdul Kalam, while making recommendation on 12.10.2010 to the G successor in the office of the President that the appellant's mercy petition be rejected, the Home Minister did not even make a mention of note dated 30.9.2005. In the summary prepared by the Home Ministry for the President's consideration, which was signed by the Home Minister on 18.10.2010, also no reference was made H

to the order and note dated 30.9.2005 of the then President. Why this was done has not been explained by the respondents. Though, the file containing the petition filed by the appellant and various notings recorded therein must have been place before the President, omission to make a mention of the order passed by her predecessor and note dated 30.9.2005 from the summary prepared for her consideration leads to an inference that the President was kept in dark about the view expressed by her predecessor and was deprived of an opportunity to objectively consider the entire matter. [Para 20] [1072-A-F]

1.2. It is neither the pleaded case of the respondents nor any material has been produced before this Court to show that the Government of India had placed the file before the then President for review of the order recorded by him on 30.9.2005 or the President who finally decided the appellant's petition on 8.5.2011 was requested to reconsider the decision of her predecessor. Therefore, it must be held that the President was not properly advised and assisted in the disposal of the petition filed by the appellant. [Para 21] [1072-G-H; 1073-A]

1.3. The High Court did not have the benefit of going through the record/files maintained by the Ministry of Home Affairs and this is the reason why the impugned order does not contain any reference to the order passed by the President on 30.9.2005 and the note recorded by him for the consideration of the Home Minster. [Para 22] [1073-A-B]

1.4. In the above backdrop, 12 years delay in the disposal of the appellant's mercy petition was sufficient for commutation of the sentence of death and the High Court committed serious error by dismissing the writ petition solely on the ground that he was found guilty of committing heinous crime. In the result, the rejection of

A **the appellant's mercy petition is declared illegal and quashed and the sentence of death awarded to him by the trial Court, which has been confirmed by the High Court and this Court is commuted into life imprisonment. [Paras 23, 24] [1073-C-D; 1075-G-H]**

B *Daya Singh v. Union of India* **(1991) 3 SCC 61: 1991 (2) SCR 462 – held applicable.**

Mahendra Nath Das v. State of Assam **(1999) 5 SCC 102: 1999 (3) SCR 729;** *Jagmohan Singh v. State of U.P.* C **(1973) 1 SCC 20: 1973 (2) SCR 541;** *Rajendra Prasad v. State of U.P.* **(1979) 3 SCC 464;** *Bachan Singh v. State of Punjab* **(1980) 2 SCC 684;** *T.V. Vatheeswaran v. State of Tamil Nadu* **(1983) 2 SCC 68;** *Sher Singh v. State of Punjab* **(1983) 2 SCC 344;** *Javed Ahmed Pawala v. State of* D *Maharashtra* **(1985) 1 SCC 275: 1985 (2) SCR 8;** *Mahesh v. State of M.P.* **(1987) 3 SCC 80: 1987 (2) SCR 710;** *Triveniben v. State of Gujarat* **(1989) 1 SCC 678: 1989 (1) SCR 509;** *Madhu Mehta v. Union of India* **(1989) 3 SCR 775;** *Sevaka Perumal v. State of T.N.* **(1991) 3 SCC 471: 1991 (2) SCR 711;** *Dhananjoy Chatterjee v. State of W.B.* **(1994) 2** E **SCC 220: 1994 (1) SCR 37;** *Jashubha Bharatsinh Gohil v. State of Gujarat* **(1994) 4 SCC 353;** *Ravji v. State of Rajasthan* **(1996) 2 SCC 175: 1995 (6) Suppl. SCR 195;** *State of Madhya Pradesh v. Munna Choubey* **(2005) 2 SCC 710: 2005 (1) SCR 781;** *Swamy Shraddananda v. State of* F *Karnataka* **(2008) 13 SCC 767: 2008 (11) SCR 93;** *Vivian Rodrick v. State of West Bengal* **(1971) 1 SCC 468: 1971 (3) SCR 546;** *Shivaji Jaising Babar v. State of Maharashtra* **(1991) 4 SCC 375;** *Devinder Pal Singh Bhullar v. State of N.C.T of Delhi* **[Judgment dated 12th April, 2013 by** G **Supreme Court];** *Maru Ram v. Union of India* **(1981) 1 SCC 107;** *Machhi Singh v. State of Punjab* **(1983) 3 SCC 470: 1983 (3) SCR 413;** *Ediga Anamma v. State of A.P.* **(1974) 4 SCC 443: 1974 (3) SCR 329 and** *Epuru Sudhakar v. Government of A.P.* **(2006) 8 SCC 161: 2006 (7) Suppl. SCR** H **81 – referred to.**

Case Law Reference:

1999 (3) SCR 729	referred to	Para 6
1973 (2) SCR 541	referred to	Para 12
(1979) 3 SCC 464	referred to	Para 12
(1980) 2 SCC 684	referred to	Para 12
(1983) 2 SCC 68	referred to	Para 12
(1983) 2 SCC 344	referred to	Para 12
1985 (2) SCR 8	referred to	Para 12
1987 (2) SCR 710	referred to	Para 12
1989 (1) SCR 509	referred to	Para 12
(1989) 3 SCR 775	referred to	Para 12
1991 (2) SCR 711	referred to	Para 12
1994 (1) SCR 37	referred to	Para 12
(1994) 4 SCC 353	referred to	Para 12
1995 (6) Suppl. SCR 195	referred to	Para 12
2005 (1) SCR 781	referred to	Para 12
2008 (11) SCR 93	referred to	Para 12
1971 (3) SCR 546	referred to	Para 13
1991 (2) SCR 462	held applicable	Para 13
(1991) 4 SCC 375	referred to	Para 13
(1981) 1 SCC 107	referred to	Para 16
1983 (3) SCR 413	referred to	Para 16
1974 (3) SCR 329	referred to	Para 16
2006 (7) Suppl. SCR 81	referred to	Para 16

A CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 677 of 2013.

From the Judgment & Order dated 30.01.2012 of the High Court of Guwahati in WP (Crl) No. 35 of 2011.

B Shyam Divan, P.S. Sudheer, Avijit Roy, T.A. Khan for the appearing parties.

The Judgment of the Court was delivered by

C **G.S. SINGHVI, J.** 1. Leave granted.

2. The question which arises for consideration in this appeal is whether 12 years delay in the disposal of the petition filed by the appellant under Article 72 of the Constitution was sufficient for commutation of the sentence of death into life D imprisonment and the Division Bench of the Gauhati High Court committed an error by dismissing the writ petition filed by him.

3. The appellant was prosecuted for an offence under Section 302 of the Indian Penal Code (IPC) on the allegation E that he had killed Rajen Das, Secretary of Assam Motor Workers Union on 24.12.1990. He was convicted by Sessions Judge, Kamrup, Guwahati (hereinafter referred to as, 'the trial Court') in Sessions Case No. 80(K) of 1990 vide judgment dated 11.11.1997 and was sentenced to life imprisonment.

F 4. While he was on bail in Sessions Case No. 80(K) of 1990, the appellant is said to have killed Hare Kanta Das (a truck owner). He was tried in Sessions Case No. 114(K) of 1996 and was convicted by the trial Court and was sentenced to death on the premise that the murder was most foul and G gruesome.

5. The appellant challenged the judgments of the trial Court in Appeal Nos. 254(J) of 1997 and 2(J) of 1998. Both the appeals were dismissed by the High Court vide judgments

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dated 3.2.1998 and 12.12.1998 and the sentence of death awarded in Sessions Case No. 114(K) of 1996 was confirmed. A

6. The appeal filed by the appellant against the confirmation of the sentence of death by the High Court was dismissed by this Court vide judgment – *Mahendra Nath Das v. State of Assam* (1999) 5 SCC 102. While dealing with the appellant's contention that the extreme penalty of death should not have been imposed by the trial Court and confirmed by the High Court, this Court made the following observations: B

> "Now coming to the facts of this case, the circumstances of the case unmistakably show that the murder committed was extremely gruesome, heinous, cold-blooded and cruel. The manner in which the murder was committed was atrocious and shocking. After giving blows with a sword to the deceased when he fell down the appellant amputated his hand, severed his head from the body, carried it through the road to the police station (majestically as the trial court puts it) by holding it in one hand and the blood-dripping weapon in the other hand. Does it not depict the extreme depravity of the appellant? In our view it does. C D E
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> The mitigating circumstances pointed out by the learned counsel for the appellant are, though the appellant himself did not state any mitigating circumstances when enquired about the same by the learned Sessions Judge, that the appellant is a young man of 33 years and having three unmarried sisters and aged parents and he was not well at that time. These circumstances when weighed against the aggravating circumstances leave us in no doubt that this case falls within the category of rarest of rare cases. The trial court has correctly applied the principles in awarding the death sentence and the High Court has committed no error of law in confirming the same. F G
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> On these facts, declining to confirm the death sentence will, H

A in our view, stultify the course of law and justice. In *Govindaswami v. State of T.N.*(1998) 4 SCC 531, Mukherjee, J. speaking for the Court observed, "If, in spite thereof, we commute the death sentence to life imprisonment we will be yielding to spasmodic sentiment, B unregulated benevolence and misplaced sympathy."

7. Soon after the judgment of this Court, the appellant submitted a petition to the President under Article 72 of the Constitution and prayed for commutation of the sentence of death into life imprisonment. A similar petition was filed by him C under Article 161 of the Constitution. The Governor of Assam rejected his petition vide order dated 7.4.2000. The mercy petition addressed to the President was forwarded by the Government of Assam to the Ministry of Home Affairs sometime in June, 2000. After a lot of correspondence with the State D Government, the Ministry of Home Affairs prepared a note suggesting that the petition filed by the appellant may be rejected. On 20.6.2001, the then Home Minister recommended to the President that the mercy petition of the appellant should be rejected.

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8. The record produced by the learned Additional Solicitor General does not show as to what happened in the next three years, but consideration of the appellant's petition again started in September, 2004. After the file was processed at various F levels in the Ministry of Home Affairs, the case was submitted to the President on 19.4.2005 with the recommendation of the Home Minister that the mercy petition of the appellant may be rejected

9. The President considered the mercy petition in the light G of the recommendation made by the Home Minister and passed order dated 30.9.2005, which reads as under:

"I have carefully studied the mercy petition proposal sent for my consideration in respect of Mahendra Nath Das. I H find that though the crime committed was of a gruesome

nature, yet the conduct of the accused does not show trace of pre-meditated murder. The crime can well be attributed to a gross lack of mental equanimity on his part. In such circumstances, his mercy petition in my view, be accepted and his death sentence commuted to life-long imprisonment (i.e. for the rest of his life). During his further incarceration in prison, he may be given periodic counseling by spiritualist and moral leaders which could help reform his personality and mental psyche. This may be considered.

A.P.J. Abdul Kalam
PRESIDENT OF INDIA
30/9/2005"

10. On the same day, i.e., 30.9.2005, the President recorded another note for the Home Minister in which he dealt with mercy petitions filed by Sushil Murmu, Santosh Yadav, Molai Ram, Mahendra Nath Das, R. Govindasamy, Piara Singh, Sarabjit Singh, Satnam Singh and Gurdev Singh. As per that note, the mercy petitions of Sushil Murmu, Santosh Yadav and Molai Ram were rejected. As regards Mahendra Nath Das, R. Govindasamy, Piara Singh, Satnam Singh, Sarabjit Singh and Gurdev Singh, the President opined that their mercy petitions be accepted.

11. After receiving the note of the President, the office of the Home Minister asked for the appellant's file. However, requisition for the return of the file was sent to the President's Secretariat only on 7.9.2010. The President's Secretariat returned the file on 24.9.2010. Thereafter, the Ministry of Home Affairs (Judicial Cell) prepared a note of about 6 pages in which the concerned officer recorded the details of the crime committed by the appellant, referred to the judgments of the trial Court, the High Court and this Court and the grounds on which the appellant had sought commutation of the sentence of death

A into life imprisonment as also the representations made by some persons including President of the Union and suggested that the mercy petition may be rejected. The Home Minister referred to the observations made by this Court and recommended that the mercy petition may be rejected because B there was no mitigating circumstance. The recommendations made by the Home Minister on 18.10.2010 were approved by the President on 8.5.2011. Thereafter, the appellant was informed about rejection of his petition.

C 12. The writ petition filed by the appellant questioning the rejection of his mercy petition was dismissed by the Division Bench of the High Court, which referred to the judgments of this Court in *Jagmohan Singh v. State of U.P.* (1973) 1 SCC 20, *Rajendra Prasad v. State of U.P.* (1979) 3 SCC 464, *Bachan Singh v. State of Punjab* (1980) 2 SCC 684, *T.V.* D *Vatheeswaran v. State of Tamil Nadu* (1983) 2 SCC 68, *Sher Singh v. State of Punjab* (1983) 2 SCC 344, *Javed Ahmed Pawala v. State of Maharashtra* (1985) 1 SCC 275, *Mahesh v. State of M.P.* (1987) 3 SCC 80, *Triveniben v. State of Gujarat* (1989) 1 SCC 678, *Madhu Mehta v. Union of India* E (1989) 3 SCR 775, *Sevaka Perumal v. State of T.N.* (1991) 3 SCC 471, *Dhananjoy Chatterjee v. State of W.B.* (1994) 2 SCC 220, *Jashubha Bharatsinh Gohil v. State of Gujarat* (1994) 4 SCC 353, *Ravji v. State of Rajasthan* (1996) 2 SCC 175, *State of Madhya Pradesh v. Munna Choubey* (2005) 2 F SCC 710, *Swamy Shraddananda v. State of Karnataka* (2008) 13 SCC 767 and observed:

> "32. We may now come to the last and the crucial question whether or not in the facts and circumstances of the present case, the prayer for commuting the death sentence G to the life imprisonment can be accepted. We have already noted the stand of the State that till decision on mercy petition, the petitioner had never been kept in the condemned cell which was in compliance with law laid down in Sunil Batra. The said stand has not been rebutted H in any manner. Though delay in deciding the mercy petition

does appear to be unexplained and if delay alone is a conclusive factor, the death sentence may be liable to be set aside but in view of law laid down by Constitution Bench in Triveniben, delay is a factor which has to be seen in the light of subsequent circumstances, coupled with the nature of offence and circumstances in which the offence was committed, as already found by the competent court while passing the final verdict. At this stage, the correctness of the final verdict is not in issue as held in Triveniben (particularly in paragraph 22 and 76). Beyond delay, there is no subsequent circumstance showing any adverse effect on the petitioner on that court. Throughout he has continued to live as normal prisoner with other prisoners. If delay is considered along with dastardly and diabolical circumstances of the crime, in absence of any further supervening circumstances in favour of the petitioner, no case is made out for vacating the death sentence. Thus while delay has furnished cause of action to the writ petitioner to seek altering of death sentence, in absence of any other subsequent circumstances necessitating vacation of death sentence, and taking into account the circumstances for which the death sentence was awarded, there is no ground to vacate the sentence so awarded. As held in Sher Singh (last portion of paragraph 19 and 20), while death sentence should not, as far as possible, be imposed but in rare and exceptional class of cases where sentence is held to be valid, the same cannot be allowed to be defeated by applying any rule of thumb. We have already noticed reasons for which retention of death sentence was upheld by the Hon'ble Supreme Court in Jagmohan Singh and Bachan Singh by distinguishing the American Judgments and taking into account the study conducted by the Law Commission of India in its 35th Report and conditions prevailing in the Country. It was noted that in the perspective of prevailing condition of India, the Parliament has repeatedly rejected all attempts to abolish death sentence. We have also referred to judgment

A of the Hon'ble Supreme Court in Munna Choubey wherein after punishment may harm the justice system and undermine the public confidence in efficacy of law, there was need to maintain proportion in punishment and crime and to protect the society, adequate punishment was
B necessary. Thus, mere delay is a significant factor, cannot itself be a ground for commuting the death sentence to life imprisonment in absence of any further circumstance justifying such a course when offence and circumstances are rarest of rare.

C 33. We have analysed the principle of law laid down in Triveniben and not found any ground for vacating the death sentence. Judgments in Madhu Mehta and Daya Singh do not lay down any further principle as precedent and appear to in exercise of the jurisdiction of the Hon'ble Supreme
D Court under Article 142 of the Constitution. We are also not persuaded to follow the view taken by the High Courts of Madras, Rajasthan and Bombay that delay alone was conclusive for commuting death sentence to life. In our view, this interpretation is contrary to law laid in Triveniben
E for the reasons already discussed."

13. The arguments in this case were heard along with W.P. (Crl.) D.No.16039 of 2011, W.P. (Crl.) No. 146 of 2011 and W.P. (Crl.) No.86 of 2011, which were finally disposed of
F on 12.4.2013. Therein, we have noticed in detail the arguments of Shri Shyam Divan, learned senior counsel for the petitioner, Shri K. V. Viswanathan, learned senior counsel for the intervener (PUDR) and the learned Additional Solicitor General Harin P. Raval. In nutshell, the argument of Shri Divan is that
G even though the appellant's conviction has become final, 12 years delay in the disposal of the mercy petition was sufficient for commutation of the sentence of death into life imprisonment and the High Court committed grave error by refusing to do so. He relied upon the judgments in *Vivian Rodrick v. State of West Bengal* (1971) 1 SCC 468, *Madhu Mehta v. Union of India*
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(supra), *Daya Singh v. Union of India* (1991) 3 SCC 61 and *Shivaji Jaising Babar v. State of Maharashtra* (1991) 4 SCC 375 and submitted that the High Court misunderstood the ratio of judgments in *Madhu Mehta's* case and Daya Singh's case and erroneously held that the principle laid down in Triveniben's case cannot be invoked in the appellant's case for commutation of the sentence of death into life imprisonment.

14. Shri K.V. Viswanathan, learned senior counsel appearing for the intervener (PUDR) made detailed submissions in support of his argument that the delay of over one decade in the disposal of the mercy petition by the President is sufficient for commutation of the sentence of death into life imprisonment.

15. Shri Harin P Raval, learned Additional Solicitor General emphasised that the second murder committed by the appellant was gruesome and barbaric and, therefore, this Court should not exercise power under Article 136 of the Constitution and order commutation of the sentence of death into life imprisonment simply because there was long time gap between filing of the mercy petition and disposal thereof. Shri Raval argued that even though in September, 2005 the then President had opined that the sentence of death awarded to the appellant may be commuted into life long imprisonment, the final decision taken by the President on 8.5.2011 cannot be faulted on the ground of delay.

16. We have considered the respective submissions. In Devender Pal Singh Bhullar's case, this Court considered the following questions:

> "(a) What is the nature of power vested in the President under Article 72 and the Governor under Article 161 of the Constitution?
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> (b) Whether delay in deciding a petition filed under Article 72 or 161 of the Constitution is, by itself, sufficient for issue

A of a judicial fiat for commutation of the sentence of death into life imprisonment irrespective of the nature and magnitude of the crime committed by the convict and the fact that the delay may have been occasioned due to direct or indirect pressure brought upon the Government by the B convict through individuals, groups of people and organizations from within or outside the country or failure of the concerned public authorities to perform their duty?

(c) Whether the parameters laid down by the Constitution Bench in Triveniben's case for judging the issue of delay C in the disposal of a petition filed under Article 72 or 161 of the Constitution can be applied to the cases in which an accused has been found guilty of committing offences under TADA and other similar statutes?

D (d) What is the scope of the Court's power of judicial review of the decision taken by the President under Article 72 and the Governor under Article 161 of the Constitution, as the case may be?"

E After noticing the judgments in *Jagmohan Singh's* case, Rajender Prasad's case, *Bachan Singh's* case, *Maru Ram v. Union of India*, (1981) 1 SCC 107, *Machhi Singh v. State of Punjab* (1983) 3 SCC 470, *Ediga Anamma v. State of A.P.* (1974) 4 SCC 443, *T.V. Vatheeswaran's* case, *K.P. Mohd's* case, *Sher Singh's* case, *Javed Ahmed's* case, *Triveniben's* F case, *Daya Singh's* case, *Epuru Sudhakar v. Government of A.P.* (2006) 8 SCC 161 and some judgments of other jurisdictions, the Court held:

"(i) the power vested in the President under Article 72 and G the Governor under Article 161 of the Constitution is manifestation of prerogative of the State. It is neither a matter of grace nor a matter of privilege, but is an important constitutional responsibility to be discharged by the highest executive keeping in view the considerations H of larger public interest and welfare of the people.

(ii) while exercising power under Article 72, the President is required to act on the aid and advice of the Council of Ministers. In tendering its advice to the President, the Central Government is duty bound to objectively place the case of the convict with a clear indication about the nature and magnitude of the crime committed by him, its impact on the society and all incriminating and extenuating circumstances. The same is true about the State Government, which is required to give advice to the Governor to enable him to exercise power under Article 161 of the Constitution. On receipt of the advice of the Government, the President or the Governor, as the case may be, has to take a final decision in the matter. Although, he/she cannot overturn the final verdict of the Court, but in appropriate case, the President or the Governor, as the case may be, can after scanning the record of the case, form his/her independent opinion whether a case is made out for grant of pardon, reprieve, etc.. In any case, the President or the Governor, as the case may be, has to take cognizance of the relevant facts and then decide whether a case is made out for exercise of power under Article 72 or 161 of the Constitution."

In that case the Court extensively quoted the observations made in Ediga Anamma's case, T.V. Vatheeswaran's case, K.P. Mohd's case, Sher Singh's case, Javed Ahmed's case, Triveniben's case, Madhu Mehta's case, Daya Singh's case and observed:

"38. In the light of the above, we shall now consider the argument of Shri K.T.S. Tulsi, learned senior counsel for the petitioner, and Shri Ram Jethmalani and Shri Andhyarujina, Senior Advocates, who assisted the Court as Amicus, that long delay of 8 years in disposal of the petition filed under Article 72 should be treated as sufficient for commutation of the sentence of death into life imprisonment, more so, because of prolonged detention, the petitioner has become mentally sick. The thrust of the

A argument of the learned senior counsel is that inordinate delay in disposal of mercy petition has rendered the sentence of death cruel, inhuman and degrading and this is nothing short of another punishment inflicted upon the condemned prisoner.

B 39. Though the argument appears attractive, on a deeper consideration of all the facts, we are convinced that the present case is not a fit one for exercise of the power of judicial review for quashing the decision taken by the President not to commute the sentence of death imposed C on the petitioner. Time and again, (Machhi Singh's case, Ediga Anamma's case, Sher Singh's case and Triveniben's case), it has been held that while imposing punishment for murder and similar type of offences, the Court is not only entitled, but is duty bound to take into D consideration the nature of the crime, the motive for commission of the crime, the magnitude of the crime and its impact on the society, the nature of weapon used for commission of the crime, etc.. If the murder is committed in an extremely brutal or dastardly manner, which gives rise E to intense and extreme indignation in the community, the Court may be fully justified in awarding the death penalty. If the murder is committed by burning the bride for the sake of money or satisfaction of other kinds of greed, there will be ample justification for awarding the death penalty. If the F enormity of the crime is such that a large number of innocent people are killed without rhyme or reason, then too, award of extreme penalty of death will be justified. All these factors have to be taken into consideration by the President or the Governor, as the case may be, while deciding a petition filed under Article 72 or 161 of the G Constitution and the exercise of power by the President or the Governor, as the case may be, not to entertain the prayer for mercy in such cases cannot be characterized as arbitrary or unreasonable and the Court cannot exercise power of judicial review only on the ground of H undue delay.

40. We are also of the view that the rule enunciated in Sher Singh's case, Triveniben's case and some other judgments that long delay may be one of the grounds for commutation of the sentence of death into life imprisonment cannot be invoked in cases where a person is convicted for offence under TADA or similar statutes. Such cases stand on an altogether different plane and cannot be compared with murders committed due to personal animosity or over property and personal disputes. The seriousness of the crimes committed by the terrorists can be gauged from the fact that many hundred innocent civilians and men in uniform have lost their lives. At times, their objective is to annihilate their rivals including the political opponents. They use bullets, bombs and other weapons of mass killing for achieving their perverted political and other goals or wage war against the State. While doing so, they do not show any respect for human lives. Before killing the victims, they do not think even for a second about the parents, wives, children and other near and dear ones of the victims. The families of those killed suffer the agony for their entire life, apart from financial and other losses. It is paradoxical that the people who do not show any mercy or compassion for others plead for mercy and project delay in disposal of the petition filed under Article 72 or 161 of the Constitution as a ground for commutation of the sentence of death. Many others join the bandwagon to espouse the cause of terrorists involved in gruesome killing and mass murder of innocent civilians and raise the bogey of human rights."

The Court also dealt with the scope of judicial review in such matters and observed:

"41. While examining challenge to the decision taken by the President under Article 72 or the Governor under Article 161 of the Constitution, as the case may be, the Court's power of judicial review of such decision is very

limited. The Court can neither sit in appeal nor exercise the power of review, but can interfere if it is found that the decision has been taken without application of mind to the relevant factors or the same is founded on the extraneous or irrelevant considerations or is vitiated due to malafides or patent arbitrariness – *Maru Ram v. Union of India,* (1981) 1 SCC 107, *Kehar Singh v. Union of India* (1989) 1 SCC 204, *Swaran Singh v. State of U.P.* (1998) 4 SCC 75, *Satpal v. State of Haryana* (2000) 5 SCC 170, *Bikas Chatterjee v. Union of India* (2004) 7 SCC 634, *Epuru Sudhakar v. Government of A.P.* (2006) 8 SCC 161 and *Narayan Dutt v. State of Punjab* (2011) 4 SCC 353."

17. In *Triveniben's* case, the Constitution Bench considered the conflicting opinions expressed in T.V. Vatheeswaran's case, Sher Singh's case and Javed Ahmed's case and held:

"Undue long delay in execution of the sentence of death will entitle the condemned person to approach this Court under Article 32 but this Court will only examine the nature of delay caused and circumstances that ensued after sentence was finally confirmed by the judicial process and will have no jurisdiction to reopen the conclusions reached by the court while finally maintaining the sentence of death. This Court, however, may consider the question of inordinate delay in the light of all circumstances of the case to decide whether the execution of sentence should be carried out or should be altered into imprisonment for life. No fixed period of delay could be held to make the sentence of death inexecutable and to this extent the decision in Vatheeswaran case cannot be said to lay down the correct law and therefore to that extent stands overruled."

18. In *Madhu Mehta's* case, this Court commuted the sentence of death awarded to one Gyasi Ram, who had killed a Government servant, namely, Bhagwan Singh (Amin), who

had attached his property for recovery of arrears of land revenue. After disposal of the criminal appeal by this Court, the wife of the convict filed a mercy petition in 1981. The same remained pending for 8 years. This Court considered the writ petition filed by the petitioner Madhu Mehta, who was the national convener of Hindustani Andolan, referred to the judgments in T.V. Vatheeswaran's case, Sher Singh's case and Triveniben's case and held that in the absence of sufficient explanation for the inordinate delay in disposal of the mercy petition, the death sentence should be converted into life imprisonment.

19. The facts of Daya Singh's case were that the petitioner had been convicted and sentenced to death for murdering Sardar Pratap Singh Kairon. The sentence was confirmed by the High Court and the special leave petition was dismissed by this Court. After rejection of the review petition, he filed mercy petitions before the Governor and the President of India, which were also rejected. The writ petition filed by his brother Lal Singh was dismissed along with Triveniben's case. Thereafter, he filed another mercy petition before the Governor of Haryana in November, 1988. The matter remained pending for next two years. Finally, he sent a letter from Alipore Central Jail, Calcutta to the Registry of this Court for commutation of the sentence of death into life imprisonment. This Court took cognizance of the fact that the petitioner was in jail since 1972 and substituted the sentence of imprisonment for life in place of the sentence of death.

20. In the appellant's case, there was a long time gap of 12 years between the submission of the petition under Article 72 of the Constitution and rejection thereof. The Union of India has tried to explain this time gap by citing correspondence between the Central Government and the Government of Assam, consideration of the matter in different levels in the Ministry of Home Affairs etc. However, no explanation has been given for the time gap of three years between 20.6.2001, i.e.,

A the date on which the then Home Minister made recommendation for rejection of the mercy petition filed by the appellant, and September, 2004, when the file again started moving within the Ministry and five years between 30.9.2005, i.e., the date on which the President opined that the mercy B petition of the appellant be accepted and September, 2010, when the file was actually summoned back by the Ministry of Home Affairs. That apart, what is most intriguing is that even though in note dated 5.10.2010 prepared by the Joint Secretary, Ministry of Home Affairs, a reference was made to C note dated 30.9.2005 of the then President Dr. A.P.J. Abdul Kalam, while making recommendation on 12.10.2010 to the successor in the office of the President that the appellant's mercy petition be rejected, the Home Minister did not even make a mention of note dated 30.9.2005. In the summary D prepared by the Home Ministry for the President's consideration, which was signed by the Home Minister on 18.10.2010, also no reference was made to the order and note dated 30.9.2005 of the then President. Why this was done has not been explained by the respondents. Though, the file containing the petition filed by the appellant and various notings E recorded therein must have been place before the President, omission to make a mention of the order passed by her predecessor and note dated 30.9.2005 from the summary prepared for her consideration leads to an inference that the President was kept in dark about the view expressed by her F predecessor and was deprived of an opportunity to objectively consider the entire matter.

21. It is neither the pleaded case of the respondents nor any material has been produced before this Court to show that G the Government of India had placed the file before the then President for review of the order recorded by him on 30.9.2005 or the President who finally decided the appellant's petition on 8.5.2011 was requested to reconsider the decision of her predecessor. Therefore, it must be held that the President was H not properly advised and assisted in the disposal of the petition

filed by the appellant. A

22. The Division Bench of the Gauhati High Court did not have the benefit of going through the record/files maintained by the Ministry of Home Affairs and this is the reason why the impugned order does not contain any reference to the order passed by the President on 30.9.2005 and the note recorded by him for the consideration of the Home Minster. B

23. In the above backdrop, we are convinced that 12 years delay in the disposal of the appellant's mercy petition was sufficient for commutation of the sentence of death and the Division Bench of the High Court committed serious error by dismissing the writ petition solely on the ground that he was found guilty of committing heinous crime. The Division Bench of the High Court was also not justified in distinguishing the judgment in Daya Singh's case on the assumption that the case appears to have been decided by this Court under Article 142 of the Constitution. A careful reading of that judgment shows that this Court had commuted the sentence of death of Daya Singh into life imprisonment by taking into consideration long time gap of 12 years in the execution of death sentence and the judgment of the Constitution Bench in Triveniben's case. This is evinced from paragraphs 5, 7, 8 and 9 of the judgment, which are extracted below: C D E

> "**5.** Before proceeding further we may refer to the decision in Triveniben case laying down the principle which governs the present petition. Although the cases were disposed of by two judgments, according to the opinion of the bench, which was unanimous, undue delay in execution of the sentence of death entitles the condemned prisoner to approach this Court under Article 32, but this Court will examine only the nature of delay caused and circumstances ensued after the sentence was finally confirmed by the judicial process, and will have no jurisdiction to reopen the conclusions reached by the court while finally maintaining the sentence of death. Further, F G H

A while considering the grievance of inordinate delay this Court may consider all the circumstances of the case for deciding as to whether the sentence of death should be altered into imprisonment for life, and no fixed period of delay could be held to make the sentence of death B inexecutable. In the light of these observations the circumstances of the present case are to be examined.

7. The initial reason for the further delay has been a fresh mercy petition filed by the petitioner. Does this fact justify keeping him under a sense of anticipation for more than C two years? If the prayer was not considered fit to be rejected at once it was certainly appropriate to have stayed the execution, but the matter should have been disposed of expeditiously and not kept in abeyance as has been done. The counter-affidavit filed on behalf of the Union of D India states that on the receipt of the last mercy petition the Governor of Haryana immediately made a reference to the President of India seeking enlightenment on the question as to whether the Governor, while dealing with such applications, is bound by the advice of the Chief E Minister of the State and whether it is open to the Governor to exercise his constitutional power in a case where an earlier application to the same effect had been rejected by the President. Soon after the receipt of this communication, the matter was referred to the Department F of Legal Affairs, Ministry of Law and Justice for advice, and the Ministry suggested that the question should be discussed with the Attorney General of India. Since the matter remained under consideration no reply could be sent to the query and ultimately it was only in March this G year, that the reply could be sent in the shape of a directive under Article 257(1) of the Constitution to all the Chief Secretaries of the State Governments and Union territories. The affidavit, however, does not furnish any fact or circumstance in justification of the delay. In absence of any reasonable explanation by the respondents we are of H

the view that if the concerned officers had bestowed the necessary attention to the matter and devoted the time its urgency needed, we have no doubt that the entire process of consideration of the questions referred would have been completed within a reasonable period without leaving any yawning gap rightly described by the learned Additional Solicitor General as "embarrassing gap". There has, thus, been an avoidable delay, which is considerable in the totality of circumstances in the present case, for which the condemned prisoner is in no way responsible.

8. As was cautioned by this Court in Triveniben case we are not laying down any rule of general application that the delay of two years will entitle a convict, sentenced to death, to conversion of his sentence into one for life imprisonment, rather we have taken into account the cumulative effect of all the circumstances of the case for considering the prayer of the petitioner. Although the fact that the petitioner has been continuously detained in prison since 1972 was taken into account while rejecting his earlier writ petition, the same is not rendered completely irrelevant for the purpose of the present case and we have taken it into consideration merely as a circumstance assuming significance as a result of the relevant circumstances arising subsequent to the judgment rendered in October 1988.

9. Having regard to all the circumstances of the case, we deem it fit to and accordingly substitute the sentence of imprisonment for life in place of the petitioner's death sentence. The writ petition is accordingly allowed."

24. In the result, the appeal is allowed, the impugned order is set aside. The rejection of the appellant's mercy petition is declared illegal and quashed and the sentence of death awarded to him by the trial Court, which has been confirmed by the High Court and this Court is commuted into life imprisonment.

B.B.B. Appeal allowed.