THE HIGH COURT OF ORISSA : CUTTACK

No.XI-02/2025/652(30)/ Dated 09/01/2025

From;

Asanta Kumar Das,
Registrar General

To,

The District & Sessions Judge,..... (All)

Sub: **Forwarding of Judgment dtd. 9th December, 2024 passed in Criminal Appeal No. 2831 of 2023 titled "State of Maharashtra & Ors. Vrs Pradeep Yashwant Kokade & Anr." by Hon'ble the Supreme Court of India regarding undue, inordinate & unexplained delay in executing the death sentence**

Sir,

With reference to the subject cited above, I am directed to forward herewith a copy of the Judgment dtd. 9th December, 2024 passed in Criminal Appeal No. 2831 of 2023 titled "State of Maharashtra & Ors. Vrs. Pradeep Yashwant Kokade & Anr." by Hon'ble the Supreme Court of India relating to undue, inordinate & unexplained delay in executing the death sentence for your information and to request you to communicate the same to all the Judicial Officers working within your jurisdiction for their information & strict adherence to the directions imparted in the said judgment.

Yours faithfully,

ASANTA KUMAR DAS
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Date: 2025.01.08 19:34:00 +05'30'

REGISTRAR GENERAL

Encl.: As above.

Memo No. 653 / Dated 09/01/2025

Copy of the aforementioned judgment forwarded to the Additional Chief Secretary to Govt. of Odisha, Home Deptt., Bhubaneswar for information and necessary action.

ASANTA KUMAR DAS
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REGISTRAR GENERAL

2024 INSC 947

Reportable

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 2831 OF 2023

STATE OF MAHARASHTRA & ORS. ... APPELLANTS

versus

PRADEEP YASHWANT KOKADE & ANR. ... RESPONDENTS

with

CRIMINAL APPEAL NO. 2832 OF 2023

J U D G M E N T

ABHAY S. OKA, J.

1. The main question involved in these appeals is about the effect of delay in executing the death sentence.

FACTUAL ASPECTS

2. The deceased was employed in a company as an Associate. The deceased was required to attend the night shift between 11:00 pm and 09:00 am. On 1st November 2007, one Purushottam Dasrath Borate (Convict no.2) was scheduled to pick up the deceased from her residence at 10:30 pm. Convict no.2 was the driver of the cab hired by the employer of the deceased. As per usual practice, Convict no.2 gave a missed

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call to the deceased. After receiving the missed call, the deceased came down. After picking up the deceased, Convict no.2 was supposed to pick up one Sagar Bidkar, an employee of the same company. Though Sagar repeatedly called Convict no.2, there was no response. At about 12:45 am, Convict no.2 came to pick up Sagar. When Sagar sat in the vehicle, one Pradeep Yashwant Kokade (Convict no.1/Respondent no.1) was already occupying the car's rear seat. Convict no.1 introduced convict no.2 to Sagar as his friend. Before the vehicle reached the company's office, Convict no.1 alighted from the car. Convict no.2 requested Sagar to endorse in the company's record that the delay was due to the puncture of a tyre in the vehicle.

3. On the morning of 2nd November 2007, when the deceased did not return home, her sister enquired with the office of the deceased. She was told that the deceased had not reported for duty. The deceased's sister lodged a missing person report with the local Police Station. The body of the deceased was found on the morning of 2nd November 2007. In the postmortem report, the cause of death was stated as shock and haemorrhage due to grievous injuries to the vital organs. There was a fracture of the skull involving the frontal, left temporal, and parietal bones with a laceration to the brain. Rib nos.2, 3 and 4 were fractured and the right lung was ruptured. The postmortem report recorded that the deceased was raped before her death. On 3rd November 2007, both the convicts were taken into judicial custody. By the judgment dated 20th

March 2012, the learned Sessions Judge, Pune, convicted both the convicts for the offences punishable under Sections 302, 376(2)(g), 364, and 404, read with Section 120-B of the Indian Penal Code, 1860 (for short, 'the IPC'). Both the convicts were sentenced to death. The proceedings were sent to the High Court of Judicature at Bombay in accordance with Section 366 of the Code of Criminal Procedure, 1973 (for short, 'the CrPC') for confirmation of the death penalty. By the judgment dated 25th September 2012, the High Court held that the case of the convicts was falling in the category of 'rarest of the rare case'. Therefore, the High Court proceeded to confirm the death sentence. This Court also confirmed the death sentence by the judgment dated 8th May 2015.

4. On 29th May 2015, the Superintendent of Yerawada Central Prison, Pune (for short, 'the Superintendent of Prison') informed the Registrar of this Court that the contents of the judgment dated 8th May 2015 of this Court had been explained to the convicts in the language known to them. On 1st June 2015, the convicts gave a statement to the jail officers that they were desirous of filing a review petition before this Court. The decision was informed to the Home Department, Government of Maharashtra on 2nd June 2015, by a letter issued by the Superintendent of Prison. On 10th July 2015, the convicts filed mercy petitions addressed to the Hon'ble Governor of the State of Maharashtra. On 16th July 2015, the Superintendent of Prison forwarded the mercy petitions to the Principal Secretary of the Home Department, Government of

Maharashtra. On 17th August 2015, the Home Department, Government of Maharashtra, addressed a letter to the Superintendent of Prison to verify whether the convicts had filed any review petition before this Court. On 22nd August 2015, the convicts confirmed to the Superintendent of Prison that they had not filed any review petition. The Superintendent of Prison communicated this fact to the Home Department, State of Maharashtra, vide a letter dated 24th August 2015. Even the Office of the Additional Director General of Police and Inspector General of Prisons (for short, 'the ADG (Prisons)') addressed a similar communication on 26th August 2015, confirming that the convicts had filed no review petition.

5. Five months after receiving the mercy petitions, on 25th January 2016, a note was prepared by the Section Officer of the Home Department, State Government for the benefit of the Hon'ble Governor. Pursuant to the letter dated 17th July 2015 sent by the ADG (Prisons), the Superintendent of Prison by his letter dated 27th January 2016, forwarded necessary factual details to the Principal Secretary of the Home Department along with a copy of the judgment of conviction of the Sessions Court. On 1st February 2016, the Superintendent of Prison requested the Senior Inspector of Police of the concerned Police Station to supply English translations of the police diary, a short crime history in English, copies of FIR, dying declaration and a copy of the charge and reason for commitment. On 29th March 2016, the Hon'ble Governor rejected the mercy petitions. A communication to that effect was issued by the Deputy

Secretary to the Hon'ble Governor to the Additional Chief Secretary of the Home Department, Government of Maharashtra by a letter dated 29th March 2016. On 9th April 2016, the Superintendent of Prison received a letter dated 6th April 2016 from the Home Department, Government of Maharashtra, informing about the rejection of the mercy petitions. According to the case of the appellant state of Maharashtra, the Hon'ble Governor's rejection of the mercy petitions was communicated to the convicts on the same day.

6. Convict no.1 intimated his desire to file a mercy petition before the Hon'ble President of India. This desire was recorded in the statement of Convict no.1 dated 11th April 2016 by the prison officials. After that, there was correspondence exchanged by the ADG (Prisons), the Superintendent of Prison, the concerned Police Station, the State Government, etc., between 13th April 2016 and 31st May 2016.

7. On 11th June 2016, relatives of the convicts submitted fresh mercy petitions before the Hon'ble President of India. On 15th June 2016 and 22nd July 2016, the Under Secretary (Judicial), Ministry of Home Affairs, Government of India (for short, 'Under Secretary (GOI)') issued letters of request to the Principal Secretary, Home Department, Government of Maharashtra for the supply of documents. On 9th August 2016, the Under Secretary, Home Department, Government of Maharashtra addressed a letter to the ADG (Prisons) and the Superintendent of Prison to supply information regarding the past criminal history of the convicts, the economic condition of

the families of convicts and the filing of any review petitions by the convicts. On 5th September 2016, the Superintendent of Prison addressed a letter to the concerned Police Station requesting information regarding the past criminal history and economic condition of the family of convicts. The Under Secretary (GOI) addressed a reminder on 6th September 2016 to the Home Department, Government of Maharashtra, requesting to supply the documents. On 9th September 2016, the Superintendent of Prison confirmed by addressing a letter to the Home Department, Government of Maharashtra, that the convicts had not filed review petitions. On 12th September 2016, the concerned Police Station forwarded to the Home Department, Government of Maharashtra, the details regarding the criminal history and economic condition of the convicts. On 30th September 2016, the Home Department of the State Government addressed a letter to the Under Secretary (GOI) giving information about the criminal history and economic condition of the convicts and filing of review petitions by the convict. On 26th December 2016, the Under Secretary (GOI) addressed a letter to the Home Department, Government of Maharashtra, for confirmation regarding the decision of the convicts not to file review petitions. This information was sought by the Home Department, Government of Maharashtra, by the letter dated 16th January 2017 from the ADG (Prisons) and the Superintendent of Prison. Accordingly, on 21st January 2017, statements of the convicts were recorded in which they stated that though they intended to file review petitions, the same

have not been filed. This information was furnished by the Offices of Superintendent of Prison and the ADG (Prisons) to the Home Department of the State Government in separate letters dated 23rd January 2017 and 7th February 2017, respectively. On 22nd February 2017, the Home Department, Government of Maharashtra, informed the Under Secretary (Judicial), Home Department, Government of India, confirming that the convicts intended to file review petitions. The said letter recorded that both the convicts had decided to file review petitions after the decision of the Hon'ble President of India on the mercy petitions. The Hon'ble President on 26th May 2017 rejected the mercy petitions. This information was submitted by the Under Secretary, Ministry of Home Affairs, Government of India, to the Principal Secretary, Home Department, Government of Maharashtra, in a letter dated 6th June 2017. By separate letters dated 19th June 2017 addressed to the family members of the convicts and the learned Sessions Judge, Pune, the Superintendent of Prison informed them about the rejection of the mercy petitions.

8. On 10th August 2017, the Superintendent of Prison addressed a letter to the learned Sessions Judge, Pune, requesting him to issue a warrant for the execution of the death sentence. On 24th August 2017, the Superintendent of Prison addressed a letter to the Registrar of this Court requesting him to provide information about any review petition filed by the convicts. By a letter dated 9th September 2017, the Registrar of this Court communicated to the

Superintendent of Prison that no review petitions were filed by the convicts. On 5th October 2017, 18th July 2018 and 29th August 2018, letters were addressed by the Superintendent of Prison to the learned Sessions Judge, Pune, requesting him to issue a warrant of execution of the death sentence. On 17th October 2018, a letter was sent by the ADG (Prisons) to the learned Sessions Judge, Pune, requesting him to fix a date for the execution of the death sentence. As no action was taken by the Sessions Court, Pune, the Home Department of the Government of Maharashtra on 30th October 2018, addressed a letter to the Law and Judiciary Department of the State Government making a query whether the Home Department could proceed with the execution of death sentence in accordance with the provisions of the Maharashtra Prison Manual. By the letter dated 12th November 2018, the Law and Judiciary Department of the State Government informed the Home Department of the State Government that the exclusive jurisdiction to issue warrants for executing the death sentence was of the learned Sessions Court. Meanwhile, on 2nd November 2018, the learned Sessions Judge, Pune, addressed a letter to the Home Department, Government of Maharashtra, seeking information about the status of mercy petitions. On 7th December 2018 and 27th December 2018, the ADG (Prisons) and the Superintendent of Prison addressed letters to the learned Sessions Court, Pune, requesting him to fix a date for executing the death sentence. On 31st January 2019, the Home Department of the State Government wrote a letter to the ADG (Prisons) and the Superintendent of Prison informing

them about the letter dated 2nd November 2018 sent by the learned Sessions Court, Pune. On 10th April 2019, warrants for the execution of the death sentence were issued by the Sessions Court, Pune.

GROUNDS OF CHALLENGE BEFORE THE HIGH COURT

9. On 2nd May 2019, the convicts filed separate writ petitions before the High Court. A prayer was made in the petitions for quashing the warrants of execution of the death sentence, *inter alia,* on the following grounds:

i. Inordinate and unexplained sdelay in execution of death sentence on the part of the State Government as well as the Sessions Court, Pune;

ii. Inordinate and unexplained delay in deciding mercy petitions;

iii. The convicts were kept in solitary confinement during the pendency of the appeals before this Court as well as the mercy petitions before the Hon'ble Governor of the State of Maharashtra and the Hon'ble President of India;

iv. Rejection of mercy petitions was illegal on account of non-application of mind due to non-placement of relevant information before the concerned authorities; and,

v. The Sessions Court, Pune, issued death warrants without notice to the convicts or their family members.

10. Counter affidavits were filed in the writ petitions before the High Court by various officers. By the impugned judgment

dated 29th July 2019, the High Court held that there was an undue and avoidable delay in executing the death sentence. Moreover, the convicts were kept in solitary confinement from 20th March 2012. Therefore, the High Court proceeded to commute the death sentence to life imprisonment for a total period of thirty-five years. The warrants for the execution of the death sentence issued by the learned Sessions Court, Pune, were set aside.

SUBMISSIONS

11. Mr Shreeyash Lalit, the learned counsel representing the appellants, made detailed submissions. He referred to a decision of this Court in the case of ***T.V.Vatheesswaran v. State of Tamil Nadu***[1]**.** He also pointed out a decision of the three Judge Bench of this Court in the case of ***Sher Singh & Ors. v. State of Punjab***[2]**.** He pointed out that in the case of ***T.V. Vatheesswaran***[1]**,** it was held that a delay beyond two years in the execution of the death sentence was enough to commute the death sentence to life imprisonment. However, in the case of ***Sher Singh & Ors***[2], it was held that a delay of two years is not enough for the commutation of a death sentence. Ultimately, this conflict was resolved by a decision by the Constitution Bench of this Court in the case of ***Triveniben v. State of Gujarat***[3]**.** He also pointed out various decisions of this Court in the cases of ***Shatrughan Chauhan***

[1] (1983) 2 SCC 68
[2] (1983) 2 SCC 344
[3] (1989) 1 SCC 678

& Anr. v. Union of India & Ors.[4]***, Ajay Kumar Pal v. Union of India & Anr***[5]***, Mukesh v. Union of India & Ors.***[6] and ***B.A. Umesh v. Union of India & Ors***[7]**.** He submitted that though undue delay in the execution of a death sentence will entitle convicts to seek commutation, no fixed period of delay can be laid down as a criterion for commutation. He submitted that in such a case, the twin test must be satisfied. The first test is whether there was an avoidable delay. The second test is whether the quantum of delay was unduly long or inordinate, which must warrant the commutation of a death sentence to life imprisonment. The learned counsel urged that both the tests must be satisfied to make out a case for commutation of a death sentence. He submitted that neither of these two tests alone would be sufficient to commute the death sentence.

12. The learned counsel submitted that the High Court has committed an error by holding that the quantum of delay is not material. He submitted that the delay has to be inordinate and, therefore, the quantum of delay is very material. He submitted that the time consumed for the disposal of mercy petitions by the Hon'ble Governor and the Hon'ble President of India was from 10th July 2015 to 26th May 2017, which is about one year and ten months. His submission is that this delay cannot be held to be inordinate or unexplained. He submitted that, in any case, there is an explanation for the delay. He submitted

[4] (2014) 3 SCC 1
[5] (2015) 2 SCC 478
[6] (2020) 16 SCC 424
[7] 2022 SCC OnLine SC 1528

that there was some delay as time was required to ascertain whether the convicts wanted to file review petitions. He submitted that the time taken of a few months to prepare a note for presenting it to the Hon'ble Governor could not be said to be unreasonable as it required scanning of voluminous records. Even the time of three months taken by the Hon'ble Governor cannot be said to be unreasonable.

13. As regards the delay in the disposal of mercy petitions by the Hon'ble President of India, he submitted that the time of five months was consumed in getting information on the criminal antecedents and economic condition of the convicts. Time of about four months or more was required to get the information on the issue of convicts filing review petitions before this Court. The Hon'ble President of India took about four months to decide on the mercy petitions, which is not at all long or inordinate considering the fact that the issue was the life and death of the convicts. He submitted that in the case of ***B.A. Umesh*[7]*,*** the delay of two years and three months in the disposal of the mercy petition was held as not excessive.

14. The learned counsel submitted that the major delay is on the part of the Sessions Court in issuing the warrants of execution of the death sentence. He submitted that on 19th June 2017, the Superintendent of Prison had communicated to the Sessions Court about the Hon'ble President of India's rejection of the mercy petitions. There was an exchange of correspondence by the Government Officers with the Sessions Court, and only on 10th April 2019 were warrants issued for

the execution of the death sentence issued by the Sessions Court. He submitted that in view of the decision of the Constitution Bench in the case of ***Triveniben***[3], only the delay caused by the executive could be taken into consideration to decide whether there was any violation of Article 21 of the Constitution of India.

15. As regards the finding of the High Court on keeping the convicts in solitary confinement before rejection of mercy petitions, the learned counsel pointed out that in the affidavit of the Superintendent of Prison, it was pointed out that the convicts were kept in a security yard wherein they were allowed to access the veranda and interact with other prisoners from 06:00 am to 06:30 pm. He pointed out that there was a fan and light bulb in their cell. In their room, there was usually more than one inmate. Moreover, they had access to an open ground. He, therefore, submitted that in view of the law laid down by this Court in the case of ***Vinay Sharma v. Union of India & Ors***[8]**,** it cannot be said that the convicts were kept in solitary confinement.

16. The learned counsel submitted that in the execution warrants, more than a reasonable period was provided from the date of warrants till the date of execution. Copies of the warrants were immediately supplied to the convicts. He submitted that merely because the convicts were not brought before the Sessions Court while proceeding with issuance of

[8] (2020) 4 SCC 391

warrants, this lapse by itself, was not sufficient to commute the sentence to life imprisonment. The learned counsel also made suggestions for issuing guidelines for effective compliance with Sections 413 and 414 of the CrPC corresponding to Sections 453 and 454 of the Bhartiya Nagarik Suraksha Sanhita, 2023 (for short, 'the BNSS'). In short, the submission of the learned counsel appearing for the appellants is that there was no warrant for commuting the death sentence.

17. Ms. Payoshi Roy, the learned counsel representing the respondents-convicts submitted that as held by this Court in the case of ***Sher Singh & Ors***[2], Article 21 of the Constitution of India inheres in every person till his last breath. The learned counsel submitted that unreasonable delay in adjudicating upon the mercy petitions makes the punishment barbaric and, hence, unconstitutional. She submitted that, in fact, avoidable delay in deciding the mercy petitions violates constitutional due process, which includes fair, just and reasonable procedure. The learned counsel relied upon the observations made by this Court in the cases of ***Sher Singh & Ors***[2] and ***Ajay Kumar Pal***[5]. The learned counsel submitted that the executive authorities should follow a self-imposed rule that every mercy petition must be disposed of within three months. The delay beyond a period of three months must be, *prima facie*, presumed to be excessive, which puts the burden on the State Government to explain the delay. She submitted that no fixed length of delay can be determinative, and, in that context, the High Court observed that the quantum of delay is not

material. She pointed out that the total delay in execution of the death sentence, in this case, starting from the date of filing of mercy petitions till the date of issuance of execution warrants, was three years, eleven months and fifteen days.

18. The learned counsel for the convicts submitted that the poor economic condition of the convicts was not considered by the Hon'ble Governor of the State of Maharashtra and the Hon'ble President of India. Even the fact of relatively young ages of the convicts has not been considered while deciding the mercy petitions. In the facts of the case, delay post the rejection of the mercy petitions will have to be treated as executive delay as there was a gross delay in doing the ministerial act of issuing execution warrants.

19. The learned counsel also submitted that the finding of the High Court regarding keeping the convicts in solitary confinement is just and proper, and no interference is called for with that finding.

CONSIDERATION

LEGAL POSITION

20. Law on the subject has been laid down in the case of ***Triveniben***[3] by a Constitution Bench. G.L. Oza, J. rendered the main opinion for himself and on behalf of three other Hon'ble Judges. The controversy which led to a reference to the Constitution Bench has been set out in the majority judgment in paragraphs 1, 2 and 3, which read thus:

"1. These matters came up before us because of the conflict in the two decisions of this Court: (i) T.V. Vatheeswaran v. State of T.N. [(1983) 2 SCC 68: 1983 SCC (Cri) 342 : (1983) 2 SCR 348], Sher Singh v. State of Punjab [(1983) 2 SCC 344: 1983 SCC (Cri) 461 : (1983) 2 SCR 582] and observations in the case of Javed Ahmed Abdul Hamid Pawala v. State of Maharashtra [(1985) 1 SCC 275: 1984 SCC (Cri) 653 : (1985) 2 SCR 8]. In Vatheeswaran case [(1983) 2 SCC 68: 1983 SCC (Cri) 342 : (1983) 2 SCR 348] a Bench of two Judges of this Court held that two years delay in execution of the sentence after the judgment of the trial court will entitle the condemned prisoner to ask for commutation of his sentence of death to imprisonment for life. The court observed that: [SCC p. 79: SCC (Cri) p. 353, para 21]

> '**Making all reasonable allowance for the time necessary for appeal and consideration of reprieve, we think that delay exceeding two years in the execution of a sentence of death should be considered sufficient to entitle the person under sentence of death to invoke Article 21 and demand the quashing of the sentence of death**.'

2. In Sher Singh case [(1983) 2 SCC 344: 1983 SCC (Cri) 461 : (1983) 2 SCR 582] which was a decision of a three-Judges' Bench it was held that a condemned prisoner has a right of fair procedure at all stages, trial, sentence and incarceration but delay alone is not good enough for commutation and two years rule could not

be laid down in cases of delay. It was held that the court in the context of the nature of offence and delay could consider the question of commutation of death sentence. The court observed: [SCC p. 356 : SCC (Cri) p. 473, para 19]

> '**Apart from the fact that the rule of two years runs in the teeth of common experience as regards the time generally occupied by proceedings in the High Court, the Supreme Court and before the executive authorities, we are of the opinion that no absolute or unqualified rule can be laid down that in every case in which there is a long delay in the execution of a death sentence, the sentence must be substituted by the sentence of life imprisonment.** There are several other factors which must be taken into account while considering the question as to whether the death sentence should be vacated. A convict is undoubtedly entitled to pursue all remedies lawfully open to him to get rid of the sentence of death imposed upon him and indeed, there is no one, be he blind, lame, starving or suffering from a terminal illness, who does not want to live.'

It was further observed: [SCC p. 357 : SCC (Cri) p. 474, para 20]

> 'Finally, and that is no less important, the nature of the offence, the diverse circumstances attendant upon it, its impact upon the contemporary society and the

> question whether the motivation and pattern of the crime are such as are likely to lead to its repetition, if the death sentence is vacated, are matters which must enter into the verdict as to whether the sentence should be vacated for the reason that its execution is delayed. The substitution of the death sentence by a sentence of life imprisonment cannot follow by the application of the two years' formula, as a matter of quod erat demonstrandum.'
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> **3.** In Javed case [(1985) 1 SCC 275: 1984 SCC (Cri) 653 : (1985) 2 SCR 8] it was observed that the condemned man who had suffered more than two years and nine months and was repenting and there was nothing adverse against him in the jail records, this period of two years and nine months with the sentence of death heavily weighing on his mind will entitle him for commutation of sentence of death into imprisonment for life. **It is because of this controversy that the matter was referred to a five-Judges' Bench and hence it is before us."**
>
> (emphasis added)

Ultimately, in paragraph 23, the Constitution Bench held thus:

> **"23.** So far as our conclusions are concerned we had delivered our order on 11-10-1988 and we had reserved the reasons to be given later. Accordingly in the light of the discussions above our conclusion is as recorded in our order dated 11-10-1988 [*Triveniben* v. *State of Gujarat*, (1988) 4 SCC 574: 1989 SCC (Cri) 25], reproduced below: [SCC p. 576: SCC (Cri) pp. 26-27, para 2]

> **'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* [(1983) 2 SCC 68: 1983 SCC (Cri) 342 : (1983) 2 SCR 348] cannot be said to lay down the correct law and therefore to that extent stands overruled.''**
>
> (emphasis added)

In paragraph 16, the Constitution Bench held that while considering the delay, the period consumed in the judicial process culminating in confirmation of the death sentence should not be considered. K. Jagannatha Shetty, J, rendered a concurring opinion. In paragraphs 75 and 76 of his opinion, it was observed thus:

"75. As between funeral fire and mental worry, it is the latter which is more devastating, for, funeral fire burns only the dead body while the mental worry burns the living one. This mental torment may become acute when the judicial verdict is finally set against the accused. Earlier to it, there is every reason for him to hope for acquittal. That hope is extinguished after the final verdict. **If, therefore, there is inordinate delay in execution, the condemned prisoner is entitled to come to the court requesting to examine whether it is just and fair to allow the sentence of death to be executed.**

76. What should be done by the court is the next point for consideration. It is necessary to emphasise that the jurisdiction of the court at this stage is extremely limited. If the court wants to have a look at the grievance as to delay, it is needless to state, that there should not be any delay either in listing or in disposal of the matter. The person who complains about the delay in the execution should not be put to further delay. The matter, therefore, must be expeditiously and on top priority basis, disposed of. The court while examining the matter, for the reasons already stated, cannot take into account the time utilised in the judicial proceedings up to the final verdict. The court also cannot take into consideration the time taken for disposal of any petition filed by or on behalf of the accused either under Article 226 or under Article 32 of the Constitution after the final judgment affirming the conviction and sentence. **The court may only consider whether there was undue long delay in disposing of mercy petition; whether the State was**

> **guilty of dilatory conduct and whether the delay was for no reason at all. The inordinate delay, may be a significant factor, but that by itself cannot render the execution unconstitutional. Nor it can be divorced from the dastardly and diabolical circumstances of the crime itself.** The court has still to consider as observed in Sher Singh case [(1983) 2 SCC 344: 1983 SCC (Cri) 461 : (1983) 2 SCR 582] : [SCR p. 596: SCC p. 357: SCC (Cri) p. 474, para 20]**"**
>
> (emphasis added)

21. Thereafter, a Bench of three Hon'ble Judges in the case of ***Shatrughan Chauhan & Anr.***[4] dealt with the same issue. Paragraphs 44 to 49 of the decision are material, which read thus:

> **"44. In view of the above, we hold that undue long delay in execution of sentence of death will entitle the condemned prisoner to approach this Court under Article 32. However, this Court will only examine the circumstances surrounding the delay that has occurred and those that have ensued after the sentence was finally confirmed by the judicial process. This Court cannot reopen the conclusion already reached but may consider the question of inordinate delay to decide whether the execution of sentence should be carried out or should be altered into imprisonment for life.**
>
> **45. Keeping a convict in suspense while consideration of his mercy petition by the President for many years is certainly an agony for him/her. It creates adverse physical conditions and psychological**

stresses on the convict under sentence of death. Indisputably, this Court, while considering the rejection of the clemency petition by the President, under Article 32 read with Article 21 of the Constitution, cannot excuse the agonising delay caused to the convict only on the basis of the gravity of the crime.

46. India has been a signatory to the Universal Declaration of Human Rights, 1948 as well as to the United Nations Covenant on Civil and Political Rights, 1966. Both these conventions contain provisions outlawing cruel and degrading treatment and/or punishment. Pursuant to the judgment of this Court in Vishaka v. State of Rajasthan [(1997) 6 SCC 241 : 1997 SCC (Cri) 932] , international covenants to which India is a party are a part of domestic law unless they are contrary to a specific law in force. It is this expression ("cruel and degrading treatment and/or punishment") which has ignited the philosophy of Vatheeswaran [T.V.Vatheeswaran v. State of T.N., (1983) 2 SCC 68 : 1983 SCC (Cri) 342] and the cases which follow it. It is in this light, the Indian cases, particularly, the leading case of Triveniben [Triveniben v. State of Gujarat, (1989) 1 SCC 678 : 1989 SCC (Cri) 248] has been followed in the Commonwealth countries. It is useful to refer the following foreign judgments which followed the proposition: (i) Pratt v. Attorney General for Jamaica [(1994) 2 AC 1 : (1993) 3 WLR 995 : (1993) 4 All ER 769 (PC)], (ii) Catholic Commission for Justice & Peace in Zimbabwe v. Attorney General [(1993) 4 SA

239 (Zimbabwe SC)] , (iii) Soering v. United Kingdom [Application No. 14038 of 1988: (1989) 11 EHRR 439], (iv) Attorney General v. Susan Kigula [Constitutional Appeal No. 3 of 2006, decided on 21-1-2009 (Uganda SC)], (v) Herman Mejia v. Attorney General [AD 2006 Action No. 296, decided on 11-6-2001 (Belize SC)].

47. It is clear that after the completion of the judicial process, if the convict files a mercy petition to the Governor/President, it is incumbent on the authorities to dispose of the same expeditiously. **Though no time-limit can be fixed for the Governor and the President, it is the duty of the executive to expedite the matter at every stage viz. calling for the records, orders and documents filed in the court, preparation of the note for approval of the Minister concerned, and the ultimate decision of the constitutional authorities. This Court, in Triveniben [Triveniben v. State of Gujarat, (1989) 1 SCC 678: 1989 SCC (Cri) 248] , further held that in doing so, if it is established that there was prolonged delay in the execution of death sentence, it is an important and relevant consideration for determining whether the sentence should be allowed to be executed or not.**

48. Accordingly, if there is undue, unexplained and inordinate delay in execution due to pendency of mercy petitions or the executive as well as the constitutional authorities have failed to take note of/consider the relevant aspects, this Court is well within its powers under Article 32 to hear the grievance of the convict and commute

thone death sentence into life imprisonment this ground alone however, only after satisfying that the delay was not caused at the instance of the accused himself. To this extent, the jurisprudence has developed in the light of the mandate given in our Constitution as well as various Universal Declarations and directions issued by the United Nations.

49. The procedure prescribed by law, which deprives a person of his life and liberty must be just, fair and reasonable and such procedure mandates humane conditions of detention preventive or punitive. In this line, although the petitioners were sentenced to death based on the procedure established by law, the inexplicable delay on account of executive is inexcusable. **Since it is well established that Article 21 of the Constitution does not end with the pronouncement of sentence but extends to the stage of execution of that sentence, as already asserted, prolonged delay in execution of sentence of death has a dehumanising effect on the accused. Delay caused by circumstances beyond the prisoners' control mandates commutation of death sentence.** In fact, in Vatheeswaran [T.V.Vatheeswaran v. Sta te of T.N., (1983) 2 SCC 68 : 1983 SCC (Cri) 342] , particularly, in para 10, it was elaborated where amongst other authorities, the minority view of Lords Scarman and Brightman in the 1982 Privy Council case of Riley v. Attorney General of Jamaica [Riley v. Attorney General of Jamaica, (1983) 1 AC 719 : (1982) 3 WLR 557 : (1982) 3 All ER 469 : 1982 Cri Law Review 679 (PC)], by quoting: (Vatheeswaran

case [T.V.Vatheeswaran v. State of T.N., (1983) 2 SCC 68 : 1983 SCC (Cri) 342] , SCC p. 72)

> "10. '… Sentence of death is one thing: sentence of death followed by lengthy imprisonment prior to execution is another.'" (Riley case [Riley v. Attorney General of Jamaica, (1983) 1 AC 719 : (1982) 3 WLR 557 : (1982) 3 All ER 469 : 1982 Cri Law Review 679 (PC)] , AC p. 735 B)
>
> (emphasis supplied)

The appropriate relief in cases where the execution of death sentence is delayed, the Court held, is to vacate the sentence of death. In para 13, the Court made it clear that Articles 14, 19 and 21 supplement one another and the right which was spelled out from the Constitution was a substantive right of the convict and not merely a matter of procedure established by law. This was the consequence of the judgment in Maneka Gandhi v. Union of India [Maneka Gandhi v. Union of India, (1978) 1 SCC 248] which made the content of Article 21 substantive as distinguished from merely procedural.**"**

(emphasis added)

In paragraph 244, the Bench proceeded to hold thus:

> **"244. It is well established that exercising of power under Articles 72/161 by the President or the Governor is a constitutional obligation and not a mere prerogative. Considering the high status of office, the Constitution Framers did not stipulate any outer time-limit for disposing of the**

> **mercy petitions under the said Articles, which means it should be decided within reasonable time. However, when the delay caused in disposing of the mercy petitions is seen to be unreasonable, unexplained and exorbitant, it is the duty of this Court to step in and consider this aspect. Right to seek for mercy under Articles 72/161 of the Constitution is a constitutional right and not at the discretion or whims of the executive.** Every constitutional duty must be fulfilled with due care and diligence, otherwise judicial interference is the command of the Constitution for upholding its values.**"**
>
> (emphasis added)

This Court also issued several other directions regarding the procedure to be followed in placing mercy petitions before the Hon'ble Governor or the Hon'ble President of India.

22. The decision of this Court in the case of ***B.A.Umesh***[7] does not make a departure from the law laid down in the case of ***Shatrughan Chauhan & Anr***[4]**.** On the contrary, paragraphs 44, 47 and 48 of the decision have been quoted therein with approval. We have carefully perused several other decisions of this Court which have been rendered in the facts of the case before this Court. The propositions laid down in these decisions can be summarized as under:

(i) Undue, unexplained and inordinate delay in execution of the sentence of death will entitle the convict to approach this Court under Article 32. But this Court will only examine the nature of the delay

caused and circumstances that ensued after the judicial process finally confirmed the sentence 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.

(ii) Keeping a convict sentenced to death in suspense while considering his mercy petitions by the Governor or the President for an inordinately long time is certainly agony for him/her. It creates adverse physical conditions and psychological stress on the convict under sentence of death. Therefore, this Court, while considering the delay in the disposal of clemency petitions by the highest constitutional authorities, while exercising its jurisdiction under Article 32 read with Article 21 of the Constitution, cannot excuse the agonising delay caused to the convict only based on the gravity of the crime; and

(iii) It is well established that Article 21 of the Constitution does not end with the pronouncement of the sentence but extends to the execution stage of that sentence. An inordinate delay in the execution of

> the sentence of death has a dehumanising effect on the accused. An inordinate delay caused by circumstances beyond the prisoners' control mandates the commutation of a death sentence.

23. In paragraph 16 of the decision of this Court in the case of ***Triveniben***[3], the Constitution Bench held that while considering the delay in the execution of the death sentence, the period consumed in the judicial process culminating in the confirmation of the death sentence should not be taken into consideration. The reason for the said conclusion is that only after the judicial process in the form of the judgment of this Court in appeal / special leave petition arising out of the order of conviction does the order of death sentence become final. Therefore, the period required for judicial consideration cannot be termed as a delay in the execution of the death sentence, as till the conclusion of judicial proceedings arising out of the order of conviction, a sentence of death does not attain finality. The question of execution thereof arises only when the death sentence becomes final.

24. We may refer to Sections 413 and 414 of the CrPC, which read thus:

> "**413. Execution of order passed under section 368**.— When in a case submitted to the High Court for the confirmation of a sentence of death, the Court of Session receives the order of confirmation or other order of the High Court thereon, it shall cause such order to be carried into effect by issuing a warrant or taking such other steps as may be necessary.

> **414. Execution of sentence of death passed by High Court.**— When a sentence of death is passed by the High Court in appeal or in revision, the Court of Session shall, on receiving the order of the High Court, cause the sentence to be carried into effect by issuing a warrant."

There are identical provisions in the BNSS in the form of Sections 453 and 454. These provisions constitute a vital safeguard. These provisions ensure that the execution of the death sentence takes place only after all remedies available to the convicts are exhausted. The executive cannot execute the death sentence unless the Sessions Court issues a warrant.

25. The proceedings for issuing a warrant for executing a death sentence under Sections 413 and 414 of the CrPC do not require any judicial adjudication. Before issuing the warrant, the Sessions Court must satisfy itself that the order of death sentence has attained finality and the review/curative or mercy petitions, if filed, have been finally rejected. Before issuing a warrant, the Sessions Court has to issue notice to the convict so that even the convict can state whether any other proceedings are pending before the Courts or Constitutional authorities. In a given case, the convict may not be interested in pursuing remedies. The Sessions Court can verify this aspect after issuing a notice to the convict. The Sessions Court, in such a case, must appraise the convict of the remedies available and, if required, provide legal aid to enable the convict to take recourse to such remedies. After the convict has been

made aware of the remedies available, reasonable time be granted to the convict to consider, weigh and even consult a member of his family or friend to finally take a decision on adopting remedies as the possibility of thinking logically and rationally may be impeded or hampered because of the situation being faced by the convict. The Sessions Court can issue a warrant only after providing such reasonable time to the convict and after satisfying itself that the convict has taken a conscious decision of not pursuing the available remedies. The reasonable time can be of seven days. The Sessions Court can direct the counselling of the convict if it is not satisfied that the decision is a well-informed, considered and conscious decision. If such a procedure is followed, it enables the convict to take recourse to the available legal remedy. Moreover, if an order of issue of warrant of execution is passed after notice to the convict, it enables the convict to challenge the order of issuing a warrant of execution. But after the convict exhausts all remedies, including filing mercy petitions or after the Sessions Court is satisfied that the convict has taken a conscious decision of not availing the remedies, the execution warrant must be issued without any delay. It is the responsibility of the trial court to take up and conclude the proceedings of issuing a warrant of execution as expeditiously as possible. The trial court must give necessary out of turn priority.

26. After the decisions on mercy petitions, if there is an inordinate and unexplained delay in actual execution for no

fault on the part of the convict, there is no reason why the principles set out in paragraph 23 should not apply. The principles will also apply to a case where there is a long and unexplained delay on the part of the Sessions Court in issuing the warrant of execution in accordance with Sections 413 and 414 of CrPC. After the order of rejection of mercy petitions is communicated to a convict, the sword of Damocles cannot be kept hanging on him for inordinately long time. This can be very agonising, both mentally and physically. Such inordinate and unreasonable delay will violate his rights under Article 21 of the Constitution. In such a case, this Court will be justified in commuting the death penalty into life imprisonment.

27. A convict can invoke even the jurisdiction of a High Court under Article 226 of the Constitution if there is an inordinate and unexplained delay in the execution of the death sentence post-confirmation of the sentence. The High Court will apply the same principles summarised in paragraphs 22 to 25.

28. No hard and fast rule can be laid down as regards the length of delay, which can be said to be inordinate. It all depends on the facts of the case. In a given case, a delay of two years may not be fatal. In another case, a delay of six months can be a ground to commute sentence. The terms "undue" or "inordinate" cannot be interpreted by applying the rules of mathematics. The Courts, in such cases, deal with human issues and the effect of the delay on a particular convict. What delay is inordinate must depend on the facts of the case. For example, if a convict is more than seventy years old and is

suffering from multiple ailments, an unexplained delay of even six months in deciding a mercy petition can amount to a violation of Article 21. Ultimately, the Courts will have to determine the effect of delay in the light of the principles laid down as aforesaid, considering the facts of the case before it.

APPLICATION OF THE PRINCIPLES TO THE FACTS OF THE CASE

29. In this case, there is a delay in the following three stages:

i. On 10th July 2015, the convicts filed mercy petitions addressed to the Hon'ble Governor of the State of Maharashtra, which were rejected on 29th March 2016. This is the first part of the delay;

ii. On 11th June 2016, mercy petitions were addressed by the convicts to the Hon'ble President of India, which were rejected on 26th May 2017. This is the second part of the delay, and

iii. The third part of the delay started on 19th June 2017, when the Superintendent of Prison informed the learned Sessions Judge, Pune, about the rejection of mercy petitions by the Hon'ble President of India. Ultimately, it was only on 10th April 2019 that the learned Sessions Court, Pune, issued the warrants for the execution of the death sentence.

Thus, from 10th July 2015 till 10th April 2019, time was consumed in deciding the mercy petitions filed before the

Hon'ble Governor of the State and the Hon'ble President of India, and in issuing warrants for executing the death sentence.

DELAY IN PROCESSING AND DISPOSAL OF MERCY PETITIONS

30. We are dealing with the first part of the delay in deciding the mercy petitions made to the Hon'ble Governor which was as follows:

Date	Particulars	Time taken
10th July 2015	Convicts filed mercy petitions addressed to the Hon'ble Governor of the State of Maharashtra	-
16th July 2015	Prison authorities forwarded the mercy petitions along with the letter	6 days
20th July 2015	Home Department of the State Government received the mercy petitions forwarded by the prison authorities	4 days
17th August 2015	Home Department of the State Government addressed a letter to the Superintendent of Prison seeking confirmation regarding the decision of the convicts to prefer review petitions	28 days
22nd August 2015	Superintendent of Prison recorded the statements of	5 days

	the convicts stating that they had not preferred review petitions.	
24th August 2015 and 26th August 2015.	Fact of convicts not having preferred review petitions was communicated by the prison authorities and the ADG (Prisons)	7/9 days since receipt of letter dated 17th August 2015 and 2/4 days since recording convicts' statement
25th January 2016	Note prepared by the Home Department of the State Government for the benefit of the Hon'ble Governor	152 days
29th March 2016	Mercy petitions rejected by the Hon'ble Governor.	64 days

From the above table, it appears that nothing was done by the Home Department of the State Government for five months (152 days) after receiving confirmation that the convicts had not preferred a review petition. Further, a perusal of the note prepared for the benefit of the Hon'ble Governor shows that it consists of three and a half pages. The recommendation is in three lines in the last paragraph. It is interesting to note that while forwarding the mercy petitions along with the letter dated 16th July 2015, the following documents were sent to the Home Department:

i. Nominal roll of the convicts;

ii. Medical report of mental and physical health;

iii. A summary of crime;

iv. Warrant of conviction issued by the Sessions Court; and

v. A copy of the judgment of the High Court confirming the death sentence and the order/judgment of this Court.

The note appears to be based only on these documents, which were available to the Home Department in July 2015. A lot of time was wasted on correspondence made by various officers. All this was avoidable. Immediately upon receipt of the mercy petitions, all the required information/documents ought to have been called for by the Home Ministry. That was not done. Perhaps the officers in the Home Ministry showed a lack of sensitivity. Ultimately, on 29th March 2016, mercy petitions were rejected by the Hon'ble Governor. Thus, the delay of 5 months between 16th July 2015 and 25th January 2016 is unexplained and unjustified.

31. Now, we come to the second part of the delay which was as follows:

Date	Particulars	Time taken
11th April 2016	Convict no.1 intimated that he was desirous of filing a mercy petition before the Hon'ble President of India.	-
13th April 2016	Letter sent by the ADG (Prisons) to the	2 days

	Superintendent of Prison, requesting to forward updated nominal roll, report on the mental and physical health of the convicts and information about criminal antecedents.	
28th April 2016	Home Department of the State Government informed the Under Secretary (GOI) that the Hon'ble Governor had rejected mercy petitions. Mercy petitions addressed to the Hon'ble President were forwarded with this letter. Apart from the copies of the mercy petitions, the judgments of the Sessions Court, Pune, the High Court and this Court, along with the communication of rejection of mercy petitions by the Hon'ble Governor, were forwarded to the Under Secretary (GOI).	-
31st May 2016	Under Secretary (GOI) addressed a letter to the Home Department of the State Government requesting to provide criminal history, economic condition and information regarding the filing of review petition by the convicts within two weeks.	33 days

11th June 2016	Fresh set of mercy petitions were filed by the relatives of both convicts	-
15th June 2016	Under Secretary (GOI) reminded the Home Department of the State Government to forward the documents mentioned in the letter dated 31st May 2016.	-
22nd June 2016	Letter dated 31st May 2016 was received by the Home Department of the State Government.	22 days
22nd July 2016	Under Secretary (GOI) reminded the Home Department of the State Government to forward the documents mentioned in the letter dated 31st May 2016.	-
9th August 2016	Home Department of the State Government wrote to the ADG (Prisons) and Superintendent of Prison to supply documents as mentioned in the letter dated 31st May 2016.	48 days since receipt of letter dated 31st May 2016
5th September 2016	Superintendent of Prison acted upon letter dated 9th August 2016 by addressing a letter to the Senior Inspector of the concerned Police Station to forward details regarding the antecedents and economic	27 days

	condition of the family of the convicts.	
6th September 2016	Under Secretary (GOI) reminded the Home Department of the State Government to forward the documents mentioned in the letter dated 31st May 2016.	-
9th September 2016	Information was sent by the Superintendent of Prison to the Home Department of the State Government recording the fact that no review petitions were filed by the convicts.	31 days since letter dated 9th August 2016
12th September 2016	The concerned Police Station forwarded a report regarding the criminal history and economic condition of the convicts to the Home Department of the State Government.	7 days
30th September 2016	Home Department of the State Government communicated the information mentioned above to the Under Secretary (GOI).	14 days
26th December 2016	Under Secretary (GOI) again requested confirmation about the review petitions filed by the convicts, despite the State Government having already provided this information to the Under Secretary (GOI)	87 days

	vide letter dated 30th September 2016.	
16th January 2017	In view of the letter dated 26th December 2016, correspondences were again started by the Home Department of the State Government.	-
23rd January 2017	ADG (Prisons) communicated to the Home Department of the State Government that the review petitions were not filed.	-
7th February 2017	Superintendent of Prison communicated to the Home Department of the State Government that the review petitions were not filed.	-
22nd February 2017	Home Department of the State Government confirmed to the Under Secretary (GOI) that a review petition had not been filed.	58 days
26th May 2017	Ultimately, the Hon'ble President rejected the mercy petitions.	93 days

A period of about three months taken by the Hon'ble President cannot amount to undue delay. However, the delay from 28th April 2016, when the mercy petitions were forwarded to the Under Secretary (GOI) till 22nd February 2017, is entirely unexplained and unwarranted.

DELAY IN ISSUE OF WARRANT OF EXECUTION

32. We have already held that the undue delay in issuing a warrant of execution can violate the rights of convicts under Article 21 of the Constitution of India. Accordingly, the third part of the delay was as follows:

Date	Particulars	Time taken
6th June 2017	Information was submitted by the Under Secretary, Ministry of Home Affairs, Government of India, to the Principal Secretary, Home Department, Government of Maharashtra regarding rejection of mercy petition	11 days since rejection by Hon'ble President
19th June 2017	Superintendent of Prison addressed separate letters to the family members of the convicts and learned Sessions Judge, Pune, informing them about the rejection of the mercy petitions.	24 days since rejection by Hon'ble President
10th August 2017	Superintendent of Prison addressed a letter to the learned Sessions Judge, Pune, requesting him to issue a warrant for the execution of the death sentence.	-
24th August 2017	Superintendent of Prison addressed a letter to the Registrar of this Court requesting him to provide information about any review petition filed by the convicts.	-

9th September 2017	Registrar of this Court communicated to the Superintendent of Prison that no review petitions were filed by the convicts.	16 days
5th October 2017	Letter was addressed by the Superintendent of Prison to the learned Sessions Judge, Pune, requesting him to issue a warrant of execution of the death sentence.	-
18th July 2018	Letter was addressed by the Superintendent of Prison to the learned Sessions Judge, Pune, requesting him to issue a warrant of execution of the death sentence.	-
29th August 2018	Letter was addressed by the Superintendent of Prison to the learned Sessions Judge, Pune, requesting him to issue a warrant of execution of the death sentence.	-
17th October 2018,	Letter was addressed by the ADG (Prisons) to the learned Sessions Judge, Pune, requesting him to fix a date for the execution of the death sentence.	-
30th October 2018	As no action was taken by the Sessions Court, Pune, the Home Department of the Government of Maharashtra addressed a letter to the Law and Judiciary Department of the State Government making a query whether the Home	-

	Department could proceed with the execution of death sentence in accordance with the provisions of the Maharashtra Prison Manual.	
2nd November 2018	Learned Sessions Judge, Pune, addressed a letter to the Home Department, Government of Maharashtra, seeking information about the status of mercy petitions	502 days since letter dated 19th June 2017
12th November 2018	Law and Judiciary Department of the State Government informed the Home Department of the State Government that the exclusive jurisdiction to issue warrants for executing the death sentence was of the learned Sessions Court	13 days
7th December 2018	ADG (Prisons) addressed letter to the learned Sessions Court, Pune, requesting him to fix a date for executing the death sentence.	-
27th December 2018	Superintendent of Prison addressed letter to the learned Sessions Court, Pune, requesting him to fix a date for executing the death sentence.	-
31st January 2019	Home Department of the State Government wrote a letter to the ADG (Prisons) and the Superintendent of Prison informing them about the letter dated 2nd November	90 days

	2018 sent by the Learned Sessions Judge, Pune	
10th April 2019	Warrants for the execution of the death sentence were issued by the Sessions Court, Pune.	661 days since letter dated 19th June 2017

33. When the mercy petitions were pending, the Sessions Court could not have issued a warrant to execute the death sentence. The most straightforward procedure that the State Government could have followed was to apply through the Public Prosecutor before the learned Sessions Court on the judicial side by placing on record the rejection of the mercy petitions and seeking the issuance of warrants for the execution. Even the Sessions Court ought to have acted upon the several letters from the Prison and issued notice to the State Government. However, that was not done. Thus, there was an inordinate delay in issuing warrants for executing the death sentence. This delay from June 2017 to April 2019 was entirely avoidable. This also is a delay post-confirmation of the death sentence by this Court, which must be taken into consideration.

THE EFFECT OF THE DELAY

34. Thus, on facts, it can be said that there was undue and unexplained delay at all three stages. The undue delays have occurred in placing the mercy petitions before the Hon'ble Governor for the State and the Hon'ble President of India. In the facts of the case, the inordinate delay is on the part of the

executive and not on the part of the Constitutional functionaries.

35. The time consumed from the filing of mercy petitions before the Hon'ble Governor to the date of issue of the execution of warrants by the learned Sessions Court, Pune, is of three years, eleven months and fourteen days. Even if we exclude the time actually taken by the constitutional functionaries to decide mercy petitions, still the delay will be of more than three years. The Court must consider the cumulative effect of the delays at three stages after taking into consideration the facts of the case. The reason is that in a given case, there may not be an inordinate delay in one stage, but there may be an inordinate delay in two other stages. The only conclusion in this case is that the delay is unexplained and inordinate. Therefore, it is impossible to find fault with the view taken by the High Court that there was a violation of the rights of the convicts guaranteed under Article 21 of the Constitution of India. Therefore, the commutation of the death sentence to a fixed term sentence of thirty-five years by the High Court cannot be faulted.

DUTY OF THE EXECUTIVE AND THE SESSIONS COURT

36. The Executive must promptly deal with the mercy petitions filed by the convicts of the death sentence. In this case, the approach of the Executive, and especially the State Government, has been casual and negligent. Even the Sessions Court ought to have been pro-active. When the delay from the date of filing of mercy petitions till the date of issue of a warrant

of execution is inordinate and unexplained, the right of the convicts guaranteed by Article 21 of the Constitution of India is violated. This right must be upheld, and it is the duty of the Constitutional Courts to do so.

37. We must also consider the rights of the victims of the offences to justice. Their right is to ensure that there is a prompt and proper investigation. However, we hasten to add that there is no right vested in the victim to insist on imposing capital punishment. The law must be enforced with all the vigour, and the Executive Branch of the State Government cannot show laxity in implementing the orders of conviction passed by the competent Courts. The very purpose of passing orders of sentence cannot be allowed to be defeated. We cannot ignore the effect of the laxity shown by law enforcement agencies on society. Therefore, we propose to issue directions to ensure that there are no administrative delays in dealing with the mercy petitions or issuing warrants for execution of death sentence.

DIRECTIONS TO CURB THE DELAYS

38. The first direction which we propose to issue is regarding the nature of documents which ought to be immediately forwarded with the mercy petitions. The second direction we propose is that the State Government must set up a dedicated cell in either the Home Department or Prison Department to ensure prompt and expeditious processing of the mercy petitions. We also propose to direct the State Government to

issue executive orders to ensure prompt processing of the mercy petitions.

39. Now, we come to the role of the Sessions Court. There cannot be any dispute that unless a warrant is issued for the execution of the death sentence under Section 413 or Section 414 of the CrPC, the death sentence cannot be executed. On this aspect, we must refer to a decision of this Court in the case of ***Shabnam v. Union of India***[9] and, in particular, paragraph 21. This Court held that the procedure laid down by the High Court of Allahabad in its decision in the case of ***People's Union for Democratic Rights (PUDR) v. Union of India & Ors.***[10] is in consonance with Article 21 of the Constitution of India. Therefore, while executing the death sentence, it is mandatory to follow the procedure laid down by the Allahabad High Court in the decision mentioned above. The decision of the Allahabad High Court can be summarised as follows:

i. The principles of natural justice must be drawn into the provisions of Sections 413 and 414 of the CrPC, and sufficient notice ought to be given to the convict before issuance of a warrant for the execution of the death sentence by the Sessions Court, which would enable the convict to consult an advocate and represent him in the proceedings;

ii. The warrant for the execution of the death sentence must specify the exact date and time of the execution

[9] (2015) 6 SCC 702
[10] 2015 SCC OnLine All 143

and not a range of dates within which the death sentence will be executed, which places the convict in a state of uncertainty. A reasonable time must be provided between the date of the order of issue of the execution warrant and the date fixed for actual execution so that the convict gets an opportunity to adopt a remedy against the warrant and to have a final meeting with the family members;

iii. A copy of the warrant must be immediately supplied to the convict, and

iv. After issuing a notice and before issuing a warrant of execution, if the convict is not represented by an advocate, legal aid should be provided to him.

As held by this Court, the procedure described above is in conformity with Article 21 of the Constitution of India.

40. To avoid the situation that arose in this case, we need to elaborate further upon the directions already issued by the Allahabad High Court. When a death sentence is confirmed or the High Court imposes a death sentence, a writ/order of the High Court is always sent to the Sessions Court. When the Sessions Court receives intimation of such order, the disposed of sessions case must be taken on board by the Sessions Court, and notice should be issued to the Public Prosecutor/investigating agency to ascertain whether the convicts have challenged the judgment of the High Court. Depending upon the rules of procedure of the concerned court,

the proceeding can be numbered as a Misc. Application in the disposed of case. If the Public Prosecutor informs the Sessions Court that the challenge before this Court is pending, the Sessions Court should pass no further order. As soon as the intimation of confirmation of the death sentence by this Court is received, the disposed of case should be taken on the cause list and notice should be issued to the convicts through the Jail Superintendent calling upon the convicts to disclose whether they intend to file review petition and/or mercy petition. It is the duty of the State/investigating agency to inform the Sessions Court about the outcome of the review and mercy petitions by filing a proper application in the disposed of case. The reason is that it is the responsibility of the State/investigating agency to ensure that the death penalty is executed. To ensure that there is no delay, the Sessions Court, after confirmation of the death sentence by the Court, shall periodically fix dates in the disposed of case so that an up-to-date report can be submitted on behalf of the State Government/investigating agency through the Public Prosecutor. It will be the duty of the State Government/investigating agency to make an application and inform the Sessions Court about the rejection of the mercy petitions made to the Constitutional authorities so that the Sessions Court can take further steps. Such information shall be furnished by making a regular application on the judicial side and not by sending a letter. After such an application is filed before the Court, notice should be issued to the convicts informing them that the Court is proposing to issue a warrant

for executing the death sentence. After hearing the convict and/or his advocate or legal aid advocate provided to the convict, the Court should pass an order directing issuance of the warrant of execution, a copy of which shall be immediately forwarded to the convict. As directed earlier by this Court, the warrant must contain a precise date and time of execution. The time should be fixed in such a manner that the convict gets at least a period of fifteen clear days from the date of receipt of the warrant of execution of the death sentence and the actual date of execution to enable him to take recourse to legal remedies or to allow him to meet his relatives finally.

41. As we are confirming the impugned judgment on the ground of inordinate and unexplained delay in the execution of the death sentence, it is not necessary to decide the controversy whether the convicts were kept in solitary confinement even before the rejection of the mercy petitions.

OUR CONCLUSIONS

42. We hold that:-

(i) Undue, unexplained and inordinate delay in execution of the sentence of death will entitle the convict to approach this Court under Article 32. However, this Court will only examine the nature of the delay caused and circumstances that ensued after the judicial process finally confirmed the sentence 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 commuted to imprisonment for life;

(ii) Keeping a convict in suspense while considering his mercy petitions by the Governor or the President for an inordinately long time will certainly cause agony to him/her. It creates adverse physical conditions and psychological stress on the convict. Therefore, this Court, while exercising its jurisdiction under Article 32 read with Article 21 of the Constitution, must consider the effect of inordinate delay in disposal of the clemency petition by the highest Constitutional authorities and cannot excuse the agonising delay caused only on the basis of the gravity of the crime;

(iii) It is well established that Article 21 of the Constitution does not end with the pronouncement of the sentence but extends to the stage of execution of that sentence. An inordinate delay in the execution of the sentence of death has a dehumanising effect on the accused. An inordinate and unexplained delay caused by circumstances beyond the prisoners' control mandates the commutation of a death sentence;

(iv) The above principles will also apply to a case where there is a long and unexplained delay on the part of the Sessions Court in issuing the warrant of execution in accordance with Section 413 or Section 414 of CrPC. After the order of rejection of mercy petitions is communicated to a convict, the sword of Damocles cannot be kept hanging on him for an inordinately long time. This can be very agonising, both mentally and physically. Such inordinate delay will violate his rights under Article 21 of the Constitution. In such a case, this Court will be justified in commuting the death penalty into life imprisonment;

(v) No hard and fast rule can be laid down as regards the length of delay, which can be said to be inordinate. It all depends on the facts of the case. The terms "undue" or "inordinate" cannot be interpreted by applying the rules of mathematics. The Courts, in such cases, deal with human issues and the effect of the delay on individual convicts. What delay is inordinate must depend on the facts of the case;

(vi) A convict can invoke even the jurisdiction of a High Court under Article 226 of the Constitution in the event there is an inordinate and unexplained delay in the execution of the death sentence, post-confirmation of the sentence. The same principles

will be applied by the High Court, which are summarised above; and,

(vii) It is the duty of the Executive to promptly process the mercy petitions invoking Articles 72 or 161 of the Constitution and forward the petitions along with requisite documents to the concerned constitutional functionary without undue delay.

OPERATIVE DIRECTIONS

43. Hence, we pass the following order:

i. The impugned judgment and order, by which the death sentence of the convicts has been commuted to a fixed sentence of thirty-five years of imprisonment, is upheld, and Criminal Appeals are dismissed;

ii. As regards the mercy petitions, we issue the following directions to all the State Governments and Union Territories:

A. A dedicated cell shall be constituted by the Home Department or the Prison Department of the State Governments/Union Territories for dealing with mercy petitions. The dedicated cell shall be responsible for the prompt processing of the mercy petitions within the time frame laid down by the respective governments. An officer-in-charge of the dedicated cell shall be nominated by

designation who shall receive and issue communications on behalf of the dedicated cell;

B. An official of the Law and Judiciary or Justice Department of the State Governments/Union Territories should be attached to the dedicated cell so constituted;

C. All the prisons shall be informed about the designation of the officer-in-charge of the dedicated cell and his address and email ID;

D. As soon as the Superintendent of Prison/officer-in-charge receives the mercy petitions, he shall immediately forward the copies thereof to the dedicated cell and call for the following details/information from the officer-in-charge of the concerned Police Station and/or the concerned investigation agency;

a. The criminal antecedents of the convict;

b. Information about family members of the convict;

c. Economic condition of the convict and his/her family;

d. The date of arrest of the convict and the period of incarceration as an undertrial; and,

e. The date of filing charge sheet and a copy of the committal order, if any.

On receipt of the request made by the jail authorities, the officer-in-charge of the concerned police station shall be under an obligation to furnish the said information to the jail authorities immediately;

E. On receipt of the said information, without any delay, the jail authorities shall forward the following documents to the officer-in-charge of the dedicated cell and the Secretary of the Home Department of the State Government:

a. Information furnished as aforesaid by the concerned Police Station with its English translation;

b. Copy of the First Information Report with its English translation;

c. Details, such as date of arrest of the convict, date of filing of chargesheet and actual period of incarceration undergone by the convict;

d. A copy of the committal order, if any, passed by the learned Judicial Magistrate;

e. A copy of charge-sheet with its English translation;

f. Report about the conduct of the convict in prison;

g. Copies of the notes of evidence, all exhibited documents in the trial and copies of statements of convicts under Section 313 of the CrPC with its English translation;

h. Copies of the judgments of the Sessions Court (with its English translation, if it is in vernacular language), High Court and this Court;

F. As soon as mercy petitions are received by the dedicated cell, copies of the mercy petitions shall be forwarded to the Secretariats of the Hon'ble Governor of the State or the Hon'ble President of India, as the case may be so that the Secretariat can initiate action at their end;

G. All correspondence, as far as possible, be made by email, unless confidentiality is involved; and,

H. The State Government shall issue office orders/executive orders containing guidelines for dealing with the mercy petitions in terms of this judgment.

iii. The Registry of this Court shall forward copies of this judgment to the Secretaries of the Home Department of the respective State Governments/Union Territories

for its implementation. The Secretaries shall report compliance within three months from today to the Registrar (Judicial) of this Court;

iv. The Sessions Court shall endeavour to follow the following guidelines:

a. As soon as the order of the High Court confirming or imposing the death sentence is received by the Sessions Court, a note thereof must be taken, and the disposed of case shall be listed on the cause list. The proceedings can be numbered as Misc. Application depending upon the applicable Rules of the procedure. The Sessions Court shall immediately issue notice to the State Public Prosecutor or the investigating agency calling upon them to state whether any appeal or special leave petition has been preferred before this Court and what is the outcome of the said petition/appeal;

b. If the State Public Prosecutor or the investigating agency reports that the appeal is pending, as soon as the order of this Court confirming or restoring the death sentence is received by the Sessions Court, again, the disposed of case or miscellaneous applications should be listed on the cause list and notice be issued to the State Public Prosecutor or the investigating agency to ascertain whether any review/curative petitions or mercy petitions are pending. If information is received

regarding the pendency of review/curative petitions or mercy petitions, the Sessions Court shall keep on listing the disposed of case after intervals of one month so that it gets the information about the status of the pending petitions. This will enable the Sessions Court to issue a warrant for the execution of the death sentence as soon as all the proceedings culminate;

c. However, before issuing the warrant, notice should be issued to the convict, and the directions issued by the Allahabad High Court in the case of ***People's Union for Democratic Rights (PUDR)***[10], and as elaborated above, shall be implemented by the Sessions Court;

d. The Sessions Courts shall consider what is held in Paragraph 25 above;

e. Copies of the order issuing the warrant and the warrant shall be immediately provided to the convicts, and the Prison authorities must explain the implications thereof to the convicts. If the convict so desires, legal aid be immediately provided to the convicts by the Prison authorities for challenging the warrant. There shall be a gap of fifteen clear days between the date of the receipt of the order as well as warrant by the convict and the actual date of the execution; and,

f. It shall also be the responsibility of the concerned State Government or the Union Territory administration to apply to the Sessions Court for the issuance of a warrant immediately after the death penalty attains finality and becomes enforceable.

v. A copy of this judgment shall be forwarded to both the convicts through the Jail Superintendent of the concerned jail.

vi. A copy of this judgment shall be forwarded to the Registrar Generals of all the High Courts, who in turn shall forward the copies thereof to all the Sessions Courts.

vii. These disposed of appeals shall be listed on 17th March 2025 for considering compliance.

.....J.
(Abhay S Oka)

.....J.
(Ahsanuddin Amanullah)

.....J.
(Augustine George Masih)

New Delhi;
December 9, 2024.