

ITEM NO.15

COURT NO.2

SECTION X

S U P R E M E C O U R T O F I N D I A  
R E C O R D O F P R O C E E D I N G S

Writ Petition (Criminal) No.261/2020

BALWANT SINGH

Petitioner(s)

VERSUS

UNION OF INDIA &amp; ORS.

Respondent(s)

(IA No.87507/2020 - FOR EXEMPTION FROM FILING O.T.; IA No.60131/2021 - FOR GRANT OF PAROLE; and, IA No.19760/2021 - FOR INTERVENTION)

Date : 24-03-2022 This matter was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE UDAY UMESH LALIT  
HON'BLE MR. JUSTICE S. RAVINDRA BHAT  
HON'BLE MR. JUSTICE PAMIDIGHANTAM SRI NARASIMHA

Counsel for the Parties:

Mr. Rupesh Kumar, AOR  
Ms. Neelam Sharma, Adv.  
Ms. Pankhuri Shrivastava, Adv.  
Mr. Rajeev Sharma, Adv.

Mr. Piyush Beriwal, Adv.  
Ms. Priyanka Das, Adv.  
Mr. Rajat Nair, Adv.  
Mr. Divyansh H. Rathi, Adv.  
Mr. Arvind Kumar Sharma, AOR

Ms. Ranjeeta Rohatgi, AOR

Mr. Gurmeet Singh Makker, AOR  
Ms. Swarupama Chaturvedi, Adv.  
Mr. Arun Kumar, Adv.  
Mr. Sarad Kumar Singhanian, Adv.  
Mr. Visaka Murty, Adv.

Mr. Anil Kumar Mishra, AOR

UPON hearing the counsel the Court made the following  
O R D E R

1. For having assassinated the then Chief Minister of Punjab, the petitioner along with co-accused was tried in respect of offences punishable under Sections 302/307/120-B of the Indian Penal Code, 1860 and Sections 3 and 4 of the Explosive Substances Act in Sessions Case No.2-A of 1995.
2. After recording conviction under the aforestated offences, the Trial Court sentenced the petitioner and co-accused, Jagtar Singh Hawara to death sentence.
3. Thereafter, Murder Reference No.6 of 2007 as well as Criminal Appeal No.731-DB of 2007 preferred by the co-accused Jagtar Singh Hawara and others, were considered by the High Court vide its judgment dated 12.10.2010.
4. It must be noted here that the petitioner had not challenged his death sentence nor had he preferred any appeal from the decision of the Trial Court.
5. The High Court found substance in the appeal preferred by the co-accused Jagtar Singh Hawara and substituted the death sentence to imprisonment for life. However, the order of conviction and sentence as awarded to the petitioner was affirmed by the High Court.
6. Insofar as the conviction and sentence awarded to the co-accused Jagtar Singh Hawara is concerned, Criminal Appeal No.1013 of 2013 at his instance along with other connected matters is pending consideration in this Court. During such pendency, a

letter was written by the Ministry of Home Affairs, Government of India on 27.09.2019 to the Chief Secretaries of the Governments of Punjab, Gujarat, Haryana, Karnataka and NCT of Delhi on the occasion of commemoration of 550<sup>th</sup> Birth Anniversary of Guru Nanak Dev Ji proposing special remission and release of prisoners.

7. We are now concerned in this writ petition with the alleged inaction on part of the concerned authorities in not commuting the death sentence awarded to the petitioner in keeping with the aforestated communication dated 27.09.2019. It is in this light that the present writ petition prays that the mercy petition preferred by the petitioner on 25.03.2012 be taken up for disposal immediately and his death sentence be commuted to imprisonment for life.

8. Notably, the prosecution in the instant crime was conducted by the Central Bureau of Investigation and as such, the authority to consider the issues regarding commutation and remission would be the Central Government.

9. Ms. Ranjeeta Rohatgi, learned Advocate appearing for State of Punjab submits that the offence was committed in Union Territory of Chandigarh where the trial was also conducted; that the petitioner has been lodged in a jail in Punjab under the orders of the High Court; and that the State Government has nothing to do with respect to the relief prayed for in the petition.

10. We may refer to order dated 04.12.2020 in which after making reference to the communication dated 27.09.2019, following observations were made by this Court:

"On a query made by the Court, Mr. K.M. Nataraj, learned Additional Solicitor General appearing on behalf of the Union of India stated that the proposal has not been sent in view of the pending appeals of the co-accused in this Court. It is not denied that the petitioner has himself not filed any appeal against his sentence. Therefore, there is no question of awaiting the outcome of any appeal pending before this Court. It is obvious that the factum of the appeals pending at the behest of other co-accused would have no relevance to the proposal intended to be sent for consideration under Article 72 of the Constitution of India.

Mr. K.M. Nataraj, learned ASG, therefore, seeks time to make a statement about the proposal as contemplated in the letter dated 27<sup>th</sup> September, 2019 to be sent for processing under Article 72 of the Constitution of India."

11. However, nothing has been done in the matter and the learned counsel appearing for Union of India has no clear instructions in the matter.

12. In the circumstances, we direct as under:

- a. The matter shall immediately be looked into by the concerned authorities including the Government of India, and the Central Bureau of Investigation.
- b. The proposal or the objection to the prayer for commutation shall be made by the Central Bureau of Investigation within two weeks from today.
- c. The appropriate authority in the Central Government shall bestow attention and take the required decision within two weeks of the receipt of the proposal or objection from the Central Bureau of Investigation.

- d. The Action Taken Report and the decision in terms thereof shall be placed on record of this case on or before 30.04.2022, failing which the concerned Secretary, Department of Home Affairs, Government of India, and the Director (Prosecution), Central Bureau of Investigation shall remain personally present along with the concerned record in the Court on the next occasion.

List this matter for further consideration on 02.05.2022.

(MUKESH NASA)  
COURT MASTER

(VIRENDER SINGH)  
BRANCH OFFICER