

JPP

***IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION***

CRIMINAL WRIT PETITION NO. 3103 OF 2014

1. Smt. Renuka @ Rinku @ Ratan Kiran Shinde,
Aged about 45 years, Occupation – Nil
R/o. At present Death Convict in Central Jail,
Yerwada, Pune
 2. Seema @ Devki Mohan Gavit
Aged about 39 years
Occupation – Nil
R/o. At present Death Convict
in Central Jail, Yerwada, Pune

V/s.

1. The Union of India
Through the Principal Secretary of
Ministry of Home Affairs,
New Delhi – 1
 2. The State of Maharashtra
Through Principal Secretary,
Home Department, Mantralaya,
Mumbai – 32
 3. The State of Maharashtra
Through Deputy Secretary to the
Government, Home Department,
30th Floor World Centre,

4. Cuffe Parade, Mumbai-5

4. The Inspector General of Prisons,
Yerwada Central Prison,
Pune (Maharashtra)

5. The Superintendent of Central
Jail, Yerwada, Pune, Maharashtra ... Respondents

Mr. Aniket Vagal for the Petitioners.

Mr. Sandesh Patil along with Mr. Prithviraj S. Gole, Mr. Chintan Y. Shah, Ms. Anusha P. Amin and Ms. Divya A. Pawar-Patil for Respondent No.1.

Ms. A.S. Pai, Public Prosecutor for Respondent Nos. 2 to 5.

CORAM : NITIN JAMDAR AND
SARANG V. KOTWAL, JJ.

RESERVED ON : 22 December 2021.

PRONOUNCED ON: 18 January 2022.

JUDGMENT: (Per Nitin Jamdar, J) :-

Rule. Rule is made returnable forthwith. Taken up for final disposal.

2. The Petitioners are sentenced to death. After seven

years, ten months and 15 days, their mercy petitions were rejected. Petitioners pray that the delay in disposal of the mercy petitions having resulted in infringement of Petitioners fundamental rights, the death sentence be commuted to that of life imprisonment.

3. The Petitioners, Renuka *alias* Rinku *alias* Ratan *alias* Kiran Shinde and Seema *alias* Devki Gavit, are sisters. Petitioners and their mother - Anjanabai, were tried by the learned Additional Sessions Judge Kolhapur in Sessions Cases Nos. 55 and 56 of 1997 for having kidnapped 13 children, attempting to kidnap one more child and committing murders of 9 of the 13 children kidnapped by them in a period starting from June 1990 to October 1996. The learned Sessions Judge convicted them on 28 June 2001, and the Petitioners were sentenced to death. Reference of Confirmation Case No.2 of 2001 was made, and Criminal Appeal No. 718 of 2001 was filed by the Petitioners in the High Court. Anjanabai expired while in custody. The Division Bench of this Court, by the judgment and order dated 8 September 2004, convicted the Petitioners for the following main offences. Criminal conspiracy of kidnapping children and using them for thefts. Kidnapping the children- Santosh, Bunty, Swati, Guddu, Meena, Raja, Shradha, Kranti, Gauri and Pankaj from lawful guardianship. The kidnapping of the children- Santosh, Bunty, Swati, Guddu, Meena, Rajan, Shradha, Gauri and Pankaj with intent to cause the child to be

secretly and wrongfully confined. For the murder of the children-Santosh, Anjali, Shradha, Gauri and Pankaj, the Petitioners were accordingly convicted and sentenced to death. The Criminal Appeal No. 722 of 2005 filed by the Petitioners in the Supreme Court was dismissed on 31 August 2006, and the Supreme Court confirmed the death sentence. The application of mercy petition made to the Governor of Maharashtra to invoke the power of pardon under Article 161 of the Constitution of India was rejected on 17 August 2013. The application to the President of India to invoke the power of pardon under Article 72 of the Constitution of India was rejected on 30 July 2014. Thereafter the present Writ Petition is filed.

4. The Respondents in this Petition are as follows. Respondent No.1 is the Union of India through the Principal Secretary of Ministry of Home Affairs, New Delhi, referred to as 'MHA'. Respondents No.2 and 3 are the State of Maharashtra through Principal Secretary and Deputy Secretary of Home Department, Mantralaya, Mumbai, referred to as the 'Home Department'. Respondent No.4 is the Inspector General of Prisons, Pune, referred to as the 'IG (Prisons)'. Respondent No. 5 is the Superintendent of Central Jail, Yerwada, Pune, referred to as the 'Superintendent'

5. By this Writ Petition filed on 19 August 2014, the

Petitioners contend that the inordinate delay in deciding the mercy petitions under Articles 72 and 161 of the Constitution of India violates the Petitioners' fundamental rights and the death sentence of Petitioner No.1 and Petitioner No.2 should be commuted to imprisonment for life. The State of Maharashtra and the Union of India have filed affidavits in replies.

6. The Petition was urgently moved on 19 August 2014, the day the Petitioners were to be executed. The Public Prosecutor made a statement on telephonic instructions of the Superintendent of Jail that the execution would not be carried out. The Petition was kept on board on the next date. On 20 August 2014, the Petition was heard. The learned Public Prosecutor made a statement on behalf of the State on instructions from Mr. Deepak Jadiye, Section Officer, Home Department, that during the pendency of the Petition, the death sentence will not be executed. The Petition has came up for hearing.

7. We have heard Mr. Aniket Vagal, the learned Counsel for the Petitioners. Mr. Sandesh Patil for Respondent No.1 and Ms. A.S. Pai, Public Prosecutor for Respondent Nos. 2 to 5.

8. The President of India, under Article 72 of the Constitution of India, has the power to grant pardons, reprieves,

respites or remissions of punishment or to suspend, remit or commute the sentence of death. Under Article 161, the Governor of a State has the power to grant pardons, reprieves, respites or remissions of punishment or to suspend, remit or commute the sentence of any person convicted of any offence against any law relating to a matter to which the executive power of the State extends. As regards the power to be exercised by the Governor of the State under Article 161 of the Constitution of India, and the power of the President of India and the position after the President of India under Article 72 of the Constitution rejects the mercy petition, the MHA issued a clarification on 5 March 1991. It is stated that once the President of India has exercised the powers under Article 72 of the Constitution of India, it would not be open to the Governor under Article 161 to exercise similar powers in respect of the same cause and even if the convicts want to apply in the change of circumstances, the same should be made to the President of India. Therefore even if the mercy petitions are made to the President of India, they first are forwarded to the Governor (in the case of the States) for the decision of the Governor.

9. The Supreme Court in the case of *Shatrughan Chauhan and Another Versus Union of India and Others*¹ has held that not only the death sentence should be passed lawfully, but the execution of the sentence must also be in consonance with the Constitutional

¹ (2014) 3 Supreme Court Cases 1

mandate and not in violation of the Constitutional principles. When the delay in disposal of mercy petition is unreasonable, unexplained and exorbitant, the court must step in. It was held that when the court declares that the fundamental right of the death convict is violated, it only upholds the *de facto* provision provided by the Constitution. It does not interfere with the power under Article 72/161 of the Constitution of India. Following this decision, the Division Benches of this Court, in the cases of *Pradeep Yashwant Kokade Vs. Union of India and Ors.*² and *Purshottam Dashrath Borate Vs. Union of India and Ors.*³ have allowed writ petitions commuting the death sentence of the petitioners therein to that of life imprisonment.

10. As stated earlier, the main prayer of the Petitioners is that due to the delay in disposal of the mercy petitions, the Constitutional right of the Petitioners of Article 21 of the Constitution of India is infringed, and the death sentence be commuted to that of life imprisonment.

11. The Ministry of Home Affairs, Union of India has issued instructions regarding the procedure to be observed by the States for dealing with the petitions for mercy on behalf of convicts under sentence to death and their appeals. First part thereof deal with

² W.P.No.2607 of 2019 decided on 29/07/2019.

³ W.P.No.2609 of 2019 decided on 29/07/2019.

petitions for mercy. Second part deals with relating to the duties of Superintendents of Jail in connection with the petitions for mercy for or on behalf of the convicts under sentence of death. In the judgment of *Shatrughan Chauhan*, the Supreme Court has referred to and reproduced the main components of both the procedures laid down by MHA, which is as under.

12. Regarding the procedure of the first part, for handling the mercy petition concerning the State Governments, the steps are as follows. Rule I enables a convict under sentence of death to submit a petition for mercy within seven days after and exclusive of the day on which the Superintendent of Jail informs him of the dismissal by the Supreme Court of his appeal or of his application for special leave to appeal to the Supreme Court. Rule II prescribes the procedure for the submission of petitions. As per this Rule, such petitions shall be addressed to the Governor of the State at the first instance and thereafter to the President of India. As soon as the mercy petition is received, the execution of the sentence shall, in all cases, be postponed pending receipt of orders on the same. Rule III states that the petition shall be sent to the State concerned for consideration and orders of the Governor in the first instance. If, after consideration, it is rejected, it shall be forwarded to the Secretary to the MHA. If it is decided to commute the sentence of death, the petition addressed to the President of India shall be

withheld, and intimation to that effect shall be sent to the convict. Rule V states that in all cases in which a petition for mercy from a convict under sentence of death is to be forwarded to the Secretary, MHA or the Government of the State concerned, as the case may be, shall forward such petition, as expeditiously as possible, along with the records of the case and observations in respect of any of the grounds urged in the petition. Rule VI mandates that upon receipt of the orders of the President, an acknowledgement shall be sent to the Secretary, MHA, immediately in the manner prescribed. If the petition is rejected, the orders will be communicated by express letter, and receipt thereof shall be acknowledged by express letter. Orders commuting the death sentence will be communicated by express letters and by telegraph in all other cases, and receipt thereof shall be acknowledged by express letter or telegraph, as the case may be. Rule VIII(a) states that if there is a change of circumstance or if any new material is available in respect of rejection of his earlier mercy petition, the convict is free to make a fresh application to the President for reconsideration of the earlier order. If the State Government concerned has previously rejected any petition, it shall also forward a brief statement of the reasons for the rejection of the previous petition or petitions. The mercy petition can be made on behalf of the convict, and such petition shall be dealt with in the same manner provided for dealing with a petition from the convict himself.

13. The second part deals with the Procedure governing the duties of Superintendents of Jail in connection with the petitions for mercy for or on behalf of the convicts under sentence of death. Rule I mandates that immediately on receipt of warrant of execution, consequent on the confirmation by the High Court of the sentence of death, the Jail Superintendent shall inform the convict concerned that if he wishes to appeal to the Supreme Court or to make an application for special leave to appeal to the Supreme Court under any of the relevant provisions of the Constitution of India, he/she should do so within the period prescribed in the Supreme Court Rules. Rule II states that on receipt of the intimation of the dismissal by the Supreme Court of the appeal or the application for special leave to appeal filed by or on behalf of the convict, in case the convict concerned has made no previous petition for mercy; the Jail Superintendent shall forthwith inform him that if he desires to submit a petition for mercy, it should be submitted in writing within seven days of the date of such intimation. Rule III says that if the convict submits a petition within the period of seven days prescribed by Rule II, it should be addressed, to the Governor of the State at the first instance and, thereafter, to the President of India. The Superintendent of Jail shall forthwith dispatch it to the Secretary to the State Government in the Department concerned, together with a covering letter reporting the date fixed for execution and shall certify that the execution has been stayed pending receipt of the orders of

the Government on the petition. Rule IV mandates that if the convict submits petition after the period prescribed by Rule II, the Superintendent of Jail shall, at once, forward it to the State Government and at the same time telegraph the substance of it requesting orders whether execution should be postponed stating that pending reply, the sentence will not be carried out.

14. The State of Maharashtra has framed the Prison Manual and also the *Maharashtra Prisons (Prisoners Sentenced to Death) Rules of 1971* in the exercise of powers under sub-sections (18) and (28) of Section 59 of the *Prisons Act, 1894*. The relevant scheme under the Rules of 1971 is as follows. Under these Rules, the convict means the 'prisoner sentenced to death'. As per Rule 3, the Superintendent of Jail reports the admission to the State Government on the admission of such convict in prison. Rules 13, 14, and 15 of the Rules of 1971 deal with the procedure regarding the Petition for mercy and the stay of execution. The procedure, in short, is as follows. As per Rule 13, on receipt of an intimation of the dismissal by the Supreme Court of the appeal or application, the Superintendent shall, unless the convict has already made an application for mercy, forthwith inform him that if he desires to submit such petition, it should be submitted in writing within seven days from the date of such intimation. Rule 13(2) provides that in cases where there is no appeal or no application has been made by or

on behalf of a convict, the said period of seven days will be counted from the date on which the time allowed for making an appeal or an application expires. On the expiry of such time, even if a convict has made no previous petition for mercy, the Superintendent is under a duty to inform him that if he desires to submit a petition for mercy, he should do so in writing within seven days from the date of such intimation. As per Rule 14, except in cases where a convict has already submitted a petition for mercy, every convict is allowed a specified time for the preparation and submission of a petition for mercy. As per Rule 14(2), if a convict submits a petition within the prescribed period, it must be addressed to the Governor and the President of India. The Superintendent shall then forthwith forward it by registered post to the Secretary, Home Department together with a covering letter stating that the date fixed for the execution has been stayed, pending receipt of the orders of the State Government on the petition. Rule 15 deals with the mercy petition submitted after the period prescribed. It states that where a convict submits a petition of the day expiry of the period prescribed in Rule 13, the Superintendent shall at once forward it to the State Government, and at the same time telegraph the substance of it, requesting orders whether the execution may be postponed, and stating that pending reply, the sentence shall not be carried out. If mercy petition is received by the Superintendent later than noon on the day preceding that fixed for the execution, he shall at once forward it to the State

Government, and at the same time telegraph the substance of it, giving the date of execution and stating that the sentence will be carried out unless orders to the contrary are received. The execution of the sentence of death is not to be carried until an intimation has been received from the MHA about the rejection by the President of India of the petition for mercy submitted, if any, by or on behalf of the convict. The State of Maharashtra also has non-statutory provisions that deal with the procedure till the life is extinguished.

15. It is clear from these Rules, and as emphasised by Supreme Court in *Shatrughan Chauhan*, these Rules mandate that the matter has to be expedited at every stage. There cannot be any delay at the instance of the officers, particularly the Superintendent of Jail, because of the use of the phrases such as “forthwith”, “at once”, “without delay”. To decide the mercy petitions, the Governor requires copies of the judgments of the courts, copies of the records of the case, the nominal role of the convict, the health status of the prisoner and other related documents and for that collection of records is necessary. However, the procedure referred to above clearly shows that it must be undertaken with utmost expediency. The Petitioners contend that Rules were not adhered to and most casual approach was adopted in collecting the information, and that is why there was a delay of more than seven years. The chronology of events would show that the Petitioners' grievance is fully justified,

particularly concerning the officers of the State of Maharashtra.

16. The chronology is narrated in the affidavit-in-reply and synopsis filed by the Respondents. The affidavit in reply filed by the Respondent-State leaves various periods unexplained. There is confusion in dates, the narration is not in sequence, and no attempt is made to clear up the confusion. The learned Public Prosecutor has made the file available to us, but the file and chronology of correspondence are not complete. In this state of affairs, we have attempted to narrate the events as linearly as possible.

17. After the decision of the Supreme Court when steps were being taken to execute the death sentence of the Petitioners, various communications were received from 1 September 2006 to 8 September 2006 addressed to the President of India to be treated as mercy petitions on behalf of the Petitioners. These were representations from the residents of Canada, Japan, the United States, and India. It was stated that the execution of women is extremely rare, and though the applicants have all the sympathy to the victims, the death penalty would be against the civilized nation and therefore, the President of India should use the power of pardon.

17.1 The communications received were sent by the President's Secretariat to the Secretary, MHA, under a covering letter

dated 8 September 2006, which the MHA received on 11 September 2006.

17.2 On 15 September 2006, the MHA addressed the communication to the Secretary, Home Department as under:-

*“To,
The Home Secretary,
Government of Maharashtra,
Mumbai.*

Subject: Mercy Petitions under Article 72 of the Constitution in the matter of grant of clemency on behalf of condemned prisoners Renuka Kiran Shinde and Seema Mohan Gavit, presently confined at Yarvada Central Jail, Pune, Maharashtra.

Sir,

I am directed to forward herewith the petitions received from the President's Secretarial on behalf of the condemned prisoners Renuka Kiran Shinde and Seema Mohan Gavit for the commutation of their death penalty. As per the procedure prescribed by this Ministry (copy enclosed), the mercy petitions has to be considered by the Governor of Maharashtra before consideration of the same by the President of India under Article 72 of the Constitution. It is a pre-requisite that the Governor considers the mercy petition under Article 161 of the Constitution before it is submitted to the President of India because once the petition is considered and decided under Article 72, the Governor will not be able to exercise his constitutional powers.

2. *It is, therefore, requested that in the event of rejection of*

mercy petition by the Governor, the mercy petition of the condemned prisoner or petitions on his behalf may be forwarded to this Ministry for consideration by the President of India along with the following details :

- a) The details of the decision taken by Governor of Maharashtra;*
- b) Recommendation of the State Government in regard to the grant of clemency to the prisoners;*
- c) Legible and clean copy each of the judgment of Trial court, High Court and the Supreme Court of India;*
- d) Legible and clean copy of the Records of the case.*

3. This issues with the approval of Joint Secretary (Judicial) in the Ministry.”

17.3 Around 24 February 2004, Petitioner No.1- Renuka was transferred to Nagpur Central Prison. Petitioner No.2 - Seema was kept at Yerwada Central Prison.

17.4 On 19 September 2006, the Superintendent, Yerwada Central Prison, Pune addressed a letter to Superintendent Nagpur Central Prison with a copy of the letter dated 15 September 2006 received from MHA.

17.5 In October 2006, Under Secretary of the Home Department addressed a letter to the Inspector General of Prisons, Pune forwarding application/representation filed by the Petitioners for the opinion of IG (Prisons), Pune.

17.6 After one month, from 19 September 2006 to 18 October 2006, the said letter was received in the Office of IG (Prisons), Pune.

17.7 Thereafter, after 16 days on 4 November 2006, the office of IG (Prisons), Pune, addressed a letter to Superintendent, Yerwada Central Prison, Pune and Superintendent, Nagpur Central Prison requesting to submit documents as mentioned in the letter along with the opinion regarding mercy petition received by the office of the Governor of Maharashtra and the President of India.

17.8 Two months after that, on 3 January 2007, the office of the IG (Prisons), Pune, sent a reminder to the Superintendent, Yerwada Central Prison, Pune, for submitting information sought as per letter dated 4 November 2006.

17.9 After three months and 13 days, on 16 April 2007, the office of IG (Prisons), Pune, sent another reminder to the Superintendent, Yerwada Central Prison, Pune, for information by letter dated 4 November 2006 and 3 January 2007.

17.10 After six months and ten days, on 26 October 2007, again a reminder was sent by the office of IG (Prisons), Pune for compliance of information. Reminders were sent on the following

dates:

- a) 3 January 2007*
- b) 16 April 2007*
- c) 26 October 2007*

The reminders were not sent to Nagpur Central Prison.

17.11 On 3 November 2007, the Superintendent of Yerwada Central Prison, Pune, addressed a letter to IG (Prisons), Pune and submitted the necessary documents along with the opinion.

17.12 Thirteen days thereafter, on 16 November 2007, the office of the IG (Prisons), Pune, addressed a letter to Home Department for the report, nominal role, crime details, judgment of Sessions Court and High Court.

18. On 14 January 2008, in light of the uncertainty, Petitioner No.1 - Renuka, who was lodged in Nagpur Central Prison, submitted a mercy petition to the President of India on 14 January 2008.

18.1 Fifteen days thereafter, on 30 January 2008, the Superintendent of Nagpur Central Prison through IG (Prisons), Pune, forwarded a letter to the Home Department with a copy of mercy petition dated 14 January 2008 and the nominal role of the

convict Petitioner No.1.

18.2 On 13 February 2008, that is 14 days thereafter, the office of the IG (Prisons), Pune, addressed a letter to the Superintendent, Nagpur Central Prison, who returned the mercy petition dated 14 January 2008 with a request to submit the proposal of Petitioner No.1 - Renuka directly to the Government of Maharashtra.

18.3 After 22 days, on 5 March 2008, the Superintendent, Nagpur Central Prison, addressed a letter to the Secretary, Home Department for disposal of Mercy Petition addressed to the President of India by Petitioner No.1 - Renuka along with the nominal role.

18.4 One month and 19 days thereafter, on 24 April 2008, the Home Department addressed a letter to the IG (Prisons), Pune stating that the entire papers as per Central Government requirement, all the papers are required to be translated in english. As per the said letter, legible copies were required to be forwarded.

18.5 A reminder was sent one month after that on 23 May 2008 by the office of IG (Prisons), Pune to the Superintendent, Yerwada Central Prison, Pune and Superintendent, Nagpur Central Prison, requesting to submit the proposal in English regarding the

Government of Maharashtra letter dated 24 April 2008.

18.6 On 9 June 2008, after 16 days, the Superintendent of Yerwada Central Prison, Pune, addressed a letter to the Inspector General of Prisons, Pune and forwarded all the papers in English to the Office of IG (Prisons), Pune.

18.7 On 17 July 2008, 1 month ten days thereafter, the Deputy Inspector General of Prisons addressed a letter to the Superintendent, Nagpur Central Prison and directed that the information should be forwarded in English as per the letter dated 13 May 2008 and 13 June 2008. It was stated in the said letter that the delay is being caused due to the non-submission of the proposal. It was further stated in the said letter that two copies of the English translation of all the papers should be forwarded within three days in the office.

18.8 On 22 July 2008, the Superintendent, Nagpur Central Prison addressed a letter to the Secretary, Home Department, for disposal of mercy petition addressed to the President of India by Petitioner No.1 - Renuka along with the note.

18.9 On 28 July 2008, the Deputy Inspector General of Prisons wrote to the Secretary, Home Department, to submit mercy

petition as required by a letter dated 11 April 2008.

19. Until this time, nothing had moved on the mercy petitions of 15 September 2006 made on behalf of the Petitioners. The MHA wrote to the Secretary, Home Department, to submit the documents regarding the mercy petitions sent with a communication dated 15 September 2006.

19.1 On 8 February 2008, the MHA again reminded the Home Department of Maharashtra, referring to the letters dated 15 September 2006 and 27 February 2007, to submit information and documents.

19.2 On 8 May 2008, the MHA again sent a reminder to the Secretary, Home Department referring to the correspondence of 15 September 2006, 27 February 2007 and 8 February 2008 and that documents be sent expeditiously.

19.3 On 7 October 2009, the Joint Secretary, MHA, personally wrote to the Additional Chief Secretary, State of Maharashtra, mentioning the earlier reminders calling upon the Additional Chief Secretary to personally look into the matter and ensure the matters are sent.

19.4 Here, the Mercy Petition received on behalf of the Petitioners forwarded by the MHA to the Home Department on 15 September 2006, upon which process was initiated, lose track. There is no clarity as to what happened thereafter regarding these mercy petitions. On these mercy petitions received on 15 September 2006, that the execution of death sentence was stayed.

20. On 26 September 2008, a mercy petition was filed by Petitioner No.2 - Seema through an Advocate.

20.1 On 10 October 2008, the Advocate addressed a letter to the State of Maharashtra regarding the mercy petition.

20.2 Again, on 26 November 2008, the Advocate addressed a letter to the Superintendent, Yerwada Central Prison, Women Prison, Pune, intimating about the mercy petition he filed before the Governor of Maharashtra on behalf of Petitioner No.2 - Seema.

21. On 11 June 2009, the Superintendent of Nagpur Central Prison addressed a letter to the office of the Governor and forwarded a copy of mercy petition filed by the Petitioner No.1 - Renuka on 1 June 2009. It was also stated that by the letter dated 22 July 2008, the mercy petition of Petitioner No.1- Renuka, addressed to the President of India, was forwarded by the State of

Maharashtra. Since all these mercy petitions were pending before the Governor of Maharashtra and nothing was proceeding, Petitioner No.1 filed a mercy petition to the President of India on 27 November 2010.

21.1 On 2 January 2011, after one month and five days, the Home Department addressed a letter to the IG (Prisons), Pune, to submit its report in respect to the queries raised pertaining to mercy petition of Petitioner No.1 - Renuka dated 27 November 2010 and further to submit a recommendation as expeditiously as possible to be forwarded the same to the President of India.

21.2 On 7 February 2011, the office of the Additional Director General of Prisons sent a reminder to the Superintendent, Yerwada Central Prison, Pune, to submit information as per the letter dated 2 January 2011.

22. Meanwhile, Petitioner No.1 was sent to Yerwada Central Prison, Pune, and Petitioner No.1 and 2 thereafter were in Yerwada Central Prison.

23. On 8 February 2011, the Superintendent, Yerwada Central Prison, Pune addressed to the Additional Director General of Prisons; Pune forwarded the documents as per the letter dated 7

February 2011 through Special Inspector General of Prisons and Deputy Inspector General of Prisons, Western Region, Pune.

23.1 Thereafter, on 11 February 2011, the IG (Prisons), Pune, forwarded the proposal dated 8 February 2011 to the Additional Director General of Prisons, Pune.

23.2 After 13 days, on 24 February 2011, the IG (Prisons), Pune, forwarded his proposal with a recommendation to the Home Department.

23.3 After three months, on 20 May 2011, the Home Department addressed a letter to IG (Prisons), Pune raised certain queries and sought clarification regarding the proposal on 24 February 2011.

23.4 On 26 May 2011, the office of IG (Prisons), Pune, forwarded a letter to the Superintendent of Yerwada Central Prison, Pune, requesting them to submit three copies of the report in english before 30 May 2011.

23.5 After 22 days, on 14 June 2011, the Superintendent, Yerwada Central Prison, Pune, addressed a letter to the Additional Director General of Prisons, Pune, thereby submitting three copies

of the report in the English language in respect of Renuka Shinde.

23.6 On 29 June 2011, the IG (Prisons), Pune, forwarded a letter addressed to the Superintendent of Yerwada Central Prison, Pune stating therein the opinion submitted vide letter dated 14 June 2011 was not clear and complete and directed to submit two copies of clear and complete opinion in English immediately in respect of Petitioner No.1 Renuka.

23.7 Thereafter, on 7 July 2011, the Superintendent, Yerwada Central Prison, addressed a letter to the Additional Director General of Prisons, Pune and forwarded two copies of the opinion in English.

23.8 On 16 July 2011, the Additional Director General of Prisons, State of Maharashtra, Pune, addressed a letter to Principal Secretary, Home Department and the report.

23.9 Eight months thereafter, on 26 March 2012, the Governor of Maharashtra rejected the mercy petition of Petitioner No.2 dated 26 September 2008.

23.10 On 12 April 2012, the Joint Secretary, Home Department, addressed a letter to Secretary, MHA, thereby forwarded copies of mercy petition received from the Petitioner No.1

- Renuka with a request to forward the petition to the President of India and communicate the decision taken in the said matter at the earliest.

24. On 9 May 2012, the MHA informed the Home Department that the decision on the mercy petition of the Petitioner No.2 – Seema was not communicated to the MHA and as per the MHA's policy, the mercy petitions of all the accused are decided jointly to avoid conflicting decisions.

24.1 Thereafter, on 10 September 2012, i.e. after four months, the Home Department addressed a letter to the Additional Director General of Police and IG (Prisons), Pune, to furnish additional information as per the letter dated 9 May 2012. It was also stated in the said letter that due to the fire in Mantralaya, the documents of the Petitioners case were destroyed in the fire and therefore to provide copies of the same.

24.2 On 18 September 2012, the Research Officer in the office of IG (Prisons), Pune, addressed a letter to the Superintendent, Yerwada Central Prison, Pune, requesting to submit three copies of additional documents as per the letter dated 9 May 2012 of Central Government regarding mercy petitions of Petitioners.

24.3 On 18 September 2012, the Assistant Research Officer in the office of IG (Prisons), Pune, forwarded a reminder letter to the Superintendent, Yerwada Central Prison, Pune and directed that three copies of additional documents immediately be informed and vide letter dated 18 September 2012, which was not received by the Head Quarters.

24.4 On 29 October 2012 and 6 November 2012, the Superintendent, Yerwada Central Prison, addressed a letter to the Additional Director General of Police and IG (Prisons), Pune, wherein they forwarded three copies of additional documents in english in respect of the Petitioners.

24.5 On 19 November 2012, the Home Department addressed a letter to the Additional Director General of Police and IG (Prisons), Pune, asking for copies of judgment and status of mercy petition in respect of Petitioner No. 2 - Seema.

24.6 On 23 November 2012, the Office of IG (Prisons), Pune, forwarded a letter to the Superintendent, Yerwada Central Prison, Pune, requesting three copies of complete information along with requisite documents as per its letter dated 19 November 2012. All this procedure was going on in light of the MHA communication of 9 May 2012 regarding mercy petition of the Petitioner No.2 -

Seema.

24.7 On 27 November 2012, the Superintendent, Yerwada Central Prison, Pune, addressed a letter to the Registrar, Sessions Court, Kolhapur, to provide complete judgment copies in respect of both convicts to forward it to the Central Government as the mercy petitions were pending before the President of India.

24.8 On 21 December 2012, the Assistant Superintendent, District and Sessions Court, Kolhapur, forwarded copies of Judgment to the Superintendent, Yerwada Central Prison, Pune, which were received by Yerwada Central Prison on 11 January 2013.

24.9 In the meanwhile on 1 January 2013, the Superintendent, Yerwada Central Prison, Pune, addressed a letter to the Additional Director General of Police, Pune and forwarded photocopies of mercy petition of both the convicts through the Deputy Inspector General of Prisons, Western Region to IG (Prisons), Pune and informed that Registrar, Sessions Court, Kolhapur was unable to provide the judgment copy and the same will be provided as and when available.

24.10 On 8 January 2013, the Deputy Inspector General of Prisons, Western Region, Pune forwarded three copies of additional

information as stated in the letter dated 1 January 2013.

24.11 On 17 January 2013, the IG, Prisons addressed a letter to the Principal Secretary, Home Department, to furnish the information regarding the mercy petition of Petitioner No.2 Seema as per the query raised in the letter dated 19 November 2012.

24.12 Thereafter, pursuant to 15 March 2013, the Joint Secretary, Home Department addressed a letter to the MHA furnishing the documents as per the direction of Ministry vide letter dated 26 February 2013.

24.13 On 17 August 2013, the mercy petition of Petitioner No.2 – Seema was rejected by the Governor of Maharashtra.

25. On 6 September 2013, the Home Department informed the MHA that the Governor had rejected the mercy petition of Petitioner No.2 – Seema.

25.1 On 15 October 2013, the MHA examined the file and sent the same for the decision of the President of India.

25.2 On 5 February 2014, the President's Secretariat returned the file to the Ministry of Home Affairs to examine the case in light

of the decision of the Supreme Court in the case of *Shatrughan Chauhan*.

25.3 On 7 March 2014, the MHA after considering the decision in *Shatrughan Chauhan's* case and re-submitted it to the President's Secretariat.

25.4 On 2 June 2014, the President Secretariat returned the case file to be considered by the new Home Minister after the change in the Government at the Center.

25.5 On 18 June 2014, the case file was re-submitted to the President Secretariat for its consideration.

25.6 On 7 July 2014, mercy petitions of the Petitioners were rejected by the President of India.

25.7 On 16 July 2014, the MHA communicated the said rejection to the State of Maharashtra. On 30 July 2014, the communication made by Respondent No.1 was received by the State of Maharashtra, and the result was communicated to the Petitioners.

26. Thus, after the mercy petitions were submitted 1 September 2006 and forwarded on 15 September 2006 till 30 July

2014, it took seven years, ten months and 15 days for their disposal.

27. The jurisprudence regarding the delay in execution of death sentence as a supervening circumstance is holding the field for a considerable time. The case of *Vivian Rodrick V. State of West Bengal*⁴ came to the Supreme Court from the Calcutta High Court in the year 1971. This was an appeal by Special Leave on the question of sentence. The Calcutta High Court tried the appellant Vivian in the exercise of its original jurisdiction. It was argued before the High Court that the sentence of death should be reduced to rigorous imprisonment for life on account of the long delay that had taken place. The Supreme Court observed that if there be a case of an extremely excessive delay, that can be sufficient for imposing a lesser sentence of imprisonment for life. The Supreme Court considered the mental agony suffered where the appellant was for more than six years under the fear of death from the trial court's decision. Though this decision is in respect of delay during the appellate jurisdiction, it is to be noted that delay was considered as a factor in the context of the death sentence.

28. In the case of *Bhagwan Bux Singh versus the State of Uttar Pradesh*⁵, which is again a case that arose from the appellate jurisdiction, on account of the delay, the death sentence was

4 1971 (1) SCC 468

5 (1978) 1 Supreme Court Cases 214

commuted to life imprisonment by the Supreme Court. Similar is the case of *Ram Adhar Vs State of U.P.*⁶ wherein the sentence for death was commuted by the Supreme Court since there was a delay of six years. In the case of *Ediga Anamma Vs. State of Andhra Pradesh*⁷ the Supreme Court emphasized the ordeal of a death row convict. In the case of *Sher Singh Vs. State of Punjab*⁸ the Bench of three learned Judges held that delay alone is not only a ground for commutation of execution of death sentence to life imprisonment, and there could not be a fixed rule of two years. The matter was referred to the Constitution Bench on two issues. Firstly, whether the delay in the execution itself would be a ground for commutation of sentence and secondly, whether two years delay in execution will automatically result in commutation of sentence.

29. The Constitution Bench in the case of *Smt. Triveniben Vs. State of Gujarat*⁹, after considering the conflicting decisions held that there is no fixed period for disposal of the mercy petitions and, when the delay is to be taken as a ground for commuting death sentence into life imprisonment, it would depend upon the facts of each case, and the court will have to ascertain the facts. The Constitution Bench laid down that after the matter is finally decided judicially, it is open to the person to approach the President or the

6 (1979) 3 Supreme Court Cases 774

7 (1974) 4 Supreme Court Cases 443

8 (1983) 2 Supreme Court Cases 344

9 (1989) 1 Supreme Court Cases 678

Governor as the case may be, with a mercy petition. If the delay is caused at the instance of the person himself, he shall not be entitled to gain any benefit out of such delay. However, if the petitions are filed as a legitimate remedy and if there has been an undue and prolonged delay, that alone will be a matter attracting the jurisdiction of this court, to consider the question of the execution of the sentence. When the petitions under Article 72 or 161 are received by the authorities concerned, it is expected that these petitions shall be disposed of expeditiously. It was held that it would not be open to the court to go behind or to examine the final verdict reached by a competent court convicting and sentencing the condemned prisoner and even while considering the circumstances in order to conclude as to whether the inordinate delay coupled with subsequent circumstances could be held to be sufficient for concluding that execution of the sentence of death will not be just and proper.

30. This Court took the above view as far back as the year 1989 when the Division Bench in the case of *Bhagwan Patilba Palve Vs. State of Maharashtra*¹⁰ considered the implications of the delay in disposal of the mercy petitions. The facts, in this case, were that after the decision of the Supreme Court on 17 April 1984 rejecting the appeal of the prisoner, the mercy petition came to be preferred on 7 May 1984. It was with the Governor of Maharashtra up to March 1985, when on 20 March 1985 it was rejected by the

¹⁰ 1989 Mh.L.J. 1001

Governor. It was then sent by the Governor of Maharashtra to the President of India on 1 April 1985, and despite ten reminders, the mercy petition was not decided for about three years and two months. The prisoner was informed on 16 August 1988 when the memo to execute the sentence was also issued. The Division Bench observed that from the date the prisoner forwarded his mercy petition on 7 May 1984 till he received the information about the rejection of the said mercy petition in August 1988, four years and three months had elapsed for which there was no explanation. The Division bench pointed to the mental torture suffered by the prisoner facing the death sentence and observed that every day of the delay would constitute almost a year in one's logical thinking, and even a prisoner is likely to lose his mental balance if he does not know for days and months together with the result of his mercy petition. The mental torment might become acute when the judicial verdict is finally pronounced against the accused. Finding that there was an inordinate delay in execution, the death sentence imposed on the petitioner was commuted to one of life imprisonment.

31. Point to underscore is that an unexplained and prolonged delay in executing a death sentence may result in the court commuting the sentence, was the position of law when the petitioners' mercy petitions were being processed. The Respondents are bound to know this legal position. In the case of *Sher Singh*, the

Supreme Court observed thus:

“23. We must take this opportunity to impress upon the Government of India and the State Governments that petitions filed under Articles 72 and 161 of the Constitution or under Sections 432 and 433 of the Criminal Procedure Code must be disposed of expeditiously. A self-imposed rule should be followed by the executive authorities rigorously, that every such petition shall be disposed of within a period of three months from the date on which it is received. Long and interminable delays in the disposal of these petitions are a serious hurdle in the dispensation of justice and indeed, such delays tend to shake the confidence of the people in the very system of justice. Several instances can be cited, to which the record of this Court will bear testimony, in which petitions are pending before the State Governments and the Government of India for an inexplicably long period. The latest instance is to be found in Criminal Writ Petitions Nos.345-348 of 1983, from which it would appear that petitions filed under Article 161 of the Constitution are pending before the Governor of Jammu & Kashmir for anything between five to eight years. A pernicious impression seems to be growing that whatever the courts may decide, one can always turn to the executive for defeating the verdict of the court by resorting to delaying tactics. Undoubtedly, the executive has the power, in appropriate cases, to act under the aforesaid provisions but, if we may remind, all

exercise of power is pre-conditioned by the duty to be fair and quick. Delay defeats justice.”

Thus in the year 1983 itself, the Supreme Court had observed that the Government of India and the State Government should ensure that the mercy petition should be disposed of expeditiously. The Supreme Court indicate the time line of three months.

32. In the case of *Pratt and Morgan Vs. Jamaica and Pratt V. Attorney General for Jamaica*¹¹, the Privy Council classified the delay that could occur during a prisoner's time on death row into three categories. First, the delay is entirely due to the prisoner's fault, such as escapes from custody, multiple mercy petitions etc. Second, the delay caused by the prisoner's legitimate appeals. Third, the delay caused by the State. The first two categories do not apply in the present case.

33. All the concerned authorities have to constantly coordinate in matters of mercy petitions. We have narrated the Rules framed by the MHA and the State of Maharashtra earlier. As per the Rules, upon receipt of a warrant of execution, the Jail Superintendent has to inform the convict that he can appeal to the Supreme Court. Therefore, the Jail Superintendent is aware of the

proceedings at the High Court and thereafter appeal to the Supreme Court. When a mercy petition was made or submitted on behalf of the convict, the sentence shall be postponed pending the orders in the proceedings. The mercy petition can be submitted by or on behalf of the convict, and the execution of the sentence shall be postponed. Upon intimation of dismissal of an appeal of the convict by the Supreme Court, the Superintendent of Jail forthwith informs the convict that if he is desirous of submitting a mercy petition, he should do so within a period of seven days. If the convict submits Petition after the period prescribed, the Superintendent shall forward it forthwith to the State Government. It is the State Government that shall fix the date of execution of the convict. Thus, at every stage, the Superintendent of jail is involved and is aware of the proceedings. The Prison Authorities under the Prisons Act 1894 have to maintain a record. The State Government has to be kept informed by the Prison Authorities through the Home Department. If no reply is received from the date of the dispatch of the petition, the Superintendent has to telegraph to the Secretary to the State Government, drawing attention to the fact. The Superintendent in no case can carry out the execution before the receipt of the State Government's Administrator's reply. The Prison Authorities and the Home Department is thus actively involved in the process.

34. As the chronology narrated earlier, which is nothing but the movement of files, delay and causal approach is demonstrated at

each stage. We have been informed, and it is not in dispute, that the offence committed by the Petitioners led to public outrage, and it was widely covered in the media. Thus, it is not possible that the officers of the Respondents would not know the gravity of the files they were handling. After the mercy petitions were first received in the office of the President of India and forwarded to the Home Department on 15 September 2006, there were a series of reminders from the MHA to send details to MHA. Even the Joint Secretary of the Judicial Cell of MHA personally wrote to the Additional Chief Secretary, Home Department, to look into the matter personally urgently. However, the offices of the State Government moved as if it was a routine file, perhaps even slower than that. One reason was given by the State Government is that there was a fire in the Mantralaya on 21 June 2012, and files had to be reconstructed. However, this fire occurred on 21 June 2012. By the time there was already a delay of 6 years since 15 September 2006. Therefore, this explanation given by the State of Maharashtra is stated to be rejected. At each stage in the movement of papers, officers exhibited utter casualness. From the chronology already narrated, this is self-evident. For example, after receiving the letter from the office of IG, Prisons, Pune, the same has gone out to Yerwada central prison after 16 days. Nothing proceeded further. After two months, a reminder was sent on 3 January 2007. Again no action was shown. One reminder was also sent after three months 13 days on 16 April 2007.

Worse than that, three reminders were sent after six months and ten days. All this was just to submit the documents and information regarding mercy petition received on 15 September 2006. Several reminders had come from the Home Ministry by that time. Yet, no importance was given to this communication, including a personal request to the Additional Chief Secretary of the State.

35. To narrate one more out of many instances showing casual approach, on 3 November 2007, documents were submitted by the Superintendent of Yerwada Central Prison to the office of I. G. Prison, Pune, almost one year after the Superintendent received papers. It took one year to forward the documents in the same city; Pune. It is not possible to believe that the Superintendent did not know that the mercy petitions have to be dealt with on a priority basis. The Rules and procedures repeatedly refer to speedy handling of the files. No explanations are given in the reply. What is surprising is that thereafter the mercy petitions received with a communication dated 15 September 2006, based on which execution was stayed, they seem to have been abandoned. No explanation from the State as to what happened to these mercy petitions.

36. Petitioner No.1 and Petitioner No.2 were separated. The Petitioner No.1 was in Nagpur Central Prison, and the Petitioner No.2 was at Yerwada Central Prison. As pointed out by the learned

counsel, Petitioner No.1 had no idea what was taking place (or not taking place) at Yerwada Central Prison and that she was suffering mental agony of being a prisoner of death sentence and, therefore, submitted a mercy petition to the President of India. So again process commenced, having abandoned the earlier mercy petition without any reason or explanation. The same apathy was shown by the offices of the State of Maharashtra. Again for each step, there is a delay. To highlight some instances, after Petitioner No.1 submitted mercy petition on 14 January 2008, the Superintendent of Jail forwarded it to the Secretary, Government of Maharashtra, after two weeks. Then it was sent to Nagpur Central Prison after 14 days. Then again, subsequent communication is after 22 days, and the third communication to the Desk Officer is after one month 11 days. The reminders were issued on 23 May 2008 and 9 June 2008. Then again, after one month ten days. Then an advocate, on behalf of Petitioner No.2, submitted mercy petition, which follows the same pattern. There was a delay of 10 months, five days, three months after raising queries. After submitting papers by the Inspector General of Prisons on 16 July 2011, the next step taken was a rejection of Petitioner No.2's mercy petition of 26 September 2008 by the Governor of Maharashtra on 26 March 2012 after eight months.

37. Despite the Home Ministry's policy to decide the mercy

petition of co-convict together, only Petitioner No.1's mercy petition was rejected. That led to the Union of India informing the State Government to send the decision regarding mercy petition of the Petitioner No.2 on 9 May 2012. The chronology of the event shows that this again followed the same pattern of negligence and apathy. Again several reminders were issued. Ultimately, the mercy petition of the Petitioner No.2 was rejected on 17 August 2013 and forwarded to the Union of India on 28 August 2013.

38. The relevant period is between the years 2006 to 2014. This time modern electronic facilities for communication were freely put to use of all State functionaries. Official E-mails were available, so also transportation facilities, courier services and various modern telecommunications methods. Speed and expediency are implicit in the procedure to be followed. The procedure and the Rules were framed decades ago, and at each stage, emphasis on sending a telegram and express letters, which was one of the fastest modes of official communication then. Therefore, movement of the files in such crucial matter from one stage to another within the State sometimes in the same city, after gaps of 15 days, one month, six months, one year is abhorrent.

39. The mercy petitions on behalf of the Petitioners were received by the President of India and sent to the Home Department

on 15 September 2006. Then mercy petitions of the Petitioner No.1 on 14 January 2008 and the mercy petition of the Petitioner No.2 dated 26 September 2008. Admittedly, the cognizance of the mercy petitions made on behalf of the Petitioners sent on 15 September 2006 was taken by the office of the President of India thereafter through the MHA and Home Department, which initiated action on these mercy petitions. Initially, some action was taken; thereafter, the same came to be abandoned. On 9 May 2012 itself, the MHA had informed the Home Department that since there are two convicts, the mercy petitions of both the convicts will be decided together. The communication of the MHA to that effect is on record as annexed to the affidavit filed by the Joint Secretary (Judicial), MHA. Therefore, the delay starts from the receipt of the first mercy petition to the President of India on 1 September 2006 till the rejection of the mercy petitions by the President of India and communication thereof on 30 July 2014.

40. As per the policy referred to earlier, even if the mercy petition is made to the President of India, it should be first decided by the Governor of the State. It is stated so in the affidavit filed by the MHA. The foundation is to be found in the communication dated 5 March 1991. The logic of adopting this course of action is that if the President of India rejects the mercy petition, then in view of Article 257 (1) of the Constitution of India, it may not be

permissible for the Governor of the State to entertain a mercy petition then. Therefore whenever a mercy petition is received in the Office of the President of India, the same is forwarded to the State Government. The second policy indicated in the affidavit filed by the MHA is that the mercy petitions of all co-convicts are decided together to avoid conflicting decisions. Therefore, there is no error in the MHA forwarding the mercy petitions received in the office of the President of India in September 2006 to the Home Department on 15 September 2006. There is also no error in the MHA in waiting till the decision is given by the Governor of Maharashtra on the mercy petitions of both the Petitioners.

41. As soon as the mercy petitions were received in the first week of September 2006 in the President Secretariat, they were informed to the MHA. After receiving mercy petitions on 8 September 2016, MHA forwarded them to the Home Department of the State of Maharashtra on 15 September 2016. On 6 September 2013, the Home Department informed the MHA that the mercy petition of the Petitioner No.2 was also decided, and on 7 July 2014, the mercy petition was rejected by the President of India. Thus, the time taken on the part of the MHA was around 316 days.

42. However, though it took 316 days for the MHA, this time span is of a much lesser degree than the delay on the part of the

officers of the State Government. Though it cannot be said that the time taken by MHA is acceptable, but we find repeated reminders from the MHA to the Home Department to expedite the matter.

43. The indifference in dealing with the issue is exemplified in the affidavit filed on behalf of the State Government by Jaysing Pawar, Deputy Secretary, Home Department (Prison) Mantralaya, Mumbai. The affidavit in reply from paragraphs 1 to 67 is only a chronology of movement of paper, with no comments. It only narrates how the files moved. The only explanation given is in paragraphs 67 and 68 of the reply, which reads thus:-

" The Petitioners have filed Mercy Petitions time and again through their petitions were pending before the respective authorities as mentioned above.

I further say that whatever delay has been caused has occurred for complying the procedure as required to be followed at each level."

That is all the explanation. Firstly, the ground that the delay has occurred in complying with the procedure is incorrect, as the procedure expects expediency. Why the procedure could not be expedited is not explained at all. It is not a case that when one petition was rejected, another one was filed. In that eventuality, the delay is attributable to the convict. The present case is altogether different. Secondly, there is absolutely no justification in stating that

the mercy petitions filed time and again through the petitions were pending. There were no such repeated mercy petitions. The first ones were on behalf of the Petitioners, which was taken forward for some years and then, without explanation, abandoned. Thereafter each of the petitioners has made their mercy petitions. Making repeated representations after their rejection is different, and making a representation in the form of a reminders when no decision is being taken is different. Further, these are not ordinary representations with the State Government that it would receive daily. These are representations of prisoners sentenced to death awaiting their execution who are anxious to know their fate. The delay, in this case, is not due to the Petitioner's fault. This is not a case of multiple mercy petitions. This mercy petition is also not a case of delay caused by the prisoner's legitimate appeals. The Petitioners' Appeals had ended with the Supreme Court dismissing the same on 31 August 2006. The delay thereafter is entirely due to the dealings of the executives. The Petitioners were entitled to file mercy petitions. The mercy petitions filed on their behalf were entertained. It was incumbent on the authorities to dispose of these expeditiously. There is a complete failure on the part of the executive of the State and to some extent of the Union and the matter was delayed at every stage. There is negligence in calling for the records, orders and documents, preparation of the note for approval for the ultimate decision of the constitutional authorities. The time span of

7 years, ten months and 15 days from 15 September 2006, till 30 July 2014, in the disposal of the mercy petitions is an undue, unexplained and inordinate delay.

44. In the case of *Shatrughan Chauhan and Another Versus Union of India and Others*¹² The Supreme Court has observed that not only the death sentence should be passed lawfully, but the execution of the sentence must also be in consonance with the constitutional mandate and not in violation of Constitutional principles.

45. After taking a review of the earlier decisions, the Bench of three learned Judges in *Shatrughan Chauhan* observed 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 agonizing 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, 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 T.V. Vatheeswaran Vs. State of T.N., (1983) 2 SCC 68 and the cases which follow it. It is in this light, the Indian cases, particularly, the leading case of Triveniben Vs. State of Gujarat, (1989) 1 SCC 678 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(PC), (ii) Catholic Commission for Justice & Peace in Zimbabwe v. Attorney General, (1993) 4 SA 239 (Zimbabwe SC), (iii) Soering v. United*

Kingdom, (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 (supra), further held that in doing so, if it is established that there was a 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 the death sentence into life imprisonment on 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 dehumanizing effect on the accused. Delay caused by circumstances beyond the prisoners' control mandates commutation of death sentence. In fact, in Vatheeswaran (supra), 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 (1983) 1 AC 719, by quoting:*

"sentence of death is one thing, sentence of death followed by lengthy imprisonment prior to execution is another".

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*, (1978) 1 SCC 248 which made the content of Article 21 substantive as distinguished from merely procedural."*

46. After laying down the law accordingly, the Supreme Court examined the matters before it on a case-to-case basis and commuted the petitioners' death sentences to life imprisonment. In the case of death convict Gurmeet Singh where the delay in disposal of mercy petition was seven years eight months, the Supreme Court commuted the death sentence to life imprisonment. Here Petitioners mercy petitions were decided and rejected with seven years, ten months and 15 days for the cause entirely attributable to the Respondents. Therefore, the Petitioners' case squarely falls within the ambit of the legal position, as summarized in the case of *Shatrughan Chauhan*.

47. The learned APP sought to rely upon the decision of the Division Bench of Karnataka High Court in the case of *B. A. Umesh Vs. The Union of India & Ors.*¹³, to contend that in that case despite delay death sentence was confirmed. This decision is distinguishable on facts. Here the contention of the petitioner was, there was a delay

¹³ Writ Petition No. 53944/16(GM-RES) dtd. 29/09/2021

of one year, two months and five days on the part of the Central Government. In this case, the Supreme Court had dismissed the petitioners' criminal appeal on 1 February 2011 and upheld the sentence of the death penalty. On 8 February 2011, the petitioner filed a mercy petition before the President of India. The petitioner also filed a Review Petition on 1 March 2011 in the Supreme Court and a petition under Article 32 of the Constitution of India. In the review petition, on 9 March 2011, an interim order was passed on 18 March 2011. The review petition was dismissed on 3 October 2016, and thereafter the petitioner approached Karnataka High Court on 3 October 2016, with a prayer of commutation. Hearing the arguments of the petitioner that there was a delay of two years, three months and seven days in the disposal of the mercy petition, the Division Bench of Karnataka High Court concluded that the delay was also on account of the conduct of the petitioners therein. The facts in this decision are not comparable to the present case as there is no such conduct of the Petitioners, and thus this decision cited is not applicable.

48. We also take note of the events and the conduct of the Respondent-State after this Writ Petition was filed. On 19 August 2014, Yogesh Desai, the Superintendent of Jail, through the learned Public Prosecutor, made a statement that the death sentence of the Petitioners will not be executed. Then on 20 August 2014, when the

Petition was heard, three Public Prosecutors represented the State Government, learned Additional Solicitor General appeared for the MHA, and the Court recorded the statement of Mr. Deepak Jadiye, Section Officer of Home Department, that during the pendency of the Petition the death sentence will not be executed. The Petition came up on board on 5 September 2014, when it was adjourned to 19 September 2014. It was listed under the caption for hearing and disposal. The State filed a reply affidavit at that time, and the matter was adjourned to 8 December 2014 to be placed high on board. On 8 December 2014, it was adjourned by consent to 18 December 2014. The matter appeared before another Division Bench on 9 April 2015 when it was listed for hearing on 23 April 2015. The matter was then listed on 21 January 2016 when at the request of the learned APP for the State, it was adjourned to 18 February 2016. None was present on behalf of the Petitioners then. Thereafter, the Petition was neither circulated by the Petitioners nor by the State Government. This Petition is a regular Criminal Writ Petition and not a confirmation case which has a different categorization for the prioritization by the Registry of this Court. In October 2021, the circulation note was moved by the Petitioners before this Bench. Circulation was immediately granted, and on 6 October 2021, we queried with the parties why had attempted a hearing since the year 2016 and directed the parties to place their response on record. Considering the position of the heavy causelist and the urgency, we

heard the Petition as a specifically fixed matter on the non-working day on 18 December 2021.

49. The Petitioners have given an explanation on their part by filing an additional affidavit stating that the Petitioners' local advocate had expired and there was lack of communication and also of Petitioners' ignorance and illiteracy. No satisfactory explanation is given by the Respondent- State Government. It needs to be emphasized is when the State of Maharashtra had already faced a situation where on account of the delay the Petitioners were seeking the benefit of legal position laid down in the case of *Shatrughan (supra)*, the State Government ought to have acted promptly and asked for being relieved of its statement by circulating the Petition. The Petition was not circulated by the State Government since the year 2016 after making a statement that the death sentence will not be executed. It is also pertinent to note that the Petition was circulated before us in October 2021 at the instance of the Petitioners and not by the State Government. In any case, even if the period during which this Petition is pending is to be excluded; still, the period before the filing of this Petition also is unexplained and gross.

50. The learned Counsel for the Petitioners argued that the Petitioners were kept in solitary confinement. The learned APP on

instructions stated that the Petitioners were not kept in solitary confinement but in a yard known as *Phansi* yard. The Division Bench in the case of *Pradeep Yashwant Kokade* dealt with the identical assertion and examined the factual position as to what is a *Phansi* yard. The Division Bench, after analysis of facts, found that number of prisoners on an average is different in a *Phansi* yard, on many occasions not higher than individual occupant. The name of the yard, *Phansi* yard (Death Convict yard) by itself, has an ominous connotation. Krishna Iyer, J., in the case of *Idiga Anamma* (supra), described it as the 'brooding horror of hanging haunting the prisoner in the condemned cell'. In the case of *Shatrughan Chauhan*, the Supreme Court held that this additional period of incarceration stemming from unexplained delay under such a situation is unconstitutional.

51. The State, by filing an additional affidavit, sought to point out certain instances about the conduct of the Petitioners in custody. Since the focus and the analysis is on delay, we do not find that conduct attributed to the Petitioners as significant, nor it is serious, apart from the fact that the Petitioners have denied it.

52. Despite the gross and unexplained delay and the resultant legal position, what is surprising is that the Respondent-State has vehemently contended before us that the State is insisting

on imposition of the death penalty even as of today. This contention overlooks the neglect and indifference of its officers. Though the Respondent- State has argued that the death sentences should be maintained, its officers have created a condition to defeat the arguments. The officers, more particularly of the State Government, have laid the foundation for the law declared by the Supreme Court to apply. If the State Government was serious about executing the death sentence as being argued before us, it should have ensured that it does not create a situation that attracts a legal position leading to commuting the death sentence. Thus, the contention of the Respondent- State that the Petitioners' death sentences should not be commuted and they should be executed despite the unexplained and gross delay, cannot be accepted.

53. Having considered the facts and circumstances in which the delay of seven years, ten months and 15 days in the disposal of the mercy petitions has occurred, we find that it is entirely attributable to the officers of the Respondent - Governments, more particularly that of the State Government. The delay is not attributable to the Petitioners. In light of the law laid down by the Supreme Court that Article 21 of the Constitution of India extends to the stage of execution of the sentence, that prolonged delay in execution of sentence of death has a dehumanizing effect and that circumstances beyond the Petitioners' control caused the delay in

this case, the resultant situation mandates commutation of their death sentences. The appropriate relief thus would be to vacate the sentence of death, and commute the same to that of life imprisonment.

54. Though the delay in deciding the mercy petitions of the Petitioners cannot be excused only based on the gravity of the crime, it is pertinent to note the observations made by this Court and the Supreme Court while dismissing the appeals of the petitioners in light of Petitioners argument that they should be directed to be released forthwith. The Division Bench confirming the death sentence, observed that evidence showed that the accused (Petitioners) not only indulged in such heinous serial kidnapping and killing but were completely indifferent to the suffering of the young children and their parents. The Division Bench found that the extent of the depravity of the Petitioners was highlighted in one of many murders, that is of one child- aged about one and half years. This child was killed by dashing his head against an iron bar at the Bus stand while the other accused were witnessing the killing eating Wada-pav. After the brutal killing of a girl child aged about two and half years, the accused decided to watch a movie and went to a theatre, carrying the dead body of the murdered child in a bag. The Division Bench observed that the nature of the injuries suffered by some of the children were so severe that only an extreme depraved

mind could have perpetuated such brutal killings. The judgment highlighted the 42 injuries, including incised wounds on another murdered child aged three to 4 four years. The Bench noted that almost every child was killed brutally. While dismissing the Appeal of the Petitioners, the Supreme Court observed that the nature of the crime and the systematic way in which each child was kidnapped and killed shows the depravity of the mind of the appellants. The Supreme Court observed that Petitioners are not likely to be reformed, and they were a menace to society. In law, the life imprisonment is till life of the convict unless the Competent Authority remits the remainder. The above facts are for the Competent Authority to keep in mind if it is called upon to decide the issue of remission.

55. To summarize, the position of law that unexplained and gross delay in disposal of mercy petitions may result in commuting the death sentence was already holding the field when the mercy petitions by and on behalf of the Petitioners were made. Despite this legal position, wholly due to the casual approach of the officers of the Respondent- State, the mercy petitions were not decided for seven years, ten months and 15 days. Though the procedure for deciding the mercy petitions mandates speed and expediency, the State machinery showed indifference and laxity at each stage of processing the files. That it took seven years only for the movement of files for

such a grave issue is unacceptable when electronic communications were available to be used. The argument of the State that the Petitioners should be executed even today overlooks that it is the dereliction of its officers that is the cause for commuting the death sentence to that of life imprisonment. The State represents the interest of the society in the criminal justice system. The Respondent State not only has violated the constitutional rights of the Petitioners but also failed the innocent victims of these heinous crimes. While we accede to the Petitioners prayer that their death sentences be commuted to that of life imprisonment, we decline the prayer of the Petitioners that they should be directed to be released forthwith having completed 25 years of imprisonment. That is so because the legal position is that sentence for imprisonment for life is for the remainder of the convict's life unless the Competent Authority remits the remaining sentence. The crimes committed by the Petitioners are heinous. The brutality shown by the Petitioners in murdering innocent children is beyond words to condemn. While confirming the death sentence, the High Court found no mitigating circumstances, nor any material that the Petitioners could be reformed or introduced in the society as responsible citizens. The Supreme Court dismissed their appeals observing that there are no circumstances in favour of the Petitioners, and they were a menace to the society. Therefore, if and when the issue of remission of the Petitioners sentence arises for consideration, we have no doubt that

the Competent Authority will consider the gravity of the offences, the adverse observations of this Court and the Supreme Court that the Petitioners are beyond being reformed.

56. As a result, the death sentences imposed on the Petitioners - Renuka Kiran Shinde and Seema Mohan Gavit be and hereby are commuted to one of the life imprisonments.

57. The warrant to execute the death sentence of the Petitioners, which was not given effect during the pendency and hearing of this Petition, is cancelled and set aside.

58. Rule is made absolute in the above terms. The Writ Petition stands disposed of accordingly.

(SARANG V. KOTWAL, J.)

(NITIN JAMDAR, J.)