

Jasbir Singh @ Jassa vs The State Of Punjab on 9 December, 2021

Bench: Uday Umesh Lalit, S. Ravindra Bhat, Bela M. Trivedi

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NOS. OF 2021
(Arising out of SLP (Crl.) Nos.9650-9651/2019)

JASBIR SINGH @ JASSA ETC.

...Appellant

VERSUS

STATE OF PUNJAB & OTHERS

...Respondent

WITH

SPECIAL LEAVE PETITION (CRIMINAL) No.9875/2019

JASBIR SINGH @ JASSA & ANOTHER

...Appellant

VERSUS

STATE OF PUNJAB & OTHERS

...Respondent

O R D E R

CRIMINAL APPEAL NOS. OF 2021 (Arising out of SLP (Crl.) Nos.9650-9651/2019) Leave granted.

These appeals challenge the final judgment and order dated 19.08.2019 passed by the Division Bench of the High Court of Punjab & Haryana at Chandigarh in Letters Patent Appeal Nos.1397 of 2019 and 1395 of 2019.

The appellants Jasbir Singh alias Jassa and Vikram Singh alias Vicky Walia and one Sonia were tried in the Court of Sessions Judge, Hoshiarpur (in Sessions Trial No.24 of 03.09.2005) for having committed offences punishable under Sections 302, 364A, 201 read with 120-B of the Indian Penal Code, 1860. By judgment dated 20.12.2006, the Trial Court found them guilty of the offences with which they were charged. By sentencing order dated 21.12.2006, they were given death sentence under Sections 302 and 364A IPC.

While dealing with Murder Reference No.01/2007 and Criminal Appeal No.105 (DB) of 2007 filed by the accused, the High Court of Punjab & Haryana at Chandigarh affirmed the view taken by the Trial Court and the award of death sentence.

The matter was carried to this Court and by its judgment and order in *Vikram Singh & Others v. State of Punjab* (2010) 3 SCC 56, the death sentence awarded to the present appellants was confirmed by this Court. However, the sentence of co-accused Sonia was modified to life imprisonment.

Review Petition (Crl.) Nos.192-193 of 2011 arising from the decision of this Court was dismissed by this Court on 20.04.2011.

After the decision of the Constitution Bench of this Court in *Mohd. Arif alias Ashfaq v. Registrar, Supreme Court of India & Others*, (2014) 9 SCC 737, another review petition was preferred which was also dismissed by this Court.

The death sentence having thus been affirmed right through, Civil Writ Petition being CWP No.21274 of 2016 was filed by the appellants submitting inter alia that there was undue and unexplained delay on the part of the concerned authorities in disposing of their Mercy Petitions and thus they were entitled to commutation of death sentence to one for imprisonment for life.

The aforesaid Writ Petition came up before a Single Judge of the High Court, who by his judgment and order dated 26.07.2019 dismissed the same. The correctness of the decision of the Single Judge was put in challenge by the appellants by filing Letters Patent Appeal Nos.1395 and 1397 of 2019. Both these appeals were disposed of by the Division Bench of the High Court by its judgment and order which is presently under challenge.

The Division Bench was of the view that the intra-Court appeal under the Letters Patent would not be maintainable. Reliance was placed on the decision of this Court in *Ram Kishan Fauzi v. State of Haryana & Others*, (2017) 5 SCC 533 and particularly on the following observations of this Court:

“On a plain reading of the aforesaid clause of the Letters Patent, it is manifest that no appeal lies against the order passed by the Single Judge in exercising of criminal jurisdiction. Thus, the question that is required to be posed is whether the learned Single Judge, in the obtaining factual matrix has exercised criminal jurisdiction or not.” While the challenge against the decision of the Division Bench was pending in this Court, Special Leave Petition (Criminal) No.9875 of 2019 was preferred by the appellants challenging the judgment and order passed by the Single Judge dismissing Civil Writ Petition No.21274 of 2016 (O&M).

In these appeals, we have heard Mr. Shri Singh, learned Advocate appearing for the appellants, Mr. K.M. Nataraj, learned Additional Solicitor General for Union of India, and Ms. Jaspreet Gogia, learned Advocate for the State.

The scope of matters where supervening circumstances are relied upon to submit that the delay in disposal of either mercy petitions or applications seeking commutation/remission afforded a ground seeking commutation of death sentence to life imprisonment, was considered in *Shatrughan Chauhan & Another v. Union of India & Others*, (2014) 3 SCC 1 by a three- Judge bench of this Court.

After considering all the earlier decisions on the point, broadly five heads were noticed by this judgment which were urged to be coming under the category as “Supervening Circumstances”. In the discussion beginning from paragraph 28 onwards, those five Supervening Circumstances were noticed and dealt with.

Out of these circumstances, insofar as issue of “delay” was concerned, this Court concluded that unexplained delay would be one of the grounds for commutation of sentence of death into life imprisonment and such supervening circumstances would be applicable to all types of cases, including the offences under TADA.

During the course of its discussion, this Court dealt with the issue whether while considering a writ petition founded on unexplained delay in disposal of mercy petitions or applications for commutation, the concerned Court would be reopening the case on merits. Paragraph 61 of the decision was as under:

“61. As already asserted, this Court has no jurisdiction under Article 32 to reopen the case on merits. Therefore, in the light of the aforesaid elaborate discussion, we are of the cogent view that undue, inordinate and unreasonable delay in execution of death sentence does certainly attribute to torture which indeed is in violation of Article 21 and thereby entails as the ground for commutation of sentence. However, the nature of delay i.e. whether it is undue or unreasonable must be appreciated based on the facts of individual cases and no exhaustive guidelines can be framed in this regard.” A clear-cut distinction was, therefore, recognized and accepted that consideration of a writ petition founded on the ground of delay in disposal of mercy petition or application for commutation of sentence, would be distinct and different from the original proceedings which culminated in the affirmation of death sentence.

The decision of this Court in *Ram Kishan Fauzi* (supra) arose out of a writ petition where relief in the nature of quashing of the recommendations of Lokayukta, which would have led to launching of criminal prosecution, was in issue. The relief prayed for was thus integrally connected with the criminal proceedings which could have been launched as a result of the recommendations of Lokayukta. It was in this context that this Court held that no appeal would be maintainable against the decision of the Single Judge which had dealt with such writ petition.

If a clear-cut distinction is accepted that while dealing with a writ petition based on the ground of delay in disposal of mercy petition or application for commutation, the Court does not and will not enter into the merits of the matter, the proceedings so

initiated by way of writ petition are not connected with the earlier determination of guilt in regular proceedings. The nature of such proceedings by way of a writ petition would be independent, original and founded on circumstances which occurred after the guilt stood determined by the criminal courts; and, therefore, such proceedings will certainly be one where remedy by way of an intra-Court appeal, if the concerned Rules of Letters Patent so permit, would be maintainable.

In the premises, in our view, the Division Bench of the High Court was in error in finding the Letters Patent Appeal to be not maintainable.

We, therefore, allow this appeal and set-aside the view taken by the Division Bench of the High Court and remit the matter for fresh consideration by the Division Bench. The Letters Patent Appeals are, therefore, restored to the file of the High Court.

Considering the fact that the issue has been pending consideration for a fairly long time, we request the Division Bench of the High Court to dispose of the pending Letters Patent Appeals as early as possible and preferably within three months from the receipt of the copy of this order.

The instant facts have raised a matter of concern. The first round of proceedings leading to the determination of guilt itself would normally take considerable length of time. Going by the provisions of the Code of Criminal Procedure, 1973 any award of death sentence would be subject to confirmation by the High Court and the matter would lie before a Division Bench of the High Court. If any subsequent appeal is preferred after the death sentence is confirmed by the High Court, going by the norms laid down by this Court, the matter would be taken up by a three-Judge Bench of this Court. Even a review arising therefrom would be considered by a three- Judge Bench.

After all these proceedings are over, a second round based on the alleged delay or other grounds in disposal of mercy petition or application for commutation can certainly be availed of by the concerned convicts, if the facts so justify. If such matters are listed before a Single Judge of the High Court from whose decision a further intra-Court appeal would be maintainable in certain cases, the entire process would lead to tremendous delay. At the same time, the matter having been seen by a Division Bench and by a three-Judge Bench in the Supreme Court, in the fitness of things, the second round if initiated ought to be considered by a Division Bench of the High Court and that too, as early as possible. We may, therefore, observe that if the concerned Rules or Procedure or the provisions of the Letters Patent Appeal permit so, the High Courts may do well to list the original writ petitions in the second round of litigation before the Division Bench itself for consideration. With these observations, the instant appeals are allowed. Let copies of this Order be sent to all the High Courts. SPECIAL LEAVE PETITION (CRIMINAL) No.9875/2019 In view of the order passed in the appeals arising from the decision of the Division Bench, no

orders are called for in this Special Leave Petition challenging the order passed by the Single Judge.

The Special Leave Petition stands disposed of. Pending applications, if any, also stand disposed of.

.....J. (UDAY UMESH LALIT)J. (S. RAVINDRA BHAT)
.....J. (BELA M. TRIVEDI) New Delhi, December 09, 2021.

ITEM NO.10

COURT NO.2

SECTION II-B

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Petition for Special Leave to Appeal (Crl.) Nos.9650-9651/2019 (Arising out of impugned final judgment and order dated 19-08-2019 in LPA No.1397/2019, 19-08-2019 in LPA No.1395/2019 passed by the High Court Of Punjab & Haryana At Chandigarh) JASBIR SINGH @ JASSA ETC. Petitioner(s) VERSUS STATE OF PUNJAB & ORS. Respondent(s) (IA No.117180/2020 - FOR PAROLE; IA No.117663/2020 - FOR EXEMPTION FROM FILING AFFIDAVIT; and, IA No.161098/2019 - FOR EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT) WITH SLP(Crl) No.9875/2019 (II-B) (IA No.161311/2019 - FOR EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT) Date : 09-12-2021 These matters were called on for hearing today. CORAM :

HON'BLE MR. JUSTICE UDAY UMESH LALIT HON'BLE MR. JUSTICE S. RAVINDRA BHAT HON'BLE MS. JUSTICE BELA M. TRIVEDI For Petitioner(s) Mr. Shri Singh, Adv.

Mr. Amartja Kanjilal, Adv.

Mr. Rajat Mittal, AOR For Respondent(s) Ms. Jaspreet Gogia, AOR Mr. Karanvir Gogia, Adv.

Ms. Shivangi Singhal, Adv.

Ms. Varnika Gupta, Adv.

Ms. Rooh-e-hina Dua, AOR Mr. K.M. Nataraj, ASG Mr. Anmol Chandan, Adv.

Mr. Sanjay Tyagi, Adv.

Mr. Adit Khorana, Adv.

Mr. Udai Khanna, Adv.

Mr. Arvind Kumar Sharma, AOR UPON hearing the counsel the Court made the following O R D E R SLP (Crl.) Nos.9650-9651/2019 Leave granted.

The appeals are allowed and the matter is remitted to the High Court for consideration afresh by the High Court. Let copies of this Order be sent to all the High Courts. Pending applications, if any, also stand disposed of. SPECIAL LEAVE PETITION (CRIMINAL) No.9875/2019 In view of the order passed in the appeals arising from the decision of the Division Bench, no orders are called for in this Special Leave Petition challenging the order passed by the Single Judge.

The Special Leave Petition stands disposed of. Pending applications, if any, also stand disposed of.

(MUKESH NASA)
COURT MASTER

(VIRENDER SINGH)
BRANCH OFFICER

(Signed Order is placed on the File)