Mukesh Kumar vs Union Of India on 29 January, 2020

Equivalent citations: AIR 2020 SUPREME COURT 694, AIRONLINE 2020 SC 72, 2020 (1) AJR 789, 2020 (1) KCCR SN 40 (SC), (2020) 2 SCALE 596

Author: R. Banumathi

Bench: A.S. Bopanna, Ashok Bhushan, R. Banumathi

REP

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION
WRIT PETITION (CRIMINAL) D NO.3334 OF 2020

MUKESH KUMAR ..

VERSUS

UNION OF INDIA AND OTHERS …Respon

ORDER

R. BANUMATHI, J.

This writ petition has been filed under Article 32 of the Constitution of India by the petitioner-Mukesh Kumar - a death-row convict. The petitioner has filed the writ petition challenging the rejection of his mercy petition by the President of India and seeking commutation of his death sentence inter alia on the following grounds:-

(i) Relevant materials were not placed before the President of India and they were kept out of consideration while considering the mercy petition;

(ii) The mercy petition was rejected swiftly and there was of mind in rejection of the mercy petition;

(iii) Solitary confinement of the petitioner for more than one and half years due to which the petitioner has developed severe psychiatric ailments;

(iv) Non-consideration of relevant circumstances like prisoners' suffering in the prison and consideration of extraneous and irrelevant circumstances; and

(v) Non-observance of established rules and guidelines in considering the petitioner's mercy petition.

2. The present writ petition relates to rejection of petitioner's mercy petition by the President of India. The petitioner is a death- row convict in Nirbhaya's case which relates to the gangrape of the victim in the moving bus in Delhi on the night of 16.12.2012. The trial court convicted the petitioner and other co-accused by judgment dated 13.09.2013. The High Court confirmed the death sentence by its judgment dated 13.03.2014 and the Supreme Court confirmed the same vide judgment dated 05.05.2017. In the judgment dated 05.05.2017 in Mukesh and Another v. State (NCT of Delhi) and Others (2017) 6 SCC 1, this Court after referring to various judgments and by elaborate reasonings held that there were no extenuating or mitigating circumstances. Likewise, the trial court and the High Court have also recorded detailed reasonings that the incident was brutal and falling within the category of "rarest of rare cases". The review petition was heard by the Supreme Court in open court and the same was considered and dismissed by judgment dated 09.07.2018. In the writ petition, the petitioner has enumerated dates and events right from day of petitioner's arrest i.e. 18.12.2012 from his village in connection with FIR No.413/2012 registered at Vasant Vihar P.S. till 14.01.2020 – the date on which the Supreme Court dismissed the petitioner's curative petition.

3. According to the petitioner, after exhausting all his remedies, he has filed mercy petition on 14.01.2020 addressed to the President of India under Article 72 of the Constitution of India and to the Lieutenant Governor under Article 161 of the Constitution and the through the Superintendent, Tihar Jail No.2. The Superintendent, Tihar Jail No.2 forwarded the petitioner's mercy petition along with his nominal roll, latest medical report of the petitioner, trial court judgment and details of the punishment of the petitioner to Officer in Charge – Legal, Prison, Tihar Jail for processing of the petitioner's mercy petition. The grievance of the petitioner is that despite a provision for recommendation by the jail superintendent in nominal roll, the Superintendent (Prison), Tihar Jail who had the opportunity to observe the petitioner on a daily basis is the person who is best placed to opine whether the petitioner has repented and reformed and is eligible for grant of pardon. According to the petitioner, his conduct in prison and his capacity to reform, is a crucial consideration for mercy.

4. It is alleged that within 24 hours of petitioner's mercy petition, on 15.01.2020, the Deputy Chief Minister announced that the Government has recommended the rejection of the mercy petition of the petitioner and sent it to the Lieutenant Governor. The petitioner's mercy petition was rejected by respondent No.1 – Lieutenant Governor on 15.01.2020. On 16.01.2020, respondent No.2-NCT of Delhi has recommended the rejection of petitioner's mercy petition and the same was forwarded to the President of India. The petitioner's mercy petition was rejected by the President of India on 17.01.2020. Pursuant to the rejection of petitioner's mercy petition, learned Sessions Judge on 17.01.2020 issued a fresh execution warrant directing the petitioner to be executed on 01.02.2020.

5. Since the petitioner did not possess any documents pertaining to the consideration of his mercy petition, on 17.01.2020, petitioner through his lawyer moved the application before the Superintendent, Tihar Jail, Secretary Home Department, Government of NCT and Secretary Home Department, UOI requesting for all documents pertaining to his mercy petition. On 20.01.2020,

petitioner also filed RTI application before the Superintendent, Tihar Jail, Secretary Home Department, Government of NCT and Secretary Home Department, UOI requesting for supply of all documents pertaining to his mercy petition. In response to the application moved through petitioner's lawyer as well as his RTI application dated 20.01.2020, the Superintendent, Tihar Jail provided the petitioner with the documents pertaining to the petitioner's mercy petition between 20.01.2020 and 23.01.2020.

6. Ms. Anjana Prakash, learned Senior counsel for the petitioner submitted that power under Article 72 of the Constitution is the constitutional duty and is to be exercised in the light of the guidelines and with great care and circumspection. Placing reliance upon Shatrughan Chauhan and another v. Union of India and others (2014) 3 SCC 1, it was submitted that while forwarding the mercy petition, all the relevant documents like case records, judgment of the trial court, High Court and the Supreme Court should be placed before the President of India an the Home Ministry is to send their views within reasonable time. Placing reliance upon communication from the Superintendent, Tihar Jail dated 14.01.2020, the learned Senior counsel submitted that as laid down in Shatrughan Chauhan, the relevant materials had not been placed before the President of India and the relevant materials had been kept out of consideration. The learned Senior counsel inter alia submitted that in violation of the principles laid down in Sunil Batra v. Delhi Administration and Others (1978) 4 SCC 494, the petitioner had been kept in solitary confinement and this aspect has not been taken into consideration. It was further contended that the sufferings of the petitioner in the prison during the custody has not been taken into consideration while considering his mercy petition.

7. Refuting the contention of the petitioner, Mr. Tushar Mehta, learned Solicitor General submitted that while forwarding the mercy petition all the relevant materials as laid down in paras 23 and 24.2 of Shatrughan Chauhan have been placed before the President of India. The learned Solicitor General submitted that all the guidelines laid down in Shatrughan Chauhan and other judgments have been substantially complied with. Insofar as the averments of solitary confinement, the learned Solicitor General submitted that as per the affidavit of the Director General, Prisons, the petitioner was only kept in a single room with iron bars open to air and the petitioner was intermingling with other prisoners as per rules and the same cannot be equated to solitary confinement. So far as the averment as to quick rejection of the mercy petition, the learned Solicitor General submitted that delay in disposal of the mercy petition may be a ground for consideration of the mercy petition; whereas quick consideration of the mercy petition and rejection of the same cannot be a ground for judicial review of the order of the President under Article 72 of the Constitution nor does it suggest that there was pre-determined mind and non-application of mind.

8. We have heard Ms. Anjana Prakash, learned Senior counsel appearing for the petitioner and Mr. Tushar Mehta, learned Solicitor General appearing for Union of India and Govt. of NCT of Delhi and considered their submission and perused the averments made in the petition.

9. What is impugned in this writ petition is the rejection of petition under Article 72 of the Constitution of India by the President of India on 17.01.2020. In this writ petition filed under Article 32 of the Constitution, the petitioner challenges the order of rejection of his mercy petition by the President of India inter alia on the various grounds that the settled principles of consideration of

mercy petition have not been followed.

10. As per Article 72 of the Constitution, the President of India shall have 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. As per Article 72(1)(c) of the Constitution, the power is inclusive of commutation in cases where the sentence is a sentence of death. Under Article 161 of the Constitution, similar is the power of the Governor to give relief to any person convicted of any offence against any law relating to a matter to which the executive power of the State extends. The disposal of the petitions filed under Articles 72 and 161 of the Constitution requires consideration of various factors i.e. the nature of crime, the manner in which the crime is committed and its impact on the society and that the time consumed in this process cannot be characterised as delay. As held in Devender Pal Singh Bhullar v. State of (NCT of Delhi) (2013) 6 SCC 195 that the disposal of the mercy petitions filed under Articles 72 and 161 of the Constitution of India requires consideration of various factors.

11. After referring to Kehar Singh v. Union of India (1989) 1 SCC 204 and other judgments, in Shatrughan Chauhan and another v. Union of India and others (2014) 3 SCC 1, the Supreme Court considered the power of the President or the Governor of the State under Articles 72 and 161 of the Constitution and observing that it is a constitutional duty, held as under:-

> "14. Both Articles 72 and 161 repose the power of the People in the highest dignitaries i.e. the President or the Governor of a State, as the case may be, and there are no words of limitation indicated in either of the two Articles. The President or the Governor, as the case may be, in exercise of power under Articles 72/161 respectively, may examine the evidence afresh and this exercise of power is clearly independent of the judiciary. This Court, in numerous instances, clarified that the executive is not sitting as a court of appeal, rather the power of President/Governor to grant remission of sentence is an act of grace and humanity in appropriate cases i.e. distinct, absolute and unfettered in its nature." .....
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> 19. In concise, the power vested in the President under Article 72 and the Governor under Article 161 of the Constitution is a constitutional duty. As a result, it is neither a matter of grace nor a matter of privilege but is an important constitutional responsibility reposed by the People in the highest authority. The power of pardon is essentially an executive action, which needs to be exercised in the aid of justice and not in defiance of it. Further, it is well settled that the power under Articles 72/161 of the Constitution of India is to be exercised on the aid and advice of the Council of Ministers."
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> 12. The manner of exercise of the power under the said Articles is a matter of discretion. In Shatrughan Chauhan in para (25), the Supreme Court held that "the manner of exercise of the power under the said Articles is primarily a matter of discretion and ordinarily the courts would not interfere with the decision on merits.

However, the courts retain the limited power of judicial review to ensure that the constitutional authorities consider all the relevant materials before arriving at a conclusion."

13. The Supreme Court has taken the consistent view that the executive orders under Articles 72 and 161 of the Constitution should be subject to limited judicial review. In Shatrughan Chauhan, it was held as under:-

> "22. ..... Accordingly, there is no dispute as to the settled legal proposition that the power exercised under Articles 72/161 could be the subject-matter of limited judicial review. (Vide Kehar Singh v. Union of India (1989) 1 SCC 204, Ashok Kumar v. Union of India (1991) 3 SCC 498, Swaran Singh v. State of U.P. (1998) 4 SCC 75, Satpal v. State of Haryana (2000) 5 SCC 170 and Bikas Chatterjee v. Union of India (2004) 7 SCC 634.)"

14. The grounds for judicial review of rejection petition under Article 72 of the Constitution of India by the President of India has been laid down in Satpal v. State of Haryana (2000) 5 SCC 170 which has been referred to with approval by the Constitution Bench in Bikas Chatterjee v. Union of India and Another (2004) 7 SCC 634 wherein it was held as under:-

> "9. In a Division Bench decision of this Court in Satpal v. State of Haryana (2000) 5 SCC 170 these very grounds have been restated as:
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> (i) the Governor exercising the power under Article 161 himself without being advised by the Government; or (ii) the Governor transgressing his jurisdiction; or (iii) the Governor passing the order without application of mind; or (iv) the Governor's decision is based on some extraneous consideration; or (v) mala fides. It is on these grounds that the Court may exercise its power of judicial review in relation to an order of the Governor under Article 161, or an order of the President under Article 72 of the Constitution, as the case may be.

10. In the case of Maru Ram v. Union of India, the Bench noted that the power conferred by Article 72 is a high prerogative power vested by the Constitution in the highest functionary of the Union. The Constitution Bench has also held that while exercising the power of judicial review the Court shall keep in mind that where a power is vested in a very high authority, it must be presumed that the said authority would act properly and carefully after an objective consideration of all the aspects of the matter and further, the higher the power the more cautious would be its exercise."

15. Although the decision of the President of India under Article 72 of the Constitution of India is open to judicial review but the grounds therefore are very limited, the Constitution Bench in Bikas Chatterjee held as under:-

> "8. Although the decision of the President of India on a petition under Article 72 of the Constitution is open to judicial review but the grounds therefor are very very limited. In the Constitution Bench decision in Maru Ram v. Union of India (1981) 1

SCC 107 this Court has held that it is only a case of no consideration or consideration based on wholly irrelevant grounds or an irrational, discriminatory or mala fide decision of the President of India which can provide a ground for judicial review."

16. In Epuru Sudhakar and Another v. Govt. of A.P. and Others (2006) 8 SCC 161, it was held as under:-

"34. The position, therefore, is undeniable that judicial review of the order of the President or the Governor under Article 72 or Article 161, as the case may be, is available and their orders can be impugned on the following grounds:

(a) that the order has been passed without application of mind;

(b) that the order is mala fide;

(c) that the order has been passed on extraneous or wholly irrelevant considerations;

(d) that relevant materials have been kept out of consideration;

(e) that the order suffers from arbitrariness.

35. Two important aspects were also highlighted by learned amicus curiae; one relating to the desirability of indicating reasons in the order granting pardon/remission while the other was an equally more important question relating to power to withdraw the order of granting pardon/remission, if subsequently, materials are placed to show that certain relevant materials were not considered or certain materials of extensive value were kept out of consideration. According to learned amicus curiae, reasons are to be indicated, in the absence of which the exercise of judicial review will be affected." The same view was reiterated in Narayan Dutt and others v. State of Punjab and another (2011) 4 SCC 353.

17. It is the consistent view taken by this Court that the exercise of power of judicial review of the decision taken by the President of India on mercy petition is very limited and the same can be subject to challenge only on the following grounds:-

(a) that the order has been passed without application of mind;

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(b)      that the order is mala fide;
(c)      that the order has been passed on extraneous or wholly
         irrelevant considerations;
(d)      that relevant materials have been kept out of consideration; and
(e)      that the order suffers from arbitrariness.
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18. In the light of the above principles, let us consider the present writ petition and the grounds urged by the petitioner, the petitioner has primarily raised the following

grounds to challenge the order of rejection of the mercy petition:-

(i) non-sending of relevant materials and non-application of mind and failure to consider relevant circumstances;

(ii) absence of recommendation of the Superintendent, Tihar Jail in nominal roll;

(iii) sufferings of the petitioner in the prison;

(iv) solitary confinement;

(v) the petition has been rejected swiftly without application of mind.

19. Re: Contention: Non-placing of relevant materials before the President of India and relevant materials were kept out of the consideration:- Placing reliance upon Shatrughan Chauhan, It was submitted that the power to commute a death sentence is not an act of grace but a constitutional responsibility of the President of India or Governor of a State. It was submitted that all the relevant documents and materials as laid down in Shatrughan Chauhan case and other judgments ought to have been placed before the President of India. Drawing our attention to the communication dated 14.01.2020 from the Office of the Superintendent, Central Jail, Tihar, it was submitted that only four documents as stated in Annexure P/2 viz. (i) Nominal Roll of Mukesh S/o Mange Lal; (ii) Latest Medical Report; (iii) Trial Court Judgment; and (iv) Details of Punishments are said to have been forwarded and all the relevant materials have not been placed before the President. Learned Senior counsel has submitted that the documents like (i) DNA Report exhibited by PW 45; (ii) Odontology Report; (iii) Complaint under Section 154 Cr.P.C.; (iv) Case diary and charge sheet and such other documents which would prove the innocence of the petitioner were not placed before the President and thus the relevant materials were kept out of the consideration of the President of India.

20. Considering the question as to the relevant documents to be placed before the President of India and after referring to Epuru Sudhakar v. State of A.P. (2006) 8 SCC 161, in Shatrughan Chauhan, the Supreme Court held as under:-

"24.2. ..... in Epuru Sudhakar v. State of A.P. (2006) 8 SCC 161, this Court held thus:

.....

35. Two important aspects were also highlighted by learned amicus curiae; one relating to the desirability of indicating reasons in the order granting pardon/remission while the other was an equally more important question relating to power to withdraw the order of granting pardon/remission, if subsequently, materials are placed to show that certain relevant materials were not considered or certain materials of extensive value were kept out of consideration. According to learned amicus curiae, reasons are to be indicated, in the absence of which the exercise of judicial review will be affected.

> 103. ..... For illustration, on receipt of mercy petition, the Department concerned has to call for all the records/materials connected with the conviction. Calling for piecemeal records instead of all the materials connected with the conviction should be deprecated. When the matter is placed before the President, it is incumbent on the part of the Home Ministry to place all the materials such as judgment of the trial court, High Court and the final court viz. Supreme Court as well as any other relevant material connected with the conviction at once and not call for the documents in piecemeal."

21. The documents stated in Annexure P/2 sent by the Superintendent, Central Jail, Tihar for consideration of the mercy petition filed by the petitioner were the documents sent to the Officer In-Charge (Legal), Prison Headquarters, Tihar. The four documents viz. (i) Nominal Roll of Mukesh S/o Mange Lal; (ii) Latest Medical Report; (iii) Trial Court Judgment; and (iv) Details of Punishments in Annexure P/2 were probably the only documents available with the Superintendent or called for from the Superintendent, Central Jail, Tihar. There is no merit in the contention that only the above four documents were the materials placed before the President of India.

22. In this regard, the Joint Secretary, Ministry of Home Affairs has filed an affidavit stating that all the relevant documents as laid down in Paras (23) and (24.2) of Shatrughan Chauhan case were placed before the President and after detailed examination, the President has rejected the mercy petition on 17.01.2020. To satisfy ourselves, we have perused two files containing the communications of the Ministry of Home Affairs, NCT of Delhi and the office of Lieutenant Governor and the file containing the note put up before the President of India. From the covering letter dated 15.01.2020 from NCT of Delhi addressed to Deputy Secretary (Judicial), Ministry of Home Affairs, it is seen that all the relevant documents viz., the judgment of the trial court, High Court and the Supreme Court and legible and clean copy of records of the case and the details of the review/curative petitions filed by the petitioner and other co-accused along with the present status and other details of the petitioner like past criminal history, economic condition of the family of the petitioner and the recommendation of the Government of NCT of Delhi were all sent by the NCT of Delhi along with mercy petition to be placed before the President of India. By perusal of the note, we have seen that all the documents were taken into consideration and upon consideration of the relevant records and the facts and circumstances of the surrounding crime, the President has rejected the mercy petition. There is no merit in the contention that the relevant materials were kept out of the consideration of the President.

23. Insofar as the documents like (i) DNA Report exhibited by PW 45; (ii) Odontology Report; (iii) Complaint under Section 154 Cr.P.C; (iv) Case diary and charge sheet and other documents like Dying Declaration, etc. are concerned, they are the materials upon which reliance has been placed upon by the petitioner to put forth his defence. The defence of the petitioner and the above materials were considered by the trial court, High Court and the Supreme Court and the defence to put forth by the petitioner has been rejected. It is not necessary that each and every material relied upon by the petitioner-accused should have been placed before the President. There is no merit in the contention of the petitioner that relevant materials were kept out of the consideration of the President.

24. Absence of recommendation of the Superintendent, Tihar Jail:- The Superintendent, Central Jail, Tihar has sent the Nominal Roll. Column No.23 of the Nominal Roll relates to "recommendations of the Jail Superintendent, if any". One of the grounds urged by the petitioner is that forwarding of the mercy petition without recommendation of the Superintendent of Jail which is the essential requirement as per the guidelines. According to the petitioner, the Superintendent of Jail is the right person to make recommendation as to the conduct of the petitioner in the jail and about his repentance and that the petitioner has reformed. The learned counsel for the petitioner contended that Column No. 23 was left blank and thus, the guidelines had not been followed. It was submitted that recommendation of the Superintendent, Central Jail, Tihar ought to have been called for as he is the only person who could have given his opinion that the prisoner's conduct in prison is good and whether the petitioner repented and whether it is a fit case for consideration of mercy petition.

25. The nominal roll is sent by the Superintendent to give various details as per the columns contained thereon. Though Column No.23 relates to recommendations of the Jail Superintendent, it is not incumbent upon the Jail Superintendent to give his recommendations as the column contains the word "recommendations of the Jail Superintendent, if any". Though Column No.23 relates to recommendation by the Superintendent, Tihar Jail, the word "if any" indicates that the Superintendent may or may not give his remarks/recommendations. That apart, as rightly contended by the learned Solicitor General, considering the high position of the President of India and the constitutional duty which the President is discharging, it may not be appropriate for the Superintendent to make the recommendation nor was it necessary for the authorities to call for the opinion of the Jail Superintendent as to the subsequent conduct of the prisoner while in prison unless the situation warrants.

26. It is stated that the guidelines "Procedure Regarding Petitions for Mercy in Death Sentence Cases" issued by the Ministry of Home Affairs, Government of India have been mentioned and the said seven point guidelines are called "Guidelines for Dealing with Mercy Petitions", read as under:-

> (i) Personality of the convict (such as age, sex or mental deficiency).
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> (ii) Has the appellate court express doubt on the reliability of evidence but has nevertheless decided on conviction?
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> (iii) Is it alleged that fresh evidence is obtainable, mainly with a view to seeing whether a fresh inquiry is justified?
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> (iv) Has the Court, on appeal, enhanced the sentence?
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> (v) Is there any difference of opinion in the Bench of High Court judges necessitating reference to a third judge?
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> (vi) Was the evidence duly considered in fixing responsibility, if it was a gang murder case?

(vii) Were there long delays in the investigation and the trial?

The grievance of the petitioner is that respondents have rejected the petitioner's mercy petition without any application of mind on account of extraneous considerations which is wholly unsustainable in law. As held by the Constitution Bench in Maru Ram v. Union of India and others (1981) 1 SCC 107 and others and referred to Bikas Chatterjee, the court must keep in view that where the power is vested in a very high authority, it must be presumed that the said authority would take into consideration all the aspects of the matter. We find no reason to hold that the above guidelines were not kept in view.

27. Learned counsel appearing for the petitioner has inter alia submitted that the petitioner has been in solitary confinement for more than one and a half years and it is in gross violation of law laid down by the Supreme Court in Sunil Batra v. Delhi Administration and Others (1978) 4 SCC 494 and Shatrughan Chauhan.

28. Observing that the custodial segregation specified in Section 30(2) of the Prisons Act is attracted, only after the mercy petition is rejected by the President or the Governor and only then the person is "under sentence of death" attracting custodial segregation specified in Section 30(2) of the Prisons Act, in Shatrughan Chauhan, it was held as under:-

> "90. It was, therefore, held in Sunil Batra v. Delhi Administration (1978) 4 SCC 494 that the solitary confinement, even if mollified and modified marginally, is not sanctioned by Section 30 of the Prisons Act for prisoners "under sentence of death". The crucial holding under Section 30(2) is that a person is not "under sentence of death", even if the Sessions Court has sentenced him to death subject to confirmation by the High Court. He is not "under sentence of death" even if the High Court imposes, by confirmation or fresh appellate infliction, death penalty, so long as an appeal to the Supreme Court is likely to be or has been moved or is pending. Even if this Court has awarded capital sentence, it was held that Section 30 does not cover him so long as his petition for mercy to the Governor and/or to the President permitted by the Constitution, has not been disposed of. Of course, once rejected by the Governor and the President, and on further application, there is no stay of execution by the authorities, the person is under sentence of death. During that interregnum, he attracts the custodial segregation specified in Section 30(2), subject to the ameliorative meaning assigned to the provision. To be "under sentence of death" means "to be under a finally executable death sentence".

29. Though it is alleged that the petitioner has been in solitary confinement for 08 months and 09 days in violation of the principles of the Sunil Batra, the same is refuted by the respondents. In his affidavit, Director General, Prisons has denied the averment that the petitioner was kept in solitary confinement. It is stated that for security reasons, the petitioner was kept in one ward having multiple single rooms and barracks and the said single room had iron bars open to air and the same cannot be equated with solitary confinement/single cell. It is stated that the prisoner/petitioner who was kept in the single room comes out and mixes up with the other inmates in the prison on daily

basis like other prisoners as per rules. Considering the averments in the affidavit filed by the Director General, Prisons, the contention of the petitioner that he has been kept in solitary confinement in violation of the principles of Sunil Batra v. Delhi Administration and Others (1978) 4 SCC 494 cannot be countenanced. This cannot therefore be a ground for review of the order rejecting the petitioner's mercy petition.

30. Alleged sufferings in the prison:- Taking us through the mercy petition, learned Senior counsel for the petitioner submitted that in the mercy petition, the petitioner has narrated about the alleged sufferings and that he was beaten up in the prison and sexually harassed and was suffering everyday in the prison. The petitioner has further averred that his brother Ram Singh was actually murdered though his death was projected as "suicide" and that due to death of his brother, the petitioner was living in "perpetual fear". The learned Senior counsel contended that the averments made by the petitioner as to his sufferings in the prison had not been taken into consideration while rejecting his mercy petition.

31. As per the settled legal position held in Narayan Dutt and others v. State of Punjab and another (2011) 4 SCC 353, Epuru Sudhakar and Another v. Govt. of A.P. and Others (2006) 8 SCC 161 and Shatrughan Chauhan, the exercise of power under Article 72/161 of the Constitution is subject to challenge only on the grounds indicated thereon. The alleged sufferings in the prison cannot be a ground for judicial review of the executive order passed under Article 72 of the Constitution rejecting the petitioner's mercy petition.

32. Consideration and quick rejection of petitioner's Mercy Petition- Not a ground for review:- On behalf of the petitioner, it was contended that there was non-application of mind and the entire matter proceeded with bias and pre-determined mind. The learned Senior counsel for the petitioner submitted that after dismissal of the curative petition on 14.01.2020, the petitioner submitted the mercy petition which was forwarded by the Superintendent on the very same day and in less than 24 hours of having received the petitioner's mercy petition, the Deputy Chief Minister, Govt. of NCT of Delhi announced that the government had made the recommendation for rejection of the petitioner's mercy petition. The learned Senior counsel for the petitioner contended that the petitioner's mercy petition was sent to the Lieutenant Governor at "lightening speed" and on 16.01.2020, the Delhi Govt. recommended the rejection of petitioner's mercy petition in less than 24 hours and forwarded it to the President of India and the same was rejected by the President on 17.01.2020. It was therefore submitted that there was non-application of mind in rejection of the petitioner's mercy petition as the same has been rejected with "lightening speed" and with pre-determined mind.

33. The petitioner filed the curative petition before the Supreme Court on 08.01.2020 and the same was dismissed by the Supreme Court on 14.01.2020. The petitioner filed mercy petition addressed to the President of India under Article 72 of the Constitution of India and also to the Lieutenant Governor under Article 161 of the Constitution of India on 14.01.2020. The Lieutenant Governor forwarded the same to the Ministry of Home Affairs on 15.01.2020 with the relevant records. The Ministry of Home Affairs forwarded the same to the President of India on 16.01.2020 with the relevant records. After consideration of the matter, the President of India rejected the petitioner's

mercy petition on 17.01.2020 and the petitioner was informed about the rejection.

34. As held by the Constitution Bench in Maru Ram and referred to Bikas Chatterjee, the court shall keep in mind that where the power is vested in a very high authority, it must be presumed that the said authority would act carefully after an objective consideration of all the aspects of the matter. As pointed out earlier, the note put up before the President of India is a detailed one and that all the relevant materials were placed before the President of India and upon consideration of the same, the mercy petition was rejected. Merely because there was quick consideration and rejection of the petitioner's mercy petition, it cannot be assumed that the matter was proceeded with pre-determined mind.

35. As rightly contended by the learned Solicitor General, delay in disposal of mercy petition may be a ground calling for judicial review of the order passed under Article 72/161 of the Constitution. But the quick consideration of the mercy petition and swift rejection of the same cannot be a ground for judicial review of the order passed under Article 72/161 of the Constitution. Nor does it suggest that there was pre-determined mind and non-application of mind.

36. In the result, we do not find any ground for exercise of judicial review of the order of the President of India rejecting the petitioner's mercy petition and this petition is liable to be dismissed. The writ petition is dismissed accordingly.

……..J. [R. BANUMATHI] ……..J. [ASHOK BHUSHAN] .....J. [A.S. BOPANNA] New Delhi;

January 29, 2020.