

VINAY SHARMA

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v.

UNION OF INDIA AND OTHERS

(Writ Petition (Crl.) No. 65 of 2020)

FEBRUARY 14, 2020

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**[R. BANUMATHI, ASHOK BHUSHAN AND
A. S. BOPANNA, JJ.]**

Constitution of India: Art.72 – Writ petition challenging the rejection of mercy petition by the President of India and seeking commutation of death sentence inter alia on the grounds of non furnishing of relevant materials under the RTI Act, non-consideration of relevant material, torture, mental illness, illegal solitary confinement – Held: In the writ petition filed u/Art.32 seeking judicial review of the order of the President passed u/Art.72, the scope is very limited and the Court is called upon to examine:- where the order has been passed without application of mind; where the order has been passed on extraneous or wholly irrelevant considerations; that relevant materials are kept out consideration and the order suffers from arbitrariness – In the instant case, the case records, judgments of trial court, High Court and Supreme Court, clean copy of records of the case, Nominal Roll of the petitioner, medical report of the petitioner, Social Investigation Report and other relevant documents were forwarded to the Ministry of Home Affairs – Recommendation by the Lieutenant Governor and Home Minister for rejection of mercy petition was made after perusing the file and therefore plea of non-application of mind on their part is not tenable – All the documents along with the mercy petition were taken into consideration – Medical report of the petitioner along with the treatment and his latest report was placed before the President – Alleged suffering of the petitioner in the prison cannot be ground for judicial review of the executive order passed u/Art.72 – When the highest constitutional authority, upon perusal of the Note and the various documents placed along with the mercy petition, took decision to reject the mercy petition, it cannot be contended that the highest constitutional authority had not applied its mind to the documents – While forwarding the mercy petition, the Social Investigation Report of the petitioner containing the economic

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- A *conditions of the family was also enclosed – It is also clear from the affidavit of Prison Authority, that the petitioner was not kept in solitary confinement, rather he was kept in protective custody which was for his own benefit and also for ensuring the security – The Note put up before the President is detailed one and all the relevant materials were placed before the President and upon consideration of same, the mercy petition was rejected – No ground for exercise of judicial review of the order rejecting the petitioner's mercy petition was made out – Writ petition dismissed – Administrative law – Judicial review.*
- B *materials were placed before the President and upon consideration of same, the mercy petition was rejected – No ground for exercise of judicial review of the order rejecting the petitioner's mercy petition was made out – Writ petition dismissed – Administrative law – Judicial review.*

C *Maru Ram v. Union of India and Others (1981) 1 SCC 107 – Followed.*

Sunil Batra v. Delhi Administration and Others (1978) 4 SCC 494 : [1979] 1 SCR 392; Shatruघan Chauhan and Another v. Union of India and Others (2014) 3 SCC 1 : [2014] 1 SCR 609; Devender Pal Singh Bhullar v. State of (NCT of Delhi) (2013) 6 SCC 195 : [2013] 6 SCR 676; Satpal v. State of Haryana (2000) 5 SCC 170 : [2000] 3 SCR 858; Bikas Chatterjee v. Union of India and Others (2004) 7 SCC 634; Epuru Sudhakar and Another v. Govt. of A.P. and Others (2006) 8 SCC 161 : [2006] 7 Suppl. SCR 81; Narayan Dutt and Others v. State of Punjab and Another (2011) 4 SCC 353 : [2011] 4 SCR 983 – relied on

D *Mukesh and Another v. State (NCT of Delhi) and Others (2017) 6 SCC 1 – referred to*

E *Mukesh and Another v. State (NCT of Delhi) and Others (2017) 6 SCC 1 – referred to*

<u>Case Law Reference</u>		
(2017) 6 SCC 1	referred to	Para 2
[1979] 1 SCR 392	relied on	Para 7
[2014] 1 SCR 609	relied on	Para 7
G [2013] 6 SCR 676	relied on	Para 10
[2000] 3 SCR 858	relied on	Para 11
(2004) 7 SCC 634	relied on	Para 11

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[2006] 7 Suppl. SCR 81	relied on	Para 12	A
[2011] 4 SCR 983	relied on	Para 25	
(1981) 1 SCC 107	followed	Para 31	
(2004) 7 SCC 634	relied on	Para 31	

CRIMINAL ORIGINAL JURISDICTION: Writ Petition B
(Criminal) No. 65 of 2020.

Under Article 32 of the Constitution of India

Dr. A.P. Singh, V.P. Singh, Ms. Geeta Chauhan, Ms. Richa Singh,
Ms. Pratima Rani, Sadashiv, Advs. for the Petitioner.

Tushar Mehta, SG, Chirag M. Shroff, Kanu Agrawal, Ms. Swati Ghildiyal, B.V. Balaram Das, Ms. Seema Kushwaha, Ms. Yashika Verma,
Ms. Abhilasha Bharti, Advs. for the Respondents.

The Order of the Court was delivered by

R. BANUMATHI, J.

1. This writ petition has been filed under Article 32 of the Constitution of India by the petitioner-Vinay Sharma – 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 grounds:- (i) Non-furnishing of relevant materials under RTI Act; (ii) non-consideration of relevant material; (iii) torture; (iv) mental illness; (v) consideration of irrelevant material by the respondent authorities; and (vi) illegal solitary confinement.

2. The petitioner is a death-row convict in Nirbhaya's case which relates to the gang rape of the victim in the moving bus in Delhi on the night of 16/17.12.2012. The trial court by its judgment dated 10.09.2013 convicted the petitioner and other co-accused in SC No.114 of 2013 under Sections 120-B, 365, 366 read with Section 120-B IPC, 307 read with Section 120-B IPC, 376(2)(g), 377 read with Section 120-B IPC, 302 read with Section 120-B IPC, 395, 397 read with Section 120-B IPC, 201 read with Section 120-B IPC and 412 IPC. The trial court imposed the death sentence on the petitioner and other co-accused by the order dated 13.09.2013. The High Court by its judgment dated 13.03.2014 confirmed the conviction of the petitioner and co-accused and also the death sentence imposed upon them. For awarding death sentence, the trial court and the High Court have recorded detailed

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- A reasonings that the incident was gruesome and falling within the category of “rarest of rare cases”. The Supreme Court by its judgment dated 05.05.2017 in *Mukesh and Another v. State (NCT of Delhi) and Others* (2017) 6 SCC 1 confirmed the conviction and also the death sentence and dismissed the appeal preferred by the petitioner and other co-accused. After referring to various judgments and by elaborate reasonings, the Supreme Court held that there were no extenuating or mitigating circumstances. The review petition was heard at length by the Supreme Court in the open court and the same was considered and dismissed by the order dated 09.07.2018.
- B 3. On 07.01.2020, learned Sessions Court, Patiala House issued an execution warrant to execute the petitioner on 22.01.2020. On 08.01.2020, petitioner filed a curative petition before the Supreme Court and the same was dismissed on 14.01.2020. After rejection of co-accused Mukesh’s mercy petition, Sessions Court issued a fresh warrant for execution directing that the petitioner and the co-accused to be executed
- C on 01.02.2020. On 10.01.2020, petitioner’s counsel sought for the documents from the Superintendent and after obtaining the documents, the petitioner preferred the mercy petition to the President of India on 29.01.2020. The President of India rejected the mercy petition on 01.02.2020 and the same was communicated to the petitioner in Tihar Central Jail on 01.02.2020.
- D 4. On 31.01.2020, learned Sessions Judge passed an order postponing the execution of the death warrant. The criminal revision petition filed by the Union of India has been disposed of by the High Court by its order dated 05.02.2020. Challenge in this writ petition is the rejection of mercy petition by the President of India under Article 72 of the Constitution on 01.02.2020.

Contentions:-

- E 5. Dr. A.P. Singh, learned counsel appearing on behalf of petitioner Vinay Sharma challenged the rejection of his mercy petition by the President of India contending that the Lieutenant Governor and Home Minister, NCT of Delhi have not signed the recommendation for rejection of the petitioner’s mercy plea. It was submitted that the relevant materials like the case records, correct medical status report of the petitioner, Social Investigation Report and the nominal roll of the petitioner were not placed before the President of India and the concerned authorities
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and these documents were kept out of consideration and only irrelevant materials were placed before the President of India which according to the learned counsel, vitiates the order of rejection of mercy petition. As per Dr. A.P. Singh, he approached the respondents authorities that is office of the President of India, Lieutenant Governor, Ministry of Home Affairs and the Department of Home, Govt. of NCT of Delhi under the Right to Information Act, 2005 and filed RTI application requesting for records pertaining to the rejection of the mercy petition of the petitioner; however, the same have not been furnished to nor was there any reply to his application. However, the learned counsel submitted that he was permitted to peruse the relevant file. According to the learned counsel, without access to the records, the petitioner cannot exercise his right under Article 21 of the Constitution and he cannot challenge the order rejecting his mercy petition.

6. It is the further argument of the learned counsel for the petitioner that petitioner Vinay Sharma was only 19 years old and is not a habitual offender and hails from lower class of society and these aspects could have been considered only by a thorough Social Investigation Report which was not placed before the President of India.

7. The learned counsel submitted that the petitioner was kept in solitary confinement even while his mercy petition was still pending before the President of India and such illegal confinement was unfair and in violation of *Sunil Batra v. Delhi Administration and Others (1978) 4 SCC 494* and this becomes a ground for commutation of death sentence. It was further urged that the petitioner was tortured in the jail not only physically and there were also mental tortures and on number of days, petitioner Vinay Sharma was sent to medical treatment and also for psychological treatment. It is the claim of the learned counsel that the petitioner has been on psychological medication and diagnosed with the adjustment disorder and that as per Delhi Prisons Rules, the petitioner should have been provided with proper care and treatment for mental illness and on the basis of the medical records. It is the claim of the learned counsel that the prisoners with medical illness and mental illness cannot be executed in terms of the UN General Assembly Resolutions as referred to in *Shatrughan Chauhan and Another v. Union of India and Others (2014) 3 SCC 1* and other Union Treaties.

8. Countering the above arguments, Mr. Tushar Mehta, the learned Solicitor General has submitted that all the relevant materials were placed

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- A before the concerned authorities and the mercy petition was forwarded to the President of India along with all those documents including the details of the court cases, records of the case, medical record, Social Investigation Report. It was submitted that the mercy petition along with the relevant documents was received by the Ministry of Home Affairs
- B who have perused and with the appropriate note file, thereafter documents were placed before the President of India with a detailed Note File. Insofar as the alleged medical illness/mental illness of the petitioner, learned Solicitor General submitted that the petitioner was regularly checked and the Medical Officer In-Charge, Central Jail Hospital has issued the medical report stating that the petitioner was psychologically well adjusted and his general condition is stable and the medical report of the petitioner has been placed before the President of India. Drawing our attention to the affidavit filed by the Director General (Prisons), Tihar Jail, it was submitted that the petitioner was never placed in solitary confinement and was placed in a single room with iron bars and the petitioner intermittently mingled with other prisoners. The learned Solicitor General submitted that the scope of judicial review of the order passed by the President of India is very limited and the contentions urged on behalf of the petitioner would not fall within the grounds of review as laid down by various judgments of this Court and prayed for dismissal of the writ petition.
- E 9. 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 various grounds that the settled principles of consideration of mercy petition have not been followed and that the relevant materials were not placed before the President of India.
- F 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
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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. The grounds for judicial review of rejection of mercy petition under Article 72 of the Constitution has been considered in *Satpal v. State of Haryana (2000) 5 SCC 170* and the Constitution Bench judgment in *Bikas Chatterjee v. Union of India and Others (2004) 7 SCC 634* and *Shatrughan Chauhan*. After referring to various decisions, the Supreme Court considered the power of the President of India or the Governor of the State under Articles 72 and 161 of the Constitution and observing that the power vested in the President of India under Article 72 and the Governor under Article 161 of the Constitution is a constitutional duty, in *Shatrughan Chauhan*, it was 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

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- A Constitution of India is to be exercised on the aid and advice of the Council of Ministers.”
12. In a number of decisions, 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 WP(Crl.) D No.3334 of 2020 - similar petition filed by co-accused Mukesh Kumar, we have referred to number of judgments which have elaborately considered the scope of judicial review of the decision of the President of India on a petition under Article 72 of the Constitution of India. It is not necessary to refer to all those decisions referred to in WP(Crl.) D No.3334 of 2020. Suffice to refer to the *Epuru Sudhakar and Another v. Govt. of A.P. and Others (2006) 8 SCC 161* and *Shatrughan Chauhan*. In *Epuru Sudhakar*, the Court has referred to the various grounds available for limited judicial review under Article 72 of the Constitution, it was held as under:-
- D “**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.
- F **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.”
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13. In *Shatrughan Chauhan*, 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.”

14. 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 his mercy petition:-

- (i) non-furnishing of copy of records pertaining to the rejection of the mercy petition of the petitioner under Right to Information Act, 2005;
- (ii) relevant materials were kept out of consideration;
- (iii) torture while in custody and consequential illness and mental illness of the petitioner and non-placing of materials pertaining to health condition of the petitioner;

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- A (iv) illegal solitary confinement; and
- (v) Bias order was passed with prejudiced mind.

15. Re. Contention: Records not made available to the petitioner under RTI Act : Learned counsel for the petitioner while

- B seeking to put forth the contention would submit that he had made an application to the office of the President of India, Lieutenant Governor, Ministry of Home Affairs and the Department of Home, Govt. of NCT of Delhi under the Right to Information Act, 2005 seeking copies of certain documents from the file which were relevant in the context of consideration of the mercy petition. However, the same has not been
- C replied to. In that regard, the learned counsel contended that he was permitted to peruse the records and since the copies were not made available, he be permitted to peruse the original file and make his submissions in the court. Insofar as the grievance raised by the learned counsel for the petitioner that he had not been furnished copies under the Right to Information Act, we do not find it appropriate to advert to that aspect of the matter since it is beyond the scope of consideration in a petition of the present nature.

16. In the writ petition filed under Article 32 of the Constitution of India seeking judicial review of the order of the President passed under Article 72 of the Constitution, the scope is very limited and the Court is

- E called upon to examine:- (i) where the order has been passed without application of mind; (ii) where the order has been passed on extraneous or wholly irrelevant considerations; (iii) that relevant materials have been kept out of consideration; and (iv) the order suffers from arbitrariness.

- 17.** Insofar as the contention by the learned counsel that the file
- F be made available to him, we are of the opinion that even such a course would not be appropriate. During the course of hearing, we have rejected the request of the learned counsel appearing for the petitioner that he should be permitted to peruse the file and then make the submission on behalf of the petitioner. In any event, we have heard learned counsel for G the petitioner exhaustively and the contentions with regard to the alleged discrepancies which is said to have been observed by the learned counsel in the manner in which the file had been processed and has been taken up for consideration. Having taken note of such contention, this Court thought it fit to look into the file to satisfy itself as to whether the procedure as contemplated has been followed. Accordingly, we have
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adopted that course. In that regard, from the file the learned Solicitor General has referred to the various documents/enclosures forwarded along with the mercy petition, nature of consideration made from the stage of receipt of the mercy petition and an appropriate note put at various stages was referred and the file relating to the same was made available to the Court. The consideration made by us is based on the contents of the file. In any event, as already indicated above, the issue with regard to the nature of documents required not being provided under the Right to Information Act would not arise, keeping in view the definite parameters under which the petition of the present nature is required to be considered. Further, since this Court has examined the file as indicated above, the petitioner cannot make grievance that because of the non-furnishing of the copy of the documents, prejudice is caused to them.

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18. Re. Contention that the Lieutenant Governor, Delhi and Home Minister, Govt. of NCT of Delhi did not sign the relevant file:- Learned counsel for the petitioner submitted that he was permitted to inspect the file and on such inspection, he has noticed that the Lieutenant Governor and Minister (Home), NCT of Delhi did not peruse the file and on the other hand, upon the message sent by an official, they have recommended the rejection of the mercy petition. It was further submitted that on inspection of file, the learned counsel learnt that the relevant file has not been signed by the Minister (Home), NCT of Delhi and the Lieutenant Governor, Delhi. Upon perusal of the file relating to the mercy petition of the petitioner, it is seen that the Minister (Home), NCT of Delhi and Lieutenant Governor, Delhi has perused the relevant file and have signed the note to reject the mercy petition. We do not find any merit in the contention that there was non-application of mind on the part of the Minister (Home), NCT of Delhi and Lieutenant Governor, Delhi.

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19. Re. Contention – Non-placing of relevant materials before the President of India and the relevant materials were kept out of 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 were not placed before the President of India.

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- A 20. To satisfy ourselves, we have asked the learned Solicitor General to produce the files containing the file relating to Govt. of NCT of Delhi and the office of Lieutenant Governor, Delhi and the file relating to forwarding of the mercy petition of the petitioner from Govt. of NCT of Delhi to Ministry of Home Affairs and file containing the note put up before the President of India. Accordingly, three files pertaining to the petitioner have been produced before us which we have perused. Petitioner Vinay Sharma had earlier filed a mercy petition which was received by the President Secretariat on 04.10.2019. That mercy petition was forwarded by Govt. of NCT of Delhi along with enclosures as stated in the covering letter dated 02.12.2019. The learned Solicitor General submitted that the said mercy petition was specifically withdrawn and the petitioner had filed another mercy petition on 29.01.2020. The said mercy petition was forwarded from the Govt. of NCT of Delhi to Ministry of Home Affairs on 30.01.2020 along with the enclosures stated in the covering letter dated 30.01.2020. It is seen from the covering letter that various documents were placed before the President of India viz. (i) Recommendation of the Govt. of NCT of Delhi in regard to grant of clemency to the petitioner; (ii) Legible and clean copy each of the judgment of Trial Court, High Court and the Supreme Court of India; (iii) Legible and clean copy of records of the case including Police Report; (iv) Nominal roll of the prisoners; (v) Latest medical report of the prisoner; (vi) Details of the review/curative petitions pending in the Court filed by the accused and other co-accused of the case, if any, along with present status; (vii) The past criminal history of the prisoner, if any; (viii) Economical condition of the family of the prisoner; and (ix) Any other documents related to the case (Order for execution on 01.02.2020).
- F 21. Before placing the note file before the President of India, the Ministry of Home Affairs had placed the matter before the Hon'ble Union Minister, Ministry of Home Affairs who applied his mind and by a speaking order, recommended for rejection of the mercy petition. By perusing the note put up before the President of India, we have seen that all the documents enclosed along with mercy petition of the petitioner and the submissions made by him in the mercy petition were taken into consideration. Upon perusal of the Note and the records, the President of India rejected the mercy petition of the petitioner. Taking note of the documents forwarded along with the mercy petition and the note put up by the Ministry of Home Affairs before the President of India, the mercy
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petition was rejected. We find no merit in the contention that the relevant materials were kept out of consideration of the President of India. A

22. Non-placing of relevant materials – medical status report and the status report as per the mental health of the petitioner:-

The learned counsel for the petitioner had taken us through the averments in the petition and submitted that torture, cruelty and inhuman treatment of the petitioner and the physical assault inflicted on him in the prison, the petitioner was suffering from various illness and on complaints of “decreased appetite”, “decreased sleep” and number of other times for “psychiatric review”, “thought disorder” and “weakness”, number of times, he was taken to Central Jail Hospital and the petitioner was given treatment repeatedly for those complaints. It was contended that due to inhuman torture and degrading treatment suffered by the petitioner during his incarceration, the petitioner developed mental illness and caused self-harm to himself on several occasions. It was submitted that the medical record, mental illness and the status report on the mental health of the petitioner were not placed before the President of India. It was contended that in the mercy petition, the petitioner has narrated that the petitioner did not receive adequate health care which would have caused his mental illness and such mental illness and procedural lapses infringe the rights of the petitioner and entitling him for commutation. It was submitted that the medical status report, Social Investigation Report and various other relevant documents were not placed before the President of India and thus, the relevant materials were kept out of consideration of the President of India. C

23. Considering the question as to the relevant documents to be placed before the President of India and after referring to *Epuru Sudhakar*, in *Shatrughan Chauhan*, the Supreme Court held as under:- F

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

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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 G

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- A 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.”
24. By perusal of the file produced before us, it is seen that the medical report of the petitioner along with the treatment and his latest medical report dated 30.01.2020 was placed before the concerned authorities which in turn, was placed before the President. As seen from the enclosures in the forwarding letter of the mercy petition dated 30.01.2020, latest medical status report dated 30.01.2020 issued by Dr. Akash Narade, Senior Medical Officer and other medical reports and the treatment given to the petitioner, have been placed before the competent authority which in turn, were forwarded to the President of India. In the medical status report, Dr. Akash Narade has referred to the details of the treatment of the petitioner and certified that the petitioner is psychologically well adjusted and he was being provided with regular therapy sessions by specialized therapists and the general condition of the petitioner is stable. There is no merit in the contention that the medical report of the petitioner has not been placed before the President.
25. The alleged suffering of the petitioner in the prison cannot be a ground for judicial review of the executive order passed under Article 72 of the Constitution of India rejecting petitioner's mercy petition. As per the settled legal position in *Narayan Dutt and Others vs. State of Punjab and Another (2011) 4 SCC 353* and *Epuru Sudhakar*, exercise of power under Articles 72 and 161 of the Constitution of India is subject to challenge only on the grounds indicated thereon. When the highest constitutional authority, upon perusal of the Note and the various documents placed along with mercy petition, has taken a decision to

reject the mercy petition, it cannot be contended that the highest constitutional authority had not applied its mind to the documents.

26. Learned counsel for the petitioner then urged that the petitioner comes from poor economic and social background and the Social Investigation Report of the mercy petition has not been forwarded along with the mercy petition. This contention again has no force. As seen from the list of enclosures sent along with the mercy petition, it is seen that the economic condition of the family of the petitioner and his Family Economic Status have been enclosed as enclosure "H". It is to be pointed out that the petitioner had earlier filed a mercy petition in October, 2019 and said mercy petition was forwarded along with enclosures from the NCT of Delhi to Ministry of Home Affairs on 02.12.2019. While forwarding the said mercy petition, Social Investigation Report containing the economic conditions of the family of the petitioner was enclosed as enclosures. While forwarding the mercy petition dated 30.01.2020, the said Social Investigation Report dated 30.11.2019 containing family background of the petitioner and economic status of the family and other details were again forwarded. There is no merit in the contention that the Social Investigation Report was not placed before the President for consideration and the relevant materials were kept out of consideration of the President.

Solitary Confinement:-

27. Learned counsel appearing for the petitioner argued that the petitioner was illegally segregated and put in solitary confinement prior to rejection of his mercy petition in violation of law laid down in *Sunil Batra*. In the said case, it was held by the Supreme Court that "a person is under sentence of death" only after the mercy petition is rejected by the Governor and the President of India and on further application, there is no stay of execution by the authorities. It is therefore contended that solitary confinement prior to rejection of mercy petition by the President of India is unconstitutional.

28. According to the petitioner, he has been kept in solitary confinement for a period of one year. This contention is however refuted by the respondents. In the affidavit dated 13.02.2020 filed by the Director General (Prisons), Tihar Jail, it is stated that for security reasons, the petitioner was placed in one ward having multiple single rooms and barracks. It is further stated that during that limited period, the petitioner

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- A was kept in one of the single rooms and during such duration, whenever all prisoners came out, the petitioner-convict was also coming out. It is stated that the single room where the petitioner was placed had iron bars open to air and the same cannot be equated with solitary confinement as the petitioner was permitted to come out and mingle with other inmates at regular intervals on daily basis like other prisoners. Further, it has been submitted that such placement of the petitioner in a single room was for limited duration and intermittent period either for security reasons or other reasons in the interest of convict. It is clear from the affidavit filed by the Director General (Prisons) that the petitioner was not kept in solitary confinement; rather he was kept in protective custody which
- B was for the benefit of the petitioner and also for ensuring the security. 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*, does not merit acceptance and this cannot be a ground for review of the order rejecting the mercy petition of the petitioner.

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- 29. Bias Order was passed on irrelevant considerations:-**
 - E Another ground argued by the learned counsel for the petitioner is the alleged bias caused to the case of the petitioner because of the statements made by the Ministers in the Delhi Government as well as in the Union Government which have led to pre-judging the outcome of the petitioner's mercy petition even before it was placed before the President of India for consideration. The petitioner has referred to the various statements made by the Ministers to the effect that the death sentence be awarded to the convicts to contend that such public statements had the effect of influence "aid and advice" tendered by the Council of Ministers of Delhi
 - F to the Lieutenant Governor or by Council of Ministers in the Central Government to the President and the order of rejection is vitiated by bias. As discussed earlier, note put up before the President is a detailed one and all the relevant materials were placed before the President and upon consideration of the same, the mercy petition was rejected. The
 - G public statements said to have been made by the Ministers, cannot be said to have any bearing on the "aid and advice" tendered by the Council of Ministers of Delhi to the Lieutenant Governor or by Council of Ministers in the Central Government to the President.

- H 30. The petitioner filed curative petition before the Supreme Court and the same was dismissed on 14.01.2020. The petitioner filed mercy

petition on 29.01.2020 and the same was forwarded by NCT of Delhi to the Ministry of Home Affairs on 30.01.2020. The President of India rejected the mercy petition on 01.02.2020 and the same was communicated to the petitioner in Tihar Central Jail on 01.02.2020. As pointed out earlier, the case records, judgments of the trial court, High Court and the Supreme Court, clean copy of records of the case, Nominal Roll of the petitioner, medical report of the petitioner, Social Investigation Report and other relevant documents were forwarded to the Ministry of Home Affairs. The note put up before the President of India is a detailed one and all the relevant materials were placed before the President and upon consideration of same, the mercy petition was rejected.

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31. As held by the Constitution Bench in *Maru Ram v. Union of India and Others (1981) 1 SCC 107* and referred to *Bikas Chatterjee (2004) 7 SCC 634*, 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.

32. 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 writ petition is liable to be dismissed. The writ petition is dismissed accordingly.

Devika Gujral

Writ petition dismissed.