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B. A. UMESH

v.

UNION OF INDIA & ORS.

(CRIMINAL APPEAL NO.1892 OF 2022)

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NOVEMBER 04, 2022

**[UDAY UMESH LALIT, CJI, S. RAVINDRA BHAT AND
PAMIDIGHANTAM SRI NARASIMHA, JJ.]**

Sentence/Sentencing : Death Sentence – Commutation of –

- C *Award of death sentence in a rape and murder case – Commutation sought on the grounds of delay in disposal of mercy petition and solitary confinement from the date of conviction order till the disposal of mercy petition – Held: Undue long delay in execution of death sentence would entitle the condemned prisoner to pray for commuting the death sentence to that of life imprisonment – On facts, the alleged period is of two years and three months, starting from the receipt of the mercy petition by the Central Government till the disposal – Mercy petition was disposed on two levels i.e., Governor and the President during the said period – Time taken by the authorities and the functionaries cannot be termed as “inordinate delay” – Thus, it cannot be said that there was delay in deciding the mercy petition – As regards solitary confinement, segregation of a convict from the day when he was awarded death sentence till his mercy petition was disposed of, would be in violation of law laid down in Sunil Batra’s case – On facts, incarceration of the accused in solitary confinement and segregation from 2006 to 2013 was without the sanction of law and completely opposed to the principles laid down by this Court – Period of solitary confinement is for about 10 years – Letter by the medical professional show ill effects on the well-being of the accused due to incarceration in solitary confinement – Thus, to meet the ends of justice, the death sentence commuted to life imprisonment for minimum 30 years.*

Allowing the appeal, the Court

- HELD: 1.1 Undue long delay in execution of death sentence would entitle the condemned prisoner to pray for commuting the death sentence to that of life imprisonment. The alleged period in the instant matter is of two years and three months i.e., starting**

from the receipt of the mercy petition on 3.3.2011 by the Central Government till the disposal on 15.5.2013. It must be stated that soon after the receipt of the said mercy petition, the Ministry of Home Affairs, Government of India forwarded the mercy petition to the Principal Secretary, Home Department, Karnataka so that the Governor, Karnataka could consider the mercy petition first. In the meantime, on 9.3.2011 in Writ Petition No.52 of 2011 preferred by the appellant, this Court had granted stay of execution of death sentence. The matter was considered by the State Cabinet on 7.5.2012 which decided to approve the note prepared by the Home Department recommending rejection of the mercy petition. The matter was then placed before the Hon'ble Governor who rejected the mercy petition on 06.06.2012. The copy of the order passed by the Hon'ble Governor and relevant documents were forwarded by the State Government to the Central Government on 30.08.2012. On 18.09.2012, certain information was sought by the Central Government from the State Government which was furnished to the Central Government on 26.12.2012. The matter was thereafter taken up at the Central Government level. The Ministry of Home Affairs prepared an appropriate note for the Hon'ble President who after considering the entirety of the matter rejected the mercy petition on 12.05.2013. [Para 14, 15][652-D-H; 653-A-B]

1.2 The entire period beginning from 03.03.2011 to 15.05.2013 spanning over a period of 2 years and 3 months saw disposal of mercy petition at two different levels, one, by the Hon'ble Governor and other by the Hon'ble President. All the while, there was an order of stay granted by this Court on 19.3.2011 which was operating all through. First and foremost, the time taken by each of these authorities and the functionaries assisting them cannot be called or termed as "inordinate delay" and secondly, it was not as if every passing day was adding to the agony of appellant. The order of stay of execution had put the matter in a different perspective. In the given facts and circumstances of the case, the first submission cannot be accepted. [Para 16, 17][653-C-E]

2.1 As regards solitary confinement, the letter written by Medical Officer, Belgaum Central Prison on 6.11.2011 did say

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- A that the appellant was kept in solitary confinement and said letter has been heavily relied upon by the appellant in support of the second submission. According to the letter, the appellant was kept in solitary confinement since his admission to the prison in October, 2006 and that apart from common illness such as diarrhoea, fever, running nose and backache, the appellant was found to be suffering from psychosis with depression. This letter also affirms the fact that the appellant was mentally ill. [Para 19] [654-C-D-F]

- B 2.2 The act on part of the medical officer in checking the health and well-being of the appellant was obviously because of the mandate of Section 29 of the Prisons Act, 1894. It must be taken to be accepted that from 2006 till 2016, the appellant was kept in solitary confinement in "Andheri Block" and it was only thereafter, some relaxation in the rigours of the solitary confinement was effected and as the record shows, from 2016 onwards the conditions were gradually relaxed. [Para 20][654-G-H; 655-A-B]

- C 2.3 Segregation of a convict from the day when he was awarded death sentence till his mercy petition was disposed of, would be in violation of law laid down by this Court in Sunil Batra's case. In the instant case, the death sentence was awarded to the appellant in 2006 by the trial court and the mercy petition was finally disposed of by the Hon'ble President on 12.5.2013, which means that the incarceration of the appellant in solitary confinement and segregation from 2006 to 2013 was without the sanction of law and completely opposed to the principles laid down by this Court in Sunil Batra's case. [Para 21][655-C-D]

- D 2.4 In the instant case, the period of solitary confinement is for about ten years and has two elements: one, from 2006 till the disposal of mercy petition in 2013; and secondly from the date of such disposal till 2016. [Para 23][657-B]

- E 2.5 Having considered the entirety of matter, the impact of solitary confinement were obviously evident in the instant case, as would be clear from the letter given by the medical professional on 6.11.2011 and the communication emanating from the jail on 8.11.2011. The incarceration in solitary confinement thus did show ill effects on the well-being of the appellant. In the backdrop of

these features of the matter, the appellant is entitled to have the death sentence imposed upon him to be commuted to death sentence to life. [Para 25][658-C-D]

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2.6 Considering the entirety of facts and circumstances on record, ends of justice would be met if while commuting the death sentence awarded to the appellant, the sentence of life imprisonment is imposed upon him with a rider that he shall undergo minimum sentence of 30 years and if any application for remission is moved on his behalf, the same would be considered on its own merits only after he has undergone actual sentence of 30 years. If no remission is granted, the sentence of imprisonment for life shall mean till the remainder of his life. [Para 27][659-A-B]

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3. The instruction quoted in paragraph 3(f) of this Judgment as regards the procedure governing petitions for mercy in death sentence cases, leads to an incongruous situation. According to it, the mercy petition must be filed within seven days of the disposal of the appeal or dismissal of special leave petition. A convicted accused is entitled to file a review petition within thirty days. An anomalous situation, like the instant one, may arise where even before the review is filed, the mercy petition is required to be filed. The concerned instruction requires suitable modification so as to enable the convicted accused to file mercy petition after exhaustion of remedies in Court of law. [Para 29][659-C-D]

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B. A. Umesh v. High Court of Karnataka (2011) 3 SCC 85 : [2011] (2) SCR 367; Mohd. Arif @ Ashfaq vs. Registrar General, Supreme Court of India & Ors. (2014) 9 SCC 737 : [2014] (11) SCR 1009; Mohd. Mannan alias Abdul Mannan vs. State of Bihar (2019) 16 SCC 584 : [2019] (8) SCR 266 – referred to.

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A.G. Perarivalan vs. State through Superintendent of Police & Anr. 2022 SCC Online SC 635 – distinguished.

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Sunil Batra v. Delhi Administration & Others (1978) 4 SCC 494; Ajay Kumar Pal v. Union of India & Anr. 2015 (2) SCC 478:[2014] (12) SCR 441; Gopal Vinayak Godse vs. State of Maharashtra AIR 1961 SC 600 : [1961] SCR 440 – relied on.

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A	<u>Case Law Reference</u>	
	[2011] (2) SCR 367	referred to
	[2014] (11) SCR 1009	referred to
	(1978) 4 SCC 494	relied on
B	[2014] (12) SCR 441	relied on
	[2019] (8) SCR 266	referred to
	[1961] SCR 440	relied on
		Para 27

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal

C No.1892 of 2022.

From the Judgment and Order dated 29.09.2021 of the High Court of Karnataka at Bengaluru in Writ Petition No.53944 of 2016.

D Dr. Yug Mohit Chaudhry, Siddhartha Sharma, Prabu Ramasubramaniam, Ms. Payoshi Roy, Raghunatha Sethupathy B., Ms. Priya R., K. Paari Vendhan, Advs. for the Appellant.

K. M. Nataraj, ASG, Nikhil Goel, AAG, Ms. Sonia Mathur, Sr. Adv., Ms. Khushboo Aggarwal, Ms. Prerna Dhall, Ms. Simranjeet Singh Saluja, Sughosh Subramanyam, Shailesh Madiyal, Sanjay Kumar Tyagi, Arvind Kumar Sharma, Shubhranshu Padhi, Ashish Yadav, Rakshit Jain,

E Vishal Banshal, Aditya K. Roy, Advs. for the Respondents.

The Judgment of the Court was delivered by

UDAY UMESH LALIT, CJI

1. Leave granted.

F 2. This appeal challenges the judgment and order dated 29.9.2021 passed by the High Court of Karnataka at Bengaluru, dismissing Writ Petition No. 53944/2016 (GM-Res) preferred by the appellant herein. Said writ petition had prayed, *inter alia*, for following reliefs: -

G (A) “Issue appropriate writs, orders or directions directing the Respondents to produce mercy files pertaining to the Petitioner, all the relevant papers and correspondence pertaining to the Petitioner’s mercy petition, for the perusal of the Court since the Petitioner has been able to show a grave, and unexceptionable delay in such processes as undertaken by the Respondents.

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- (B) Issue appropriate writs, orders or directions directing production of medical file of the Petitioner from prison from the date of his arrest. A
- (C) Issue appropriate writs, orders or directions and in particular a writ of Declaration, declaring that the execution of the sentence of death on the Petitioner (as communicated through letter dated 15.05.2013 - F.No.14/1/2011-Judicial Cell, Annexure N hereto) pursuant to the rejection of his mercy petition by the office of the Hon'ble President of India is unconstitutional and bad in law. B
- (D) Issue appropriate writs, orders or directions commuting the death sentence of the Petitioner to imprisonment for life. C
- (E) Declare that the decision of the office of the Hon'ble President of India rejecting the mercy petition filed by the Petitioner is illegal, void and unenforceable; D
- (F) Declare that the decision of the office of the Hon'ble Governor of Karnataka rejecting the mercy petition filed by the Petitioner is illegal, void and unenforceable; E
- (G) Quash and set aside the order of President of India rejecting the mercy petition filed by the Petitioner; F
- (H) Quash and set aside the order of the Governor of Karnataka rejecting the mercy petition filed by the Petitioner; G
- (I) Grant inspection of the documents mentioned in (A) and (B) to the Petitioner;
- (J) Issue any such other writs, orders and directions as this Hon'ble Court deems fit in the facts and circumstances of the case in the interest of justice and equity.

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3. The basic facts leading to the filing of said Writ Petition are as under: -

- (a) One Jayashri, wife of Maradi Subbaiah was found raped and murdered in her home on 28.02.1998, which led to the registration of Crime No. 108/1998 with Peenya Circle Police Station, Yeshwanthpur Sub- Division, Bengaluru City.

- A The appellant was arrested in connection with said crime on 2.3.1998 and has been in custody since then. After due investigation, the appellant was tried in Sessions Case No. 725/1999 on the file of Sessions Judge, Fast Track Court-VII, Bengaluru for having committed offences punishable under Sections 302, 376 and 392 of the Indian Penal Code, 1860¹.
- B (b) By its judgment dated 26.10.2006, the trial Court convicted the appellant for the aforesaid offences and by order dated 27.10.2006, awarded punishment of death sentence, subject to confirmation by the High Court. The appellant was immediately transferred to Belgaum Central Prison and according to the appellant, he was kept in solitary confinement.
- C (c) Case for confirmation of death sentence was registered as Criminal Reference No. 3/2006 before the High Court. The appellant also filed Criminal Appeal No. 2408/2006 challenging his conviction. The matter was heard by a Bench of two Judges, which confirmed the order of conviction, but disagreed on the sentence to be imposed. While Mr. Justice V.G. Sabhahit confirmed the award of death sentence, Mr. Justice R.B. Naik commuted the death sentence to life imprisonment.
- D (d) The matter was therefore referred to the third Judge *i.e.*, Mr. Justice S.R. Bannurmath on the issue of sentence, who affirmed the award of death sentence by his judgment dated 18.2.2009.
- E (e) The matter was carried further by the appellant by filing Criminal Appeal Nos. 285-286/2011 before this Court, which were dismissed by this Court vide order dated 1.2.2011², affirming the appellant's conviction and sentence of death imposed upon him.
- F (f) According to the procedure governing petitions for mercy in death sentence cases, a death convict can prefer a petition for mercy within seven (7) days after the dismissal of his

¹ "IPC", for short

H ² *B.A. Umesh v. High Court of Karnataka*, (2011) 3 SCC 85.

appeal by this Court or rejection of application for special leave to appeal. The relevant instructions in that behalf read as under: -

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“I. A convict under sentence of death shall be allowed, if he has not already submitted a petition for mercy, for the preparation and submission of a petition for mercy, seven days after, and exclusive of, the date 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.

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Provided that in cases where no appeal to the Supreme Court, has been preferred or no application for special leave to appeal to the Supreme Court has been lodged, the said period of seven days shall be computed from the date next after the date on which the period allowed for an appeal to the Supreme Court or for lodging an application for special leave to appeal to the Supreme Court expires.

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(g) Having been informed about his right to file a mercy petition as per procedure, the appellant preferred a petition seeking mercy on 8.2.2011, *i.e.*, within seven days. The appellant also preferred Review Petition against the decision dated 1.2.2011 passed by this Court. Around the same time, Writ Petition (Crl.) No. 52/2011 was preferred by the appellant in this Court praying, *inter alia*, for the relief of open Court hearing in review petition. In said writ petition, this Court by order dated 9.3.2011, directed stay of execution of death sentence. The Review Petition filed by the appellant was dismissed by circulation by this Court vide its order dated 7.9.2011.

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(h) Mercy petition preferred by the appellant was rejected by the Hon’ble President on 12.5.2013. An intimation in that behalf was sent vide letter dated 15.5.2013 to the appellant.

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(i) Writ Petition (Crl.) No. 52/2011 preferred by the appellant was decided alongwith Writ Petition (Crl.) No. 77/2014 (*Mohd. Arif @ Ashfaq vs. Registrar General, Supreme*

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- A *Court of India & Ors.*) by a Constitution Bench of this Court vide judgment dated 2.9.2014³. It was held by majority that review petitions arising out of award of death sentence be heard in open Court by a Bench of three Judges of this Court.
- B (j) Consequently, the Review Petition which was rejected earlier on 7.9.2011, was listed for re-hearing before a Bench of three Judges of this Court, which by its order dated 3.10.2016⁴, dismissed the Review Petition and affirmed the award of death sentence. The order stated that on careful comparison of aggravating and mitigating circumstances and keeping in view the principles of law laid down by this Court, the Court was not inclined to allow the Review Petition or modify the order dated 1.2.2011.
- C (k) Within few days thereafter, Writ Petition No. 53944/2016 was preferred by the appellant seeking reliefs as extracted hereinabove. The High Court by its order dated 20.10.2016, stayed execution of death sentence imposed upon the appellant. Thereafter, statements of objections were preferred on behalf of the Union of India and State of Karnataka, to which rejoinders were filed. An application under Section 151 of the Code of Civil Procedure, 1908 was also preferred to bring on record certain documents regarding medical condition of the appellant.
- D 4. By its judgment and order dated 29.9.2021, the High Court dismissed the aforesaid writ petition. After considering the submissions advanced on behalf of the parties, the following conclusions were arrived at by the High Court: -
- E “(i) There is no excessive, unexplained, inordinate delay attributable to the respondents in deciding the mercy petition;
- F (ii) There is no violation of the petitioner’s right under Article 21 of the Constitution of India;
- G (iii) All the relevant and crucial materials required for deciding the mercy petition were placed before His Excellency, the

³ (2014) 9 SCC 737.

H ⁴ (2017) 4 SCC 124

Governor and His Excellency, the President of India and A nothing has been kept out of consideration;

- (iv) Petitioner cannot be said to have been kept in solitary confinement.”

5. In the challenge raised in the instant matter, while issuing notice, the order dated 31.1.2022 passed by this Court noted the submissions on behalf of the appellants as under:- B

- “a) Even after recording a finding that there was avoidable delay to the extent of 550 days in disposing of the mercy petition, the High Court did not grant any relief to the petitioner.
- b) Going by the letter written by a Medical Officer, which letter was not controverted, the petitioner was kept in solitary confinement for about 11 years. Thus, the law laid down by this Court in Sunil Batra v. Delhi Administration & Others⁵ was violated.
- c) The letter written by the Medical Officer was quite clear that because of the psychological condition, the petitioner was unable to make any mercy petition. This fact was also not taken into account in correct perspective by the High Court.” D

By said order, this Court also called for certain documents as E under:-

- “a. The State shall place before us the Report(s) of all the Probation Officer(s) relating to the accused before the next date of hearing. In case there have been more than one Report, let all Reports be placed for the consideration of F this Court.
- b. Since the National Institute of Mental Health and Neuro Sciences (NIMHANS) at Bengaluru, has on the earlier occasion made psychological assessment of the petitioner, the Director NIMHANS is directed to constitute a suitable team for psychological evaluation of the petitioner and send a Report before the next date of hearing.
- c. The Jail Authorities, Belgaum Central Prison where the petitioner is presently lodged shall render complete co- G

⁵ (1978) 4 SCC 494

- A operation in facilitating access to and due evaluation of the petitioner in all respects.”
6. When the matter was taken up on 21.4.2022, after noting the submission advanced on behalf of the appellant that the appellant had been kept in solitary confinement right from the decision of the Sessions Court, directions were issued to the District Judge, Belgaum to cause an inspection to be undertaken and submit a report. The text of the order was as under: -
- “The basic submissions raised on behalf of the petitioner were recorded in the order dated 31.01.2022.
- C While elaborating those submissions, Dr. Yug Mohit Chaudhry, learned advocate, has stressed the point that the petitioner was kept in solitary confinement right from the decision of the Sessions Court awarding him death sentence. Our attention is invited to various documents including the Prison Manual in support of the submission that, as the petitioner was segregated and kept in a separate Cell, that would amount to solitary confinement, in terms of the law laid down in Sunil Batra Etc. vs Delhi Administration and Ors. Etc⁵.
- D The submission is opposed on behalf of the State Government and though no specific reply was filed in the High Court controverting the basic allegations in the writ petition, Mr. Nikhil Goel, learned AAG for the State, on instructions, submits that video conferencing can be arranged so that this Court can have clear knowledge about the circumstances in which the petitioner has been lodged in a Cell.
- E It is true that the Hon’ble Judges constituting the Bench in Sunil Batra’s⁵ case had visited the jail premises themselves in order to have first-hand knowledge about the conditions in which said petitioner was lodged. We may at this stage rely upon the local inspection to be conducted by the District Judge, Belgaum who also holds the charge as the Chairman of the District Legal Services Committee, Belgaum.
- F We therefore, direct the District Judge, Belgaum to cause local inspection done by himself and place a report alongwith pictures, if any, to enable us have a clear understanding of the ground
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situation. The report shall concentrate on location of the barracks A
in which the cells of Death Row Convicts are situated.

It is made clear that the Cells which are close to the gallows
and are used for keeping persons about to be executed, are
different from the Cells for the Death Row Convicts.

The inspection shall cover issues whether the inmates of the B
concerned cells are allowed to intermingle with fellow prisoners,
the way the meals are served to them and the

duration for which the inmates are allowed to come out of C
their individual cells. These are only illustrative pointers. What
we want to gather is the typical life-style of Death Row Convicts
and how their days are spent.

Let the report be made as early as possible and latest by
25.04.2022.

The report shall be sent through electronic mode at the following D
Email id.: vc2.appearance@sci.nic.in.

Let copy of this order be sent through electronic mode to the
District Judge, Belgaum.

To our specific query as to the manner in which the Mercy E
Petition of the petitioner was processed, Ms. Sonia Mathur, learned
Senior Advocate appearing for Union of India has placed the
concerned file for our perusal. The Registry is directed to make
copies of the file and return the same to the concerned advocate
on record by tomorrow.”

7. Accordingly, report dated 21.4.2022 has been placed on record F
by Principal District & Sessions Judge, Belgaum alongwith picture
photograph(s) of the concerned Jail barracks and the cells. The Report
is as under: -

1. “As per the directions, I visited Central Prison, Hindalaga at G
2.15 p.m. without prior notice to the Jail Authorities.

2. The concerned barrack wherein the death convict Sri B A
Umesh is housed is on the North-Eastern side facing East in the
Central Prison Hindalga. There are six cells each measuring 8x10
feet approximately. Each cell has a toilet in the corner with an
adequate water facility. Each of the prisoners is given a flat H

- A mattress and they are at liberty to have their own bedding. There is electric light in each of the cells which can be put on at their wish and they have one window facing towards the West. The cells are covered with grill doors and adequate light and air is available. These six cells are of tiled roof. Encircling the six cells, there is guard room and another common toilet outside within the compound. Even in the compound of the barrack, there is a facility for washing of the clothes etc. It was informed that prison also has R.O. Water facility which would be provided in plastic pots.
- B 3. Out of these six cells, five are occupied. In one of the cells, there are four persons involved in an offence of kidnapping, robbery, and murder. They are Siddhalingesh, Suraj, Akshay and Jameer. In another cell, there are two occupants viz., Sameer and Shakib, who are involved in offence under Section 307 of IPC. Another cell is occupied by Balu involved in a murder case. They are all under trial prisoners.
- C 4. The Remaining two cells are occupied by one person each i.e, Akash Desai convicted for offence under NDPS Act for 10 years. Southern most cell is occupied by death convict Shri. B.A. Umesh. They informed that they are in the said cells for the last 3 months to 8 years. The other 26 death convicts are in other barracks including high security barrack, women barrack and a hospital.
- D 5. The inmates of the cell informed that they are unlocked from the cells at about 6.00 a.m. They are allowed to wander in the compound of the barrack. The barrack is guarded by five guards and it was informed that they are free to wash their clothes and take bath outside and sit under the trees in the compound. There is also hospital block in the prison and if necessary, they will be escorted to the hospital where there is a Medical Officer available. Hospital also has inpatient facilities and mini laboratory is also adjoining it. The inmates also told me that they can talk to fellow prisoners and there are no restrictions during daytime. The cells will be locked again at 6.00 p.m. in the evening.
- E 6. It is informed that breakfast is served at about 7.30 in the morning, lunch will be served at about 11.00 a.m. and supper would be served at 4.30 p.m. The inmates are free to consume the supper at any time they find it convenient and they can eat sitting together.
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All the inmates including Shri. B.A. Umesh informed that the quality of food is good and adequate. It was informed by the jail authorities that a minimum of five guards are posted in the barrack on a rotation basis.

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7. It was also informed that in one of the cells there is a TV fixed which may be seen by all the inmates together.

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8. It was also informed that prisoners are at liberty to purchase bakery items which are prepared by the inmates and sold in the prison itself. It was informed that the prisoners purchase the bakery items out of the earnings made by them.

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9. Adjoining the said barrack of six cells, on the northern side, there is a gate leading to the gallows. There is no separate cell meant for death convict, who would be kept in the cell before he is taken to the gallows.

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10. Thus it is observed that the cells have adequate light, air, drinking water facilities, a common facility to view TV, and adequate water for bathing and washing of the clothes. The cells are enclosed in a separate compound within the prison. They can move around the cells freely between 6.00 a.m. and 6.00 p.m.

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11. The photographs and videos of the cells are attached with this report for kind perusal.”

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8. On the subsequent date, the submissions advanced on behalf of the appellant were discussed in the order dated 26.4.2022 as under: -

“The Principal District and Sessions Judge, Belagavi has placed on record his Report dated 21.04.2022. Copies of the Report have been furnished to the parties.

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Dr. Yug Mohit Chaudhry, learned advocate submits that since the last date of hearing, the counsel for the petitioner have had interactions with the petitioner. Dr. Chaudhry fairly accepts that whatever is stated in the Report corresponds to the instructions received from the petitioner and that the Report depicts true state of affairs in the concerned Barrack and the Cell.

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He, however submits that the petitioner was kept in what is commonly called “Andheri Block” in Belagavi Prison from 2006 to October, 2016 i.e. till stay was granted by the High Court to the

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- A execution of death sentence. It is submitted that there are 12 Cells in that Block and only one prisoner is kept in a Cell; the petitioner was not allowed to get out of his Cell at any time during the entire length of stay except for 2 Yoga sessions which were conducted and one function where inmates were allowed to offer prayers to Lord Ayyappa. In his submission that was the worst period of his stay inside the prison and the imprisonment in the Cell in “Andheri Block” can certainly be said to be “Solitary confinement” as described in Sunil Batra Etc. vs Delhi Administration and Ors. Etc.⁵.
- C Dr. Chaudhry further submits that after October, 2016 till January, 2019 the petitioner was lodged in same “Andheri Block” but was allowed to come out of the Cell thrice a day and after January, 2019 he was shifted to the present Barrack with respect to which the Report has been made.
- D We have also had the benefit of interaction with the concerned Jail Superintendent who is present in Court. He has accepted that the petitioner was kept in “Andheri Block” till January, 2019. He has also accepted that only one inmate is kept in a cell in said “Andheri Block”. It is however, stated that all the inmates are allowed to come out of their cells thrice a day for the duration of 2-3 hours each. It is submitted that they are taken out at about 6.30 A.M. in the morning and are re-lodged after the breakfast, again to be taken out for the purposes of lunch and supper and are finally re-lodged around 5.00 P.M. In sum and substance, according to him, the inmates are allowed to come out of their Cells for about 6 hours everyday.
- F It is further stated that the petitioner was shifted to the present Barrack in January, 2019 by his predecessor and since then the petitioner has been confined in the present Barrack in circumstances described in the Report.
- G Thereafter, submissions were advanced by Mr. Nikhil Goel, learned AAG for the State and Ms. Sonia Mathur, learned Senior Advocate for Union of India. After conclusion of their submissions, Dr. Chaudhry made his submissions in rejoinder. “
- H 9. We heard Dr. Yug Mohit Chaudhry, learned advocate assisted by Ms. Payoshi Roy, learned advocate for the appellant, Mr. Nikhil Goel,

learned Additional Advocate General for the State and Ms. Sonia Mathur, learned Senior Advocate for Union of India. After conclusion of submissions, the matter was reserved for orders.

10. The parties thereafter filed written submissions and, in the submissions filed on behalf of the appellant, the challenge has principally been raised on two grounds: (i) delay in deciding mercy petition and (ii) the Solitary Confinement that the appellant was subjected to. On the first issue, following chart has been placed on record: -

“Chunks of Unexplained Delay

S.No.	Date	Event	Delay
1.	3.3.11	The Central Government forwards the mercy petition to the State Government asking the Governor to consider the mercy petition first.	No explanation for why it took 1 year, 2 months and 5 days (432 days) to send a recommendation to the Governor, or any account of what steps were taken to process the mercy petition during this period.
	7.5.12	A decision to reject the mercy petition is taken in the Cabinet Meeting and recommendation is sent to the Governor.	
2.	6.6.12	The mercy petition is rejected by the Governor	2 months and 25 days (85 days) delay to forward the mercy petition to the Central Government.
	30.8.12	The State Government forwards the mercy petition for consideration by the President.	
3.	18.9.12	The Central Government seeks the following information from the State Government – (i) Copy of mercy petition submitted by the condemned prisoner himself, if any. (ii) Details of previous criminal record. (iii) Medical Health Report (iv) Nominal Roll.	3 months and 9 days delay to send information that is readily available with the State Government. Despite the Central Government's request that this information be sent at the earliest (21.11.2012 letter), the State Government still took another 1 month. The fact that a reminder had to be sent by the

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A		27.11.12	The Central Government sends a reminder letter to the State Government to send information requested vide letter dated 18.9.2012 <i>at the earliest.</i>	Central Government itself testifies to the delay.
B		26.12.12	The State Government forwards the information requested vide letter dated 18.9.2012 to the Central Government.	
C	4.	15.5.13	The Central Government informs the State Government about the rejection of mercy petition.	No explanation for the delay of 4 months and 20 days in deciding the mercy petition, or any account of what steps were taken to process the mercy petition during this period.
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Time Period Relevant to the Mercy Petition Adjudication

E	Total Custody suffered till Date	2.3.1998-23.2.2021	22 years, 11 months, 22 days (8,395 days)
	Total Custody suffered under Sentence of Death	27.10.2006-23.2.2021	14 years, 3 months, 28 days (5,234 days)
	Total Delay caused in Disposal of Mercy Petition by State Govt. and Govt. of India	8.2.2011-15.5.2013	2 years, 3 months, 7 days (827 days) i.e. 2.26 years”

F On the point of Solitary Confinement, it has been submitted:-

- “31. The Petitioner submits that he was kept in single cell from 2006 to 2016 in a block called the Andheri Block. During this time, he was kept for most of the day inside the cell. The only other person he saw was the prison guard. He was made to eat and use the toilet within his cell and was not allowed to meet or speak to any other inmates, to this entire duration he was allowed to participate in a pooja and a yoga camp only in one instance. Therefore from 2006-2016 the Petitioner was kept in strict solitary confinement.
32. The Petitioner concedes that after 2016 the conditions of his incarceration were gradually relaxed and at present,

even though he is kept in a single cell, he is allowed to mingle with other inmates in the yard during the day. A

33. The Petitioner submits that despite having pleaded the specific conditions of his solitary confinement till 2016 in his writ petition before the Hon'ble High Court as well as in his SLP before this Hon'ble Court the Respondent has not brought on record any material to the contrary. B
34. In its reply dated 9.1.2017 before the Hon'ble High Court (SLP Pg 316-325) and before this Hon'ble Court the Respondent has merely stated that the Petitioner was allowed visits to the library and canteen and allowed visitors from time to time and hence his incarceration did not constitute solitary confinement. C
35. That neither before the High Court nor in its affidavit in reply before this Hon'ble Court did the Respondent aver that the Petitioner was allowed to mingle with other prisoners between 2006-2016. That had the Petitioner been allowed to mingle with other prisoners, the Respondents would have mentioned the same in their affidavit in reply along with the fact of visits to the library and canteen. Therefore, it is clear that the Respondent's oral argument made before this Hon'ble Court is nothing but an afterthought and sans any evidentiary basis. D E
36. Further, the statements made by the superintendent of Belagum Central Prison before this Hon'ble Court only pertains to the conditions of incarceration after 2019, when the Superintendent assumed his duties in Belgaum Central Prison. These statements do not attest to the conditions of incarceration prior to 2019." F

11. In the written submissions filed on behalf of Union of India, it has been asserted: -

"A. RE: ALLEGED DELAY IN DECIDING THE MERCY PETITION

It is submitted that the Petitioner has conceded that there is no inordinate delay on part of the Respondent No.1 in deciding the mercy petition. It is a settled position of law that there can be no H

- A specific time limit prescribed for deciding mercy petitions [*See, Para 41-44 of Shatrughan Chauhan and Anr. v. Union of India and Ors.*⁶] and only undue or inordinate delay is what is to be looked at [*See, Para 16-17, Para 71-76 of Triveniben v. State of Gujarat*⁷]. The time taken for collating the information and analyzing the same is not to be considered as undue. Further, it is also established that there can be no absolute or unqualified rule laid down for the purposes of determining delay in mercy petitions and several factors are required to be taken into account while considering the question as to whether the death sentence should be vacated or not [*See, Para 19 of Sher Singh & Ors. v. State of Punjab*⁸]. Every case is required to be considered on its own facts and circumstances.

	Date	Event
D	01.02.2011	Conviction of the Petitioner and imposition of death sentence on him is confirmed by the Hon'ble Supreme Court.
	08.02.2011	Petitioner's mother files a mercy petition on behalf of the Petitioner.
	17.02.2011	Review Petition is filed against the Hon'ble Supreme Court judgement dated 01.02.2011
E	07.09.2011	The Review Petition is dismissed.
	06.06.2012	The Mercy Petition is rejected by the Governor.
	30.08.2012	Mercy petition is forwarded by the Respondent No.2 to Respondent No.1.
F	18.09.2012, 27.11.2012	Respondent No.1 requests certain documents, including the medical health report of the Petitioner, to be sent by the Respondent No. 2.
	26.12.2012	Respondent No. 2 replied to the letterdated 18.09.2012 providing the necessary information.
G	12.05.2013	The Mercy Petition was rejected by the President.

It is submitted that the delay, if any, on part of the Respondent No. 1 has to be calculated from 26.12.2012 [when the required

⁶ (2014) 3 SCC 1

⁷ (1989) 1 SCC 678

H ⁸ (1983) 2 SCC 344

information was sent to the Central Govt.] till 12.05.2013 [when the mercy petition was finally rejected]. This amounts to approximately 5 months, which cannot be considered as inordinate delay. In any-event, the Petitioner has himself conceded that the delay in considering the mercy petition is not on account of the Respondent No. 1.

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Without prejudice to the above, it is further submitted that the Petitioner did not prefer a Writ Petition till 17.10.2016 against the order of rejection of mercy petition by the Hon'ble President that was done on 12.05.2013. This step of seeking a judicial review of the rejection of the mercy petition was only taken after the Review Petition was finally rejected by the Hon'ble Supreme Court after granting a hearing in Open Court. The Convict was protected by the stay on execution granted by this Hon'ble Court in Writ Petition No. 52 of 2011 (B.A. Umesh v. Registrar, Supreme Court of India). The Petitioner couldn't be placed on the same pedestal as a convict condemned to death as he still had a judicial avenue open and no real apprehension of execution.

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B. RE: SOLITARY CONFINEMENT

It is submitted that the aspect of solitary confinement, if any, of the Petitioner is within the purview of the State Government/ Respondent No. 2 and therefore, no specific submissions are being made in this regard on behalf of the Respondent No.1. In any event, vide order dated 21.04.2022, the Hon'ble Supreme Court had directed the District Judge, Belgaum, to conduct a local inspection of the jail, concentrating on the location of the barracks in which the cells of the Death Row Convicts are situated, and place a report before the Hon'ble Court along with pictures, if any. In terms of the same, a report was placed before the Hon'ble Court which clearly indicated that the Petitioner was not placed in solitary confinement.

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C. RE: RELEVANT RECORDS NOT BROUGHT TO THE NOTICE OF THE HON' BLE PRESIDENT

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It is submitted that the relevant documents were duly considered by the Hon'ble President before rejecting the Mercy Petition of the Petitioner. The Mercy Petition was forwarded to Respondent No.1 on 30.08.2012 for consideration by the Hon'ble President

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- A under Article 72 of the Constitution of India along with the relevant documents. On 18.09.2012, Respondent No. 1 sought additional information/documents with regard to the Medical Health Report, details of previous criminal record and few other aspects concerning the Petitioner [**Letter dated 18.09.2012 at page 17 of the Additional Documents filed by the Petitioner**]. In response to the said letter, the required documents/information was sent by the Respondent No. 2 vide letter dated 26.12.2012, including medical report of the Petitioner dated 05.10.2012 [**Letter dated 26.12.2012 at page 19 of the Additional Documents filed by the Petitioner**].”
- B 12. We now consider the first submission regarding delay in execution of death sentence due to pendency of Mercy Petition(s). At this stage, we may refer to the following passage from the three Judge Bench decision of this Court in *Ajay Kumar Pal v. Union of India & Anr.*⁹ (to which one of us was a party) which noted some of the decisions rendered by this Court on the point:
- “7. The question whether delay in execution of death sentence can be a sufficient ground or reason for substituting such sentence by life imprisonment has engaged the attention of this Court over a period of time. Some of those salient instances are:
- C 7.1. In *T.V. Vatheeswaran v. State of Tamil Nadu*¹⁰, in an appeal arising from the Judgment of the High Court confirming the death sentence, the fact that the appellant was awarded death sentence by the first court eight years earlier, was noted by this Court. After referring to few earlier cases, where such delay during the pendency of the appellate proceedings was considered, it was observed: (SCC pp. 78-79, paras 21-21)
- D “20. . . . In the United States of America where the right to a speedy trial is a constitutionally guaranteed right, the denial of a speedy trial has been held to entitle an accused person to the dismissal of the indictment or the vacating of the sentence (vide *Strunk v. United States* [1973] 37 L.Ed. 56). Analogy of American Law is not permissible, but interpreting our Constitution *sui generis*, as we are bound to do, we find no

⁹ 2015 (2) SCC 478

H ¹⁰ 1983 (2) SCC 68

impediment in holding that the dehumanising factor of prolonged delay in the execution of a sentence of death has the constitutional implication of depriving a person of his life in an unjust, unfair and unreasonable way as to offend the constitutional guarantee that no person shall be deprived of his life or personal liberty except according to procedure established by law. The appropriate relief in such a case is to vacate the sentence of death.

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21. . . . Making all reasonable allowance for the time necessary for appeal and consideration of reprieve, we think that delay exceeding two years in the execution of a sentence of death should be considered sufficient to entitle the person under sentence of death to invoke Article 21 and demand the quashing of the sentence of death. We therefore accept the special leave petition, allow the appeal as also the Writ Petition and quash the sentence of death. In the place of the sentence of death, we substitute the sentence of imprisonment for life.”

7.2. *Sher Singh and others v. State of Punjab*⁸ was a case where the death sentence already stood confirmed by dismissal of appeal and review petition therefrom by this Court. Relying on the observations in *Vatheeswaran*¹⁰, delay in execution was projected as a ground in a petition under Article 32 of the Constitution of India. Though the Court was broadly in agreement with observations in *Vatheeswaran*¹⁰ it did not agree with the statement to the effect: (SCC p. 79, para 21)

“21. . . . that delay exceeding two years in the execution of sentence of death should be considered sufficient to entitle the person under sentence to death to invoke Article 21 and demand the questioning of the sentence of death.”

However, in the context of Mercy Petitions and exercise of power in connection thereto, it was observed in para 23 as under: (*Sher Singh Case*⁸, SCC pp. 357-58)

“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

- A 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. 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 preconditioned by the duty to be fair and quick. Delay defeats justice.”
- 7.3. The issue was settled by the Constitution Bench decision in *Triveniben v. State of Gujarat*⁷, where it was concluded “No fixed period of delay could be held to make the sentence of death inexecutable ...”. The scope and ambit of exercise of jurisdiction in such cases was delineated thus in para 22: (SCC p. 697)
- “22. . . . the only jurisdiction which could be sought to be exercised by a prisoner for infringement of his rights can be to challenge the subsequent events after the final judicial verdict is pronounced and it is because of this that on the ground of long or inordinate delay a condemned prisoner could approach this Court and that is what has consistently been held by this Court. But it will not be open to this Court in exercise of jurisdiction under Article 32 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 reach a conclusion as to whether the inordinate delay coupled with subsequent circumstances could be held to be sufficient for coming to a conclusion that execution of the sentence of death will not be just and proper. The nature of the offence, circumstances in which the offence was committed will have to be taken as found by the competent court while finally passing the verdict. It may also be open to the court to examine or consider any circumstances after the final verdict was pronounced if it is considered relevant. The question of improvement in the conduct of the prisoner after

the final verdict also cannot be considered for coming to the conclusion whether the sentence could be altered on that ground also.”

7.4. In *Shatrughan Chauhan*⁶ after considering law on the point as regards delay in execution of the death sentence and the resultant effect, as also the scope and ambit of exercise of power, it was observed in paras 38, 41 and 42 as under: (SCC pp. 38-39)

“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 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.

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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*⁷, further held that in doing so, if it is established that there was 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

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- A 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.”

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- C 13. In *Ajay Kumar Pal*⁹ the delay in question was three years and ten months which was found to be inordinate and that said delay was not to the account of said petitioner but to the account of the functionaries and authorities in question. Pertinently, the matter was also considered from the standpoint of solitary confinement and violations in that behalf.

- D 14. Paras 44 and 48 of the decision of this Court in *Shatrughan Chauhan*⁶ which were quoted in *Ajay Kumar Pal*⁹, had laid down that undue long delay in execution of death sentence would entitle the condemned prisoner to pray for commuting the death sentence to that of life imprisonment. The individual cases were thereafter dealt with in *Shatrughan Chauhan*⁶ and paragraph 105 onwards of said decision show that in cases where there was a delay of 12 years (para 118), 9 ½ years (Para 137), 9 ½ years (Para 147), 7 years and 8 months (Para 161), 5 years and 8 months (Para 175) and 7 years and 5 months (Para 209), the benefit of commutation was extended by this Court.

- E 15. If the instant matter is considered in light of these cases and the settled principles, the alleged period in the instant matter is of two years and three months *i.e.*, starting from the receipt of the mercy petition on 3.3.2011 by the Central Government till the disposal on 15.5.2013. It must be stated that soon after the receipt of the said mercy petition, the Ministry of Home Affairs, Government of India forwarded the mercy petition to the Principal Secretary, Home Department, Karnataka so that the Governor, Karnataka could consider the mercy petition first. In the meantime, on 9.3.2011 in Writ Petition No.52 of 2011 preferred by G the appellant, this Court had granted stay of execution of death sentence.

- H The matter was considered by the State Cabinet on 7.5.2012 which decided to approve the note prepared by the Home Department recommending rejection of the mercy petition. The matter was then placed before the Hon’ble Governor who rejected the mercy petition on

06.06.2012. The copy of the order passed by the Hon'ble Governor and relevant documents were forwarded by the State Government to the Central Government on 30.08.2012.

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On 18.09.2012, certain information was sought by the Central Government from the State Government which was furnished to the Central Government on 26.12.2012. The matter was thereafter taken up at the Central Government level. The Ministry of Home Affairs prepared an appropriate note for the Hon'ble President who after considering the entirety of the matter rejected the mercy petition on 12.05.2013.

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16. Thus, the entire period beginning from 03.03.2011 to 15.05.2013 spanning over a period of 2 years and 3 months saw disposal of mercy petition at two different levels, one, by the Hon'ble Governor and other by the Hon'ble President. All the while, there was an order of stay granted by this Court on 19.3.2011 which was operating all through.

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17. First and foremost, the time taken by each of these authorities and the functionaries assisting them cannot be called or termed as "inordinate delay" and secondly, it was not as if every passing day was adding to the agony of appellant. The order of stay of execution had put the matter in a different perspective. In the given facts and circumstances of the case, in our view, the first submission does not merit acceptance. We are conscious of the fact that in a recent decision in *A.G. Perarivalan vs. State through Superintendent of Police & Anr.*¹¹, a Bench of three judges of this court commuted the sentence of death to life as the petition preferred under Article 161 of the Constitution had remained pending for two and half years with the Hon'ble Governor, despite the recommendations of the State Cabinet for remission of the sentence. In that case no decision was taken by the Hon'ble Governor in spite of the recommendations of the State Cabinet and as such the benefit of commutation was extended. The facts which came up for consideration in said decision thus stand on a completely different footing as against the instant matter.

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18. We now move to the second submission pertaining to solitary confinement of the appellant. Reliance in this behalf has been placed on the decision of this Court in *Sunil Batra vs. Delhi Administration & Ors.*⁵; and also on the decision of *Ajay Kumar Pal*⁹ in which segregation

¹¹2022 SCC Online SC 635

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- A of the concerned petitioner, from the day he was awarded death sentence till his mercy petition was disposed of, was taken to be in violation of the law laid down by this Court in *Sunil Batra*^s and the death sentence was commuted to life on both counts, namely; inordinate delay in considering the mercy petition and the solitary confinement that the concerned petitioner was subjected to.
- B 19. In the instant case, the letter written by Medical Officer, Belgaum Central Prison on 6.11.2011 did say that the appellant was kept in solitary confinement and said letter has been heavily relied upon by the appellant in support of the second submission. According to the letter,
- C the appellant was kept in solitary confinement since his admission to the prison in October, 2006 and that apart from common illness such as diarrhoea, fever, running nose and backache, the appellant was found to be suffering from psychosis with depression. Pertinently, on 8.11.2011, a letter was sent by the Chief Superintendent, Belagavi Central Prison to Additional DGP and IG Prisons, Karnataka to the following effect: -
- D “..... With respect to the above subject, we submit, that the death penalty convict no. 307, Umesh B.R. son of Ajjappa Reddy’s appeal petition was rejected by the Hon’ble Supreme Court, New Delhi and a letter confirming his death sentence has been sent to this office as mentioned in the reference. The said subject matter and processes have been explained in detail several times to the convict in the presence of all officers, but as the convict is mentally ill he is not agreeing to submit any more mercy petitions. So we have not received any mercy petitions from him. The convict was examined by the Prison Doctors and have given a medical report which is attached with this letter for your perusal and for further action.....”
- E This letter also affirms the fact that the appellant was mentally ill.
- F 20. The act on part of the medical officer in checking the health and well-being of the appellant was obviously because of the mandate of Section 29 of the Prisons Act, 1894 which is to the following effect: -
- G “29. Solitary confinement. – No cell shall be used for solitary confinement unless it is furnished with the means of enabling the prisoner to communicate at any time with an officer of the prison, and every prisoner so confined in a cell for more than twenty-four hours, whether as a punishment or otherwise, shall be visited

at least once a day by the Medical Officer or Medical Subordinate.” A

It must, therefore, be taken to be accepted that from 2006 till 2016, the appellant was kept in solitary confinement in “Andheri Block” and it was only thereafter, some relaxation in the rigours of the solitary confinement was effected and as the record shows, from 2016 onwards B the conditions were gradually relaxed.

21. The law on the point, as declared in *Sunil Batra*⁵ is very clear and as was held by this Court in *Ajay Kumar Pal*⁶, segregation of a convict from the day when he was awarded death sentence till his mercy petition was disposed of, would be in violation of law laid down by this Court in *Sunil Batra*⁵. In the instant case, the death sentence was awarded to the appellant in 2006 by the trial Court and the mercy petition was finally disposed of by the Hon’ble President on 12.5.2013, which means that the incarceration of the appellant in solitary confinement and segregation from 2006 to 2013 was without the sanction of law and completely opposed to the principles laid down by this Court in *Sunil Batra*⁵. C

22. In *Ajay Kumar Pal*⁶, on the issue of segregation of the convict in violation of the principles laid down in *Sunil Batra*⁵, this Court observed: - D

“9. Furthermore, as submitted in the petition, the petitioner has all the while been in solitary confinement i.e. since the day he was awarded death sentence. While dealing with Section 30(2) of the Prisons Act, 1894, which postulates segregation of a person “under sentence of death” Krishna Iyer, J. in *Sunil Batra*⁵ observed: (SCC p. 563, para 197-A) E

“197-A. (5) 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, 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, Code G

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- A and Prison Rules, has not been disposed. Of course, once rejected by the Governor and the President, and on further application there is no stay of execution by the authorities, he is ‘under sentence of death’, even if he goes on making further mercy petitions. 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’.”
- (emphasis in original)
- C Speaking for the majority in the concurring judgment D.A. Desai, J. stated thus : (*Sunil Batra case*⁵, SCC p. 572, para 223)
- “223. The expression ‘prisoner under sentence of death’ in the context of sub-section (2) of Section 30 can only mean the prisoner whose sentence of death has become final, conclusive and indefeasible which cannot be annulled or voided by any judicial or constitutional procedure. In other words, it must be a sentence which the authority charged with the duty to execute and carry out must proceed to carry out without intervention from any outside authority.”
- E 10. In the light of the enunciation of law by this Court, the petitioner could never have been “segregated” till his mercy petition was disposed of. It is only after such disposal that he could be said to be under a finally executable death sentence. The law laid down by this Court was not adhered to at all while confining the petitioner in solitary confinement right since the order of death sentence by the first court. In our view, this is complete transgression of the right under Article 21 of the Constitution causing incalculable harm to the petitioner.
- F 11. The combined effect of the inordinate delay in disposal of mercy petition and the solitary confinement for such a long period, in our considered view has caused deprivation of the most cherished right. A case is definitely made out under Article 32 of the Constitution of India and this Court deems it proper to reach out and grant solace to the petitioner for the ends of justice. We, therefore, commute the sentence and substitute the sentence of life imprisonment in place of death sentence awarded to the petitioner. The writ petition thus stands allowed.”
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23. In its jurisdiction under Article 32 of the Constitution of India, this Court had thus deemed it proper to reach out and grant solace to the petitioner on both grounds, namely, delay in disposal of mercy petition and solitary confinement for a long period. The period of solitary confinement in *Ajay Kumar Pal*⁵ in violation of the law laid down in *Sunil Batra*⁵ was from 2007 till 2014, i.e., for nearly seven years. In the instant case, the period of solitary confinement is for about ten years and has two elements: one, from 2006 till the disposal of mercy petition in 2013; and secondly from the date of such disposal till 2016. The question then arises: whether on this ground alone, the appellant is entitled to have the death sentence commuted?

24. In *Shatrughan Chauhan*⁶, solitary confinement was accepted and recognised as one of the grounds on the basis of which death sentence can be commuted. However, in the batch of matters under consideration in *Shatrughan Chauhan*⁶, no benefit was granted to any of the convicts on this ground. Paragraph 88 onwards, the effect of the law laid down by this Court in *Sunil Batra*⁵ and other cases was noticed and it was concluded as under: -

“90. It was, therefore, held in *Sunil Batra case*⁵, 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”.

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- A 91. Even in *Triveniben v. State of Gujarat*⁷, this Court observed that keeping a prisoner in solitary confinement is contrary to the ruling in *Sunil Batra*⁵ and would amount to inflicting “additional and separate” punishment not authorised by law. It is completely unfortunate that despite enduring pronouncement on judicial side, the actual implementation of the provisions is far from reality. We take this occasion to urge to the Jail Authorities to comprehend and implement the actual intent of the verdict in *Sunil Batra v. Delhi Admn.*⁵.“
- B 25. The benefit of commutation was, however, granted in *Ajay Kumar Pal*⁹ on the ground that the solitary confinement was against the principles laid down in *Sunil Batra*⁵ and also on the ground of delay. Having considered the entirety of matter, in our view, the impact of solitary confinement were obviously evident in the instant case, as would be clear from the letter given by the medical professional on 6.11.2011 and the communication emanating from the jail on 8.11.2011. The
- C D incarceration in solitary confinement thus did show ill effects on the well-being of the appellant. In the backdrop of these features of the matter, in our view, the appellant is entitled to have the death sentence imposed upon him to be commuted to death sentence to life.
- E 26. At this stage, we may refer to a recent decision by a three-Judge Bench in *Mohd. Mannan alias Abdul Mannan vs. State of Bihar*¹², where while accepting the review petition, the sentence of death was commuted to imprisonment for life. However, it was observed in paragraphs 87 and 88 as under: -
- F “87. Even though life imprisonment means imprisonment for entire life, convicts are often granted reprieve and/or remission of sentence after imprisonment of not less than 14 years. In this case, considering the heinous, revolting, abhorrent and despicable nature of the crime committed by the petitioner, we feel that the petitioner should undergo imprisonment for life, till his natural death and no remission of sentence be granted to him.
- G 88. We, therefore, commute the death sentence imposed on the petitioner to life imprisonment, till his natural death, without reprieve or remission.”

¹² (2019) 16 SCC 584

27. Considering the entirety of facts and circumstances on record, in our view, ends of justice would be met if while commuting the death sentence awarded to the appellant, we impose upon him sentence of life imprisonment with a rider that he shall undergo minimum sentence of 30 years and if any application for remission is moved on his behalf, the same shall be considered on its own merits only after he has undergone actual sentence of 30 years. If no remission is granted, it goes without saying that as laid down by this Court in *Gopal Vinayak Godse vs. State of Maharashtra*¹³, the sentence of imprisonment for life shall mean till the remainder of his life.

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28. The appeal is allowed accordingly.

29. Before we part, we must observe that the instruction quoted in paragraph 3(f) of this Judgment leads to an incongruous situation. According to it, the mercy petition must be filed within seven days of the disposal of the appeal or dismissal of special leave petition. A convicted accused is entitled to file a review petition within thirty days. An anomalous situation, like the present one, may arise where even before the review is filed, the mercy petition is required to be filed. The concerned instruction requires suitable modification so as to enable the convicted accused to file mercy petition after exhaustion of remedies in Court of law.

Nidhi Jain
(Assisted by : Shashwat Jain, LCRA)

Appeal allowed.

¹³ AIR 1961 SC 600