

BALWANT SINGH

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v.

UNION OF INDIA & ORS.

(Writ Petition (Crl.) No. 261 of 2020)

MAY 03, 2023

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[B. R. GAVAI, VIKRAM NATH AND SANJAY KAROL, JJ.]

Constitution of India – Arts. 32, 72, 161 – Mercy Petition – Petitioner was convicted for having committed an offence u/s. 120-B, 302, 307 of IPC and u/s. 3(b), 4(b) and 5(b) r/w s. 6 of Explosives Substances Act, 1908 and was awarded death sentence – Death reference of the petitioner was confirmed by the High Court – Petitioner neither preferred appeal against the decision of the High Court nor preferred the mercy petition – The mercy petition for the petitioner was preferred by the Gurudwara Prabandhak Committee – The case of the petitioner is that the Union has not taken any step upon mercy petition for more than 10 years and therefore the sentence of death imposed on the petitioner be commuted to the life imprisonment and with such plea the petitioner has approached the Supreme Court u/Art. 32 – Held: Mercy petition was filed in the year 2012 – The communication of the Ministry of Home Affairs dated 27.09.2019, the proposal for considering the commutation of the death sentence of the petitioner was started and a decision was taken to keep the same pending till disposal of the pending appeals before Supreme Court, filed by the co-accused as well as by CBI – Further, directions were again issued by the Supreme Court on 04.12.2020 and 02.05.2022 and that matter was considered by the competent authority – Thus, it cannot be said that there was an inordinate delay in disposal of mercy petition – Ministry of Home Affairs, upon material consideration of various reports from its different branches, has come to the conclusion that the consideration may be deferred as it could have an impact of compromising the security of the nation or creating law and order situation – Therefore, not in the domain of the Supreme Court to delve upon the decision of the competent authority to defer taking of any decision at present – It is within the executive to take a call.

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A Disposing of the writ petition, the Court

- HELD:** 1. It is also evident that the argument regarding pendency of the Mercy Petition and there being a delay of more than 10 years cannot be sustained. Firstly, the petitioner himself never submitted any Mercy Petition. The alleged Mercy Petition B of year 2012 was filed by SGPC. Further, after the communication of the Ministry of Home Affairs dated 27.09.2019, the proposal for considering the commutation of the death sentence of the petitioner was started and a decision was taken to keep the same pending till disposal of the pending appeals before this Court, C filed by the co-accused as well as by CBI, as according to the competent authority, it would have a bearing and it could be relevant for taking final decision on the said proposal of commutation. Further, it was after the directions issued by this Court on 04.12.2020 and 02.05.2022 that the matter was again considered by the competent authority and it was decided to defer D the question of commutation in view of the reasons given in the affidavit filed by the Ministry of Home Affairs. Thus, it cannot be alleged that there has been an inordinate delay in disposal of the Mercy Petition. [Para 17][277-H; 278-A-C]

2. Without going into any further issues as argued by counsel E for the parties, it is found that there are directions by this Court vide orders dated 4.12.2020 and 2.5.2022 to dispose of the Mercy Petition of the petitioner. It is also found that the Ministry of Home Affairs, upon material consideration of various reports from its different branches, has come to the conclusion that the consideration may be deferred as it could have an impact of F compromising the security of the nation or creating law and order situation. It would not be within the domain of this Court to delve upon the decision of the competent authority to defer taking of any decision at present. It is within the domain of the executive to take a call on such sensitive issues. As such this Court does G not deem it appropriate to issue any further directions. [Para 19][278-E-G]

*Shatrughan Chauhan and anr. v Union of India & Ors.
(2014) 3 SCC 1 : [2014] 1 SCR 609; V. Sriharan alias
Murugan v. Union of India & Ors. (2014) 4 SCC 242 :
[2014] 1 SCR 1093; Navneet Kaur v. State (NCT of*

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Delhi) and anr. (2014) 7 SCC 264 : [2014] 4 SCR 1138 A
– distinguished.

Kusumbala Tarun Das v. Union of India (2011) SCC Online Gau 370; Harbans Singh v. State of U.P. (1982) 2 SCC 101 : [1982] 3 SCR 235 – referred to.

<u>Case Law Reference</u>			B
[2014] 1 SCR 609	distinguished	Para 8	
[2014] 1 SCR 1093	distinguished	Para 8	
[2014] 4 SCR 1138	distinguished	Para 8	
[1982] 3 SCR 235	referred to	Para 10	C

CRIMINAL ORIGINAL JURISDICTION: Writ Petition (Crl.) No. 261 of 2020.

(UNDER ARTICLE 32 OF THE CONSTITUTION OF INDIA)

Mukul Rohatgi, Sr. Adv., Rupesh Kumar, Ms. Pankhuri Shrivastava, D
Ms. Neelam Sharma, Rajeev Sharma, Advs. for the Petitioner.

K M Nataraj, ASG, Gaurav Dhama AAG, Rajat Nair, Ms. Priyanka Das, Piyush Beriwal, Divyansh H Rathi, Arvind Kumar Sharma, Vatsal Joshi, Chitransh Sharma, Gurmeet Singh Makker, Ms. Malvika Raghavan, Ajay Pal, Ms. Ranjeeta Rohatgi, Advs. for the Respondents. E

Anurag Singh, Anil Kaushik, Anil Kumar Mishra, Advs. for the Intervenor.

The Judgment of the Court was delivered by

VIKRAM NATH, J.

1. The present petition under Article 32 of the Constitution of India has been preferred seeking the following reliefs:

“(a) call for the records of Mercy Petition dated 25.03.12 pertaining to clemency to the petitioner, filed before the Hon’ble President of India under Article 72 of the Constitution of India; G

(b) issue appropriate writ, order or directions directing the respondents to commute the death sentence awarded to the petitioner into imprisonment for life due to inordinate delay of more than 08 years in deciding the Mercy Petition dated 25.03.12;

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- A (c) pass any other or further order which Your Lordships may deem fit and proper in the interest of justice.”
2. Pleadings have been exchanged.
3. We have heard learned counsel for the parties and perused the material on record.
- B 4. Shorn of unnecessary details, the relevant facts are stated hereunder:
- 4.1. On 31.8.1995, in a bomb blast the then Chief Minister of Punjab Shri Beant Singh, along with 16 others, lost their lives and a dozen others were injured. The present petitioner, along with 8 others, who had hatched a conspiracy and had executed the said bomb blast, were put to trial. It would be relevant to mention that the present petitioner was arrested with respect to the said incident on 27.01.1996. The Trial Court vide judgment dated 27.07.2007 convicted the petitioner along with co-accused Jagtar Singh Hawara, Gurmeet Singh, Lakhwinder Singh, Shamsher Singh and Nasib Singh. The petitioner along with co-accused Jagtar Singh Hawara have been convicted for offences under Sections 120-B, 302, 307 of the Indian Penal Code, 1860¹ and u/s.3(b), 4(b) and 5(b) r/w 6 of Explosives Substances Act, 1908 and awarded death sentence. In death reference, the High Court vide judgment dated 10.12.2010 confirmed the conviction and sentence of the petitioner. However, while confirming the conviction of the co-accused Jagtar Singh, it commuted the death sentence into life imprisonment. Other co-accused preferred appeal before this Court.
- F However, the present petitioner did not file any appeal after the judgment of the High Court. According to the petitioner, a Mercy Petition was preferred on 25.03.2012. However, according to the respondent-Union of India, till date the petitioner has not preferred any Mercy Petition. It was Shiromani Gurudwara Prabandhak Committee² which preferred the aforesaid Mercy Petition on behalf of the petitioner.
- G 5. The grievance of the petitioner, as apparent from the petition is that, as no decision has been taken on his Mercy Petition for more than 10 years, he should be granted the commutation of his death sentence into imprisonment for life.

¹ For short ‘IPC’

² SGPC

6. Shri Mukul Rohtagi, learned senior counsel for the petitioner has relied upon a letter dated 27.09.2019 issued by the Ministry of Home Affairs,

Government of India addressed to the Chief Secretary, Government of Punjab communicating that 8 Sikh persons be given special remission under Article 161 of the Constitution of India and released from prison and a further proposal for commutation of death sentence to life imprisonment of one prisoner (petitioner) is to be processed under Article 72 of the Constitution of India. All concerned departments were required to take appropriate action in that regard. Along with the said letter is attached the list of 9 Sikh prisoners, 8 with respect to whom remission was given under Article 161 of the Constitution and one (petitioner) whose case was to be considered for commutation of death sentence to life imprisonment under Article 72 of the Constitution. It would be appropriate to reproduce the letter dated 27.09.2019 minus the annexure:

“GOVERNMENT OF INDIA
MINISTRY OF HOME AFFAIRS

Major Dhyan Cand National Stadium,
Women Safety Division, 2nd Floor,
India Gate, New Delhi – 110 002

September 27, 2019

Adviser to the Administrator,
No.227010
Dated 10-10-2019

PA/PSH 229010

Dated 11/10/19

To
The Chief Secretary
Government of
Punjab/Gujarat/Haryana/Karnataka/ NCT of Delhi

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Sub: Commemoration of 550th Birth Anniversary of Guru Nanak Dev Ji – Special Remission and Release of Prisoners.

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- A I am directed to say that on the occasion of commemoration of 550th Birth Anniversary of Guru Nanak Devi Ji, the Government of India has decided that 8 such prisoners may be granted special remission and death sentence of one Sikh prisoner may be commuted to life imprisonment. The details of these nine Sikh prisoners are given at Annexure.
- B 2. It has been decided that 8 Sikh prisoners be given special remission under Article 161 of the Constitution and released from prison. The proposal for commutation of death sentence to life imprisonment of one prisoner is to be processed under Article 72 of the Constitution of India. The State Government/Union Territory Administration concerned and Centre-State Division of Ministry of Home Affairs are requested to take all required action in this regard.
- C 3. I am also directed to convey the concurrence of the Central Government to the State Government/ Union Territories to the remission and release of eight Sikh prisoners (details mentioned in Annexure) for the cases where approval/concurrence/consultation of/with the Central Government is required under Article 161 or Article 72 of the Constitution of India, as the case may be or under any other law in force.
- D 4. This issues with the approval of the competent authority.

Encl: As above

Yours sincerely,

Sd/- (Arun Sobti)

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Deputy Secretary (PR & ATC),

Phone: 075297

Email: dspr.atc@mha.gov.in

Copy to:

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Joint Secretary (CS), Ministry of Home Affairs, New Delhi."

H 7. The eight prisoners who were granted remission as per the annexure are:

(i). Lal Singh @ Manjit Singh

(ii). Devinder Singh Bhullar

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|------------------------------------|---|
| (iii). Subheg Singh | A |
| (iv). Nand Singh | |
| (v). Harjinder Singh Kali | |
| (vi). Waryam Singh @ Sabir @ Giani | |
| (vii). Gurdeep Singh Khera | B |
| (viii). Balbir Singh | |

The only prisoner whose commutation of death sentence was to be processed under Article 72 of the Constitution of India was the petitioner.

8. Learned senior counsel has thereafter drawn our attention to the correspondence between different organs of the state with respect to commutation of death sentence of the petitioner. However, it is stated that till date no decision has been taken. It is under these circumstances that Shri Rohtagi, learned senior counsel prayed that as the State and the Union of India have not been able to decide the Mercy Petition which is pending for more than 10 years, this Court itself may grant that commutation. Shri Rohtagi placed reliance upon the following three judgments of this Court in support of his submissions:

1. **Shatrughan Chauhan and anr. v Union of India & Ors.³;**
2. **V. Sriharan alias Murugan v. Union of India & Ors.⁴;**
and
3. **Navneet Kaur v. State (NCT of Delhi) and anr.⁵**

9. On the other hand Shri K.M.Natraj, learned Additional Solicitor General submitted that the petitioner having expressed in specific terms that he has no faith in the judiciary of this country and that he did not regret at all being part of the crime and further has used contemptuous terms before the High Court which have been duly recorded, he does not deserve any mercy in view of his conduct. It is further submitted that till date the petitioner himself has not submitted any Mercy Petition. The Mercy Petition dated 25.03.2012 attached with the petition is by the SGPC under Article 72 of the Constitution of India. The communication

³ (2014) 3 SCC 1

⁴ (2014) 4 SCC 242

⁵ (2014) 7 SCC 264

- A dated 27.09.2019 by the Ministry of Home Affairs, referred to above, is only a request to the state government to send a proposal for commutation of death sentence to life imprisonment under Article 72 of the Constitution of India. It is submitted that once the petitioner has not filed any Mercy Petition himself, there is no question of granting any relief as claimed.
- B Reliance is placed upon a judgment of the Guwahati High Court in the case of **Kusumbala Tarun Das v. Union of India**⁶. Another objection taken by learned ASG is to the effect that Criminal Appeals filed by the co-accused are still pending before this Court, as such consideration of any Mercy Petition would arise only after disposal of those appeals. Details of three Criminal Appeals filed by two co-accused Lakhwinder Singh and Jagtar Singh Hawara and also one Criminal Appeal filed by the CBI against the commutation of the sentence of Jagtar Singh Hawara, are as follows:

	S1.No.	Particulars	Appeal details	Status
D	1	Appeal by accused Lakhwinder Singh	Crl.Appeal No.1464/2011	Pending
	2	Appeal by accused Jagtar Singh Hawara	Crl.Appeal No.1013/2013	Pending
E	3	Appeal by CBI	Crl.Appeal No.2277/2011	Pending

- F 10. According to learned ASG, the decision in these appeals pending before this Court would be a relevant material and while considering the Mercy Petition the same could have a bearing. As such it would be appropriate to await the decision of the pending appeals. In support of his submission, reliance is placed upon a judgment of this Court in the case of **Harbans Singh v. State of U.P.**⁷

- G 11. Shri Natraj, learned ASG further made a submission that there is no delay in consideration of the Mercy Petition. According to Shri Natraj, it is only after 27.09.2019 that the Ministry of Home Affairs, Government of India, required the state government to send the proposal for commutation of death sentence to life imprisonment under Article 72

H ⁶ (2011) SCC Online Gau 370

⁷ (1982) 2 SCC 101

of the Constitution. It is thereafter that the process has started. Further it is submitted that during the pendency of the present proceedings, two orders were passed by this Court on 4.12.2020 issuing certain directions and again on 2.5.2022 issuing further directions. Both the orders are reproduced below:

Order dated 04.12.2020:

“By the letter dated 27th September, 2019, the Ministry of Home Affairs, Government of India has written to the Chief Secretary, Government of Punjab/Gujarat/Haryana/Karnataka/NCT of Delhi that on the occasion of commemoration of 550th Birth Anniversary of Guru Nanak Dev Ji, special remission and release of prisoners are proposed. In particular, the said letter states as follows:

“It has been decided that 8 sikh prisoners be given special remission under Article 161 of the Constitution and released from prison. The proposal for commutation of death sentence to life imprisonment of one prisoner is to be processed under Article 72 of the Constitution of India. The State Government/Union Territory Administration concerned and Centre-State Division of Ministry of Home Affairs are requested to take all required action in this regard.”

On a query made by the Court, Mr. K.M. Nataraj, learned Additional Solicitor General appearing on behalf of the Union of India stated that the proposal has not been sent in view of the pending appeals of the co-accused in this Court. It is not denied that the petitioner has himself not filed any appeal against his sentence. Therefore, there is no question of awaiting the outcome of any appeal pending before this Court. It is obvious that the factum of the appeals pending at the behest of other co-accused would have no relevance to the proposal intended to be sent for consideration under Article 72 of the Constitution of India.

Mr. K.M. Nataraj, learned ASG, therefore, seeks time to make a statement about the proposal as contemplated in the letter dated 27th September, 2019 to be sent for processing under Article 72 of the Constitution of India.

List the matter on 8th January, 2021.”

- A **Order dated 02.05.2022:**
- “The basic facts leading to the filing of the instant writ petition were noted in the order dated 24.03.2022 as under:
- B 1. For having assassinated the then Chief Minister of Punjab, the petitioner along with co-accused was tried in respect of offences punishable under Sections 302/307/120-B of the Indian Penal Code, 1860 and Sections 3 and 4 of the Explosive Substances Act in Sessions Case No.2-A of 1995.
- C 2. After recording conviction under the aforesated offences, the Trial Court sentenced the petitioner and co-accused, Jagtar Singh Hawara to death sentence.
- D 3. Thereafter, Murder Reference No.6 of 2007 as well as Criminal Appeal No.731-DB of 2007 preferred by the co-accused Jagtar Singh Hawara and others, were considered by the High Court vide its judgment dated 12.10.2010.
- E 4. It must be noted here that the petitioner had not challenged his death sentence nor had he preferred any appeal from the decision of the Trial Court.
- F 5. The High Court found substance in the appeal preferred by the co-accused Jagtar Singh Hawara and substituted the death sentence to imprisonment for life. However, the order of conviction and sentence as awarded to the petitioner was affirmed by the High Court.
- G 6. Insofar as the conviction and sentence awarded to the co-accused Jagtar Singh Hawara is concerned, Criminal Appeal No.1013 of 2013 at his instance along with other connected matters is pending consideration in this Court. During such pendency, a letter was written by the Ministry of Home Affairs, Government of India on 27.09.2019 to the Chief Secretaries of the Governments of Punjab, Gujarat, Haryana, Karnataka and NCT of Delhi on the occasion of commemoration of 550th Birth Anniversary of Guru Nanak Dev Ji proposing special remission and release of prisoners.
- H 7. We are now concerned in this writ petition with the alleged inaction on part of the concerned authorities in not commuting the death sentence awarded to the petitioner in keeping with the

aforested communication dated 27.09.2019. It is in this light that the present writ petition prays that the mercy petition preferred by the petitioner on 25.03.2012 be taken up for disposal immediately and his death sentence be commuted to imprisonment for life.

8. Notably, the prosecution in the instant crime was conducted by the Central Bureau of Investigation and as such, the authority to consider the issues regarding commutation and remission would be the Central Government.”

It must be stated here that the petitioner never preferred any appeal, that is to say, no appeal was preferred by him either before the High Court or before this Court.

The order then adverted to the earlier order passed by this Court on 04.12.2020 and following observations made therein were also quoted:

“On a query made by the Court, Mr. K.M. Nataraj, learned Additional Solicitor General appearing on behalf of the Union of India stated that the proposal has not been sent in view of the pending appeals of the co-accused in this Court. It is not denied that the petitioner has himself not filed any appeal against his sentence. Therefore, there is no question of awaiting the outcome of any appeal pending before this Court. It is obvious that the factum of the appeals pending at the behest of other co-accused would have no relevance to the proposal intended to be sent for consideration under Article 72 of the Constitution of India.

Mr. K.M. Nataraj, learned ASG, therefore, seeks time to make a statement about the proposal as contemplated in the letter dated 27th September, 2019 to be sent for processing under Article 72 of the Constitution of India.”

Thereafter, certain directions were issued so that the grievance raised by the petitioner could be addressed immediately.

Affidavits in response have since then been filed on behalf of respondent no.1 and the Central Bureau of Investigation (“CBI” for short). According to the CBI, it has already sent its comments to the Home Secretary on 05.04.2022 in response to the DO letter dated 29.03.2022 issued by respondent no.1.

- A The response filed by respondent no.1 states as under:
- “18. After taking inputs from the concerned stakeholders and keeping in view the appeal filed by CBI [Criminal Appeal No.2277/2011] and appeal filed by Jagtar Singh Hawara [Criminal Appeal No.1013/2013] which are pending for consideration. The case was examined in the Ministry of Home Affairs and the proposal was submitted to His Excellency President of India for his consideration on 20th April 2022 recommending the following:
- B a. that the decision on the mercy petitions filed on behalf of convict Balwant singh Rajoana under Article 72 of the Constitution may be considered after the verdict of Hon’ble Supreme Court of India in the above mentioned two appeals.” Two basic submissions advanced by the learned counsel for respondent no.1 are as under:
- C I. Since the appeal of the co-accused is presently pending consideration by this Court, the mercy petition preferred on behalf of the petitioner would logically be ripe for consideration only after the disposal of the appeal.
- D In response, it is submitted by the counsel for the petitioner that the order dated 04.12.2020 passed by this Court was quite clear and the respondents were obliged to consider the mercy petition despite the pendency of the appeal preferred on behalf of the co-accused.
- E II. It was submitted that the petitioner himself did not prefer any mercy petition, though certain organizations had preferred mercy petitions on his behalf.
- F In response, it is submitted on behalf of the petitioner that said mercy petition has always engaged the attention of the concerned authorities and the communications addressed by the authorities to the petitioner indicate that such mercy petition is under consideration.
- G Without getting into the issue whether the petitioner himself had preferred the mercy petition, considering the communications on record as well as the fact that the petitioner has preferred the instant writ petition, in our view, there would be no embargo in considering the matter in the light of the directions issued by this Court in its order dated 04.12.2020. Furthermore, as the order
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had made it quite clear, the matter could be and had to be considered despite the pendency of the appeal preferred by the co-accused.

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In the circumstances, we direct as under:

a. In terms of the direction issued by this Court in its order dated 04.12.2020, the matter be considered by the concerned authorities without being influenced by the fact that the appeal preferred on behalf of the co-accused is still pending consideration before this Court.

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b. Let the decision be taken as early as possible and preferably within two months from today.

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List the matter for further consideration on 22.07.2022.”

12. It was next submitted that under the above directions, proceedings were taken up for consideration ignoring the aspect of pending appeals. In the meantime, multiple representations were also received and the same were under consideration for due analysis.

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13. It was next submitted by the learned ASG that considering the prevailing situation, a decision has been taken by the Ministry of Home Affairs that it would be appropriate to defer taking any decision on the Mercy Petition as it could have serious potential of compromising the security of the nation or creating a law and order situation.

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14. It was further submitted that the present petition deserves to be dismissed in view of the decision already taken as communicated to this Court vide affidavit dated 29.09.2022.

15. On the direction of the Court, Shri Natraj produced the relevant record relating to the Ministry of Home Affairs resulting into the decision taken for deferring the disposal of the Mercy Petition as communicated vide affidavit dated 29.09.2022. The said file was perused by the Court.

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16. Although Shri Mukul Rohtagi, learned senior counsel appearing for the petitioner had requested for perusal of the file of the Ministry of Home Affairs but the same was seriously objected to by Shri Natraj, learned ASG. This Court also did not deem it necessary that the said file dealing with a sensitive issue be given access to the petitioner.

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17. From the above facts and circumstances, it is also evident that the argument regarding pendency of the Mercy Petition and there being a delay of more than 10 years cannot be sustained. Firstly, the

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- A petitioner himself never submitted any Mercy Petition. The alleged Mercy Petition of year 2012 was filed by SGPC. Further, after the communication of the Ministry of Home Affairs dated 27.09.2019, the proposal for considering the commutation of the death sentence of the petitioner was started and a decision was taken to keep the same pending till disposal of the pending appeals before this Court, filed by the co-accused as well as by CBI, as according to the competent authority, it would have a bearing and it could be relevant for taking final decision on the said proposal of commutation. Further, it was after the directions issued by this Court on 04.12.2020 and 02.05.2022 that the matter was again considered by the competent authority and it was decided to defer the question of commutation in view of the reasons given in the affidavit filed by the Ministry of Home Affairs. Thus, it cannot be alleged that there has been an inordinate delay in disposal of the Mercy Petition.

18. We may also record here that the three decisions relied upon

- D by Shri Rohtagi in support of his submission regarding inordinate delay in disposal of the Mercy Petition and resultantly commutation in such cases having been granted by this Court, do not help the petitioner in view of the facts and situation being different in those three cases and in the present case.

- E 19. Without going into any further issues as argued by counsel for the parties, we find that there are directions by this Court vide orders dated 4.12.2020 and 2.5.2022 to dispose of the Mercy Petition of the petitioner. We also find that the Ministry of Home Affairs, upon material consideration of various reports from its different branches, has come to the conclusion that the consideration may be deferred as it could have an impact of compromising the security of the nation or creating law and order situation. It would not be within the domain of this Court to delve upon the decision of the competent authority to defer taking of any decision at present. It is within the domain of the executive to take a call on such sensitive issues. As such this Court does not deem it appropriate to issue any further directions.
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20. The stand of the Ministry of Home Affairs to defer the decision on the Mercy Petition of the petitioner is also a decision for the reasons given thereunder. It actually amounts to a decision declining to grant the same for the present.

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21. It is, however, directed that the competent authority, in due course of time, would again as and when it is deemed necessary, may deal with the Mercy Petition, and take a further decision. A

22. The Writ Petition is disposed of accordingly with the aforesaid observations.

23. Pending applications, if any, are disposed of. B

Ankit Gyan

Writ Petition disposed of.

(Assisted by : Parth Goswami and Mahendra Yadav, LCRAs)