MADHU MEHTA

v.

UNION OF INDIA

AUGUST 9, 1989

[SABYASACHI MUKHARJI AND B.C. RAY, JJ.]

Constitution of India—Articles 21, 32, 72 and 161—Undue long delay in execution of sentence of death—Sentence can be altered to imprisonment for life—No fixed period of delay can be considered decisive—Speedy trial—Part of fundamental right to life and liberty.

This Petition under Article 32 of the Constitution has been filed by one Madhu Mehta National Convenor of Hindustani Andolan and a Social worker praying for a writ of *Habeas Corpus* or an appropriate direction in regard to one Gyasi Ram s/o Param aged 60 years, who, is stated to be waiting for a decision on his mercy petition by the President of India for about 8 or 9 years. He is stated to be confined in the Death Cell, Central Jail, Jhansi. The Circumstances under which the Writ Petition has been filed may be stated thus:

Gyasi Ram was convicted under Section 302, IPC. and sentenced to death by Sessions Judge, Jhansi on October 19, 1978 for committing the Cold-blooded murder of one Bhagwan Singh, a Government servant. One Daya Ram was also associated with him for the Commission of the said Crime, who had escaped. The death sentence awarded to Gyasi Ram was confirmed both by the High Court as also by this Court.

On 18.12.1981, the wife of Gyasi Ram filed a mercy Petition before the President of India which remained undisposed till the filing of this Writ Petition.

It appears that mercy petitions presented by Gyasi Ram on 6.10.1981 and 26.11.1981 were rejected by the Governor of the State and were received in the Ministry of Home Affairs on 5.12.1981 for consideration by the President of India. On 21.4.1983, the mercy petitions were put up for orders before the President, and the President returned the file for further consideration.

In the meantime, information was received by the Government from the Registry of this Court that Daya Ram s/o Moolchand had also

filed a Special Leave Petition against the Judgment dated 17.10.1984 of the Allahabad High Court whereby the death sentence imposed upon him was confirmed. Subsequently two mercy petitions were filed on his behalf which were forwarded to the Governor of the State for consideration in the first instance on 9.4.84 and 9.8.85, which remained undisposed.

In the Counter-affidavit filed on behalf of the Union of India attempt has been made to explain this long delay occurred in the disposal of the mercy petitions—the main reason, amongst others, that is attributed to the long delay in disposing of the mercy petitions of Gyasi Ram, is the pendency of the mercy petitions filed by Daya Ram, with the Governor of the State, in regard to which the Union is stated to be in touch and Correspondence with the State Government. It is said that the decision on the mercy Petition moved on behalf of Daya Ram has a direct bearing to the decision to be taken on the petitions moved on behalf of Gyasi Ram. It was only on 15.3.89, the Union Government had been informed on telex that the mercy petition of Daya Ram has since been disposed of.

The Sessions Judge, Jhansi had visited the said convict in Jail on 22.5.88 and had sent a report to the effect "Gyasi's mental state is such that he might commit suicide by hanging his head on the iron grill of his cell if a decision on his mercy petition is not taken soon."

Thereafter the instant Petition has been filed. The question that arose for defermination by this Court, in the facts and Circumstances, of the case was whether by reason of the long delay in the execution of the death sentence awarded to Gyasi Ram, he was entitled to any commutation, alteration in his sentence in view of this Court's Judgments in *T.V. Vatheeswaran* v. *State of Tamil Nadu*, [1983] 2 SCR 348 and *Sher Singh & Ors.* v. *The State of Punjab*, [1983] 2 SCR 582.

Allowing the Writ Petition, this Court,

HELD: Undue long delay in execution of the sentence of death would entitle the condemned person to approach this Court or to be approached under Article 32 of the Constitution but this Court would only examine the nature of delay caused and circumstances that ensued after the sentence was finally confirmed by the Judicial process and will have no jurisdiction to re-open the conclusions reached by the Court while finally maintaining the sentence of death. [782G]

The Court is entitled and indeed obliged to consider the question

A **of inordinate delay in the light of all circumstances of the case to decide whether the execution of sentence should be carried out or should be altered into imprisonment for life. No fixed period of delay can be considered to be decisive. [782H-783A]**

B **Speedy trial in Criminal cases though may not be a fundamental right, is implicit in the broad sweep and content of Article 21. Speedy trial is part of one's fundamental right to life and liberty. [783B]**

There is no justifiable ground for keeping the mercy petition of Daya Ram and Gyasi Ram pending for such a long time. In the half yearly return dated 8th October, 1985, and thereafter in the successive C **half yearly returns of the Uttar Pradesh Government upto 16th Jan., 1989, year after year, the Mercy Petitions of Daya Ram were shown to have remained unattended and undisposed and consequently the Mercy Petition made to the President of India by Gyasi Ram was also undisposed. [781B]**

D **The time and the manner in which the Mercy Petition has been dealt with in this case in respect of Gyasi Ram make sad reading and speak of the deplorable lack of speed and promptitude which in these matters should be there. In the meantime, there is no denying the fact that Gyasi Ram has suffered a great deal of mental pain and agony. [781C]**

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The Convict has suffered mental agony of living under the shadow of death, for long far too long. He should not suffer that agony any longer. [783D]

The Court directed that the death sentence imposed on Gyasi Ram F **be altered to imprisonment for life. [783E]**

Bachan Singh **v.** *State of Punjab,* **[1983] 1 SCR 1451 and** *Smt. Triveniben* **v.** *State of Gujarat,* **[1989] 1 SCC 678, referred to.**

CRIMINAL ORIGINAL JURISDICTION: Writ Petition G (Criminal) No. 216 of 1989

(Under Article 32 of the Constitution of India)

Surya Kant and M.C. Mehta for the Petitioner.

H Anil Dev Singh, Girish Chandra, Ms. A. Subhashini and Dalveer Bhandari for the Respondent.

The Judgment of the Court was delivered by

SABYASACHI MUKHARJI, J. This is a petition under Article 32 of the Constitution filed by one Madhu Mehta, who is the National Convenor of Hindustani Andolan. This petition seeks a writ of *Habeas Corpus* or an appropriate direction with regard to one Shri Gyasi Ram, S/o Shri Param aged above 60 years, who, it is claimed, has been waiting decision on his Mercy Petition pending before the President of India for about 8 or 9 years. The said Gyasi Ram was at all relevant time lodged in "DEATH CELL, CENTRAL JAIL" JHANSI having been convicted for an offence punishable under section 302 of Indian Penal Code and sentenced to death by the learned Sessions Judge, Jhansi on October 19, 1978. It appears that Gyasi Ram was convicted and sentenced to death by the learned Sessions Judge, Jhansi on 19th October, 1978 for committing murder, which has been described by the Under-Secretary (Judicial), Ministry of Home Affairs, Govt. of India, as the 'cold blooded murder' of a Government servant, namely, Bhagwan Singh, who was the resident of Mauranipur Tehsil, in District Jhansi, Uttar Pradesh. There then were arrears of land revenue due from Gyasi Ram and also one Mool Chand. For the purpose of realising the said arrears of land revenue, their property was attached by Amin Bhagwan Singh and the same was put to sale by auction. The auction took place on 26th December, 1976 and after the auction while the said Amin was returning along with his Peon Sripat from village Kakwara after delivering the sale certificate to the auction purchaser, they were way laid by Daya Ram (son of Mool Chand) and Gyasi Ram, the convicts involved in this case. In the evidence, it was stated that Daya Ram who was armed with pistol fired at the deceased Amin Bhagwan Singh who fell down from his cycle. While Daya Ram held down Amin Bhagwan Singh, Gyasi Ram, the person about whom this petition is concerned, cut Bhagwan Singh's throat with the sword he was carrying and inflicted other injuries also. After this incident, both Daya Ram and Gyasi Ram, it has been stated, escaped. Gyasi Ram was, however, arrested, tried, convicted and sentenced to death, as mentioned hereinbefore. The death sentence was passed on Gyasi Ram by the learned Sessions Judge on 19th October, 1976. The Allahabad High Court confirmed this death sentenced on 28th February, 1979. This Court dismissed his Criminal Appeal No. 362/79 on 17th March, 1981. Mercy Petition was filed by the wife of the convicted to the President of India on 18th December, 1981. It appears that Mercy Petition has still not been disposed of. Daya Ram had absconded and could not be put on trial along with Gyasi Ram. It appears further that Gyasi Ram's Mercy Petitions dated 6th October,

A 1981 and 26th November, 1981 were rejected by the Governor of Uttar Pradesh on the 26th November, 1981 and were received in the Ministry of Home Affairs on the 5th December, 1981 for the consideration of the President of India. From the affidavit filed on behalf of the Government of India, it appears that after processing the case, the matter was put up before the President of India on 21st April, 1983 for
B his orders on the Mercy Petitions and that the President after examining the case file, returned the file on 30th July, 1983 for further consideration. While the Ministry of Home Affairs was processing the case of Gyasi Ram further, the intimation was received from this Court on 13th November, 1984 that Daya Ram, son of Mool Chand had also filed a Special Leave Petition against the judgment date 17th October,
C 1984 of the Allahabad High Court by which the sentence of death was confirmed on him. It appears from the order of this Court dated 18th February, 1985 dismissing Daya Ram's Special Leave Petition that this Daya Ram was the same person who was Gyasi Ram's partner in the crime as mentioned hereinbefore. Subsequently, two Mercy Petitions were filed on behalf of Daya Ram which were forwarded for the con-
D sideration of the Governor of Uttar Pradesh in the first instance by the Ministry of Home Affairs dated 9th April, 1984 and 9th August, 1985 respectively. These still remain undisposed of. It has been asserted on behalf of the Government of India in the half-yearly return dated 8th August, 1985 submitted by the Government of Uttar Pradesh that it was reported that they had received a Mercy Petition from Daya Ram.
E Thereafter, in successive half-yearly reports, the last of these being dated 16th January, 1989, the State Government had been saying that the Mercy Petition of Daya Ram was still under consideration. It is the version of the Government that in view of the implications of Daya Ram and Gyasi Ram in the same crime, it was considered, it is stated, that the decision on the Mercy Petition of Daya Ram by the Governor
F of Uttar Pradesh would have a direct bearing on the consideration of the Mercy Petition of Gyasi Ram by the President of India. It was, accordinly, felt, so it is asserted, that it was desirable to await the decision of the Governor of Uttar Pradesh on Daya Ram's Mercy Petition. But it was only on 18th January, 1989 that by a Wireless Message, the Central Government asked the State Government to let
G the Ministry of Home Affairs know the decision of the Governor on Daya Ram's Mercy Petition and to send it immediately for consideration of the President of India so that the cases of Gyasi Ram and Daya Ram could be submitted together to the President. But the Government did not move. It is further stated that in reply to the Wireless Message of 18th January, 1989 the State Government through its
H letter dated 1st February, 1989 ıtimated that the Mercy Petition of

Daya Ram was still under consideration. Thereafter, there was another request to the Chief Secretary by demi-official letter of the Ministry of Home Affairs dated 3rd February, 1989 to expedite consideration of Daya Ram's Mercy Petition. And upon this, it is stated that by a telex message dated 15th March, 1989, the State Government had intimated that the Governor of Uttar Pradesh had rejected the Mercy Petition and that formal letter of State Government would follow. It was stated on behalf of the Government of India that Mercy Petition of Daya Ram was received by the Ministry of Home Affairs on 21st March, 1989 along with the letter. In the affidavit, it is stated that after collecting certain further information from the Supreme Court Registry, the Ministry of Home Affairs "was now ready to process the Mercy Petitions of Gyasi Ram and Daya Ram and submit the same to the President of India for consideration". The deponent was good enough to state in the affidavit that the delay factor would be kept in view while taking a final decision in the case of Gyasi Ram and he was fully aware of the agony of Gyasi Ram and members of his family. It was stated that in view of the reasons stated above, it was not possible to avoid the delay.

The learned District and Sessions Judge, Jhansi had, in the meantime, visited the said convict Gyasi Ram in jail on 22nd May, 1988 and had sent a report to the Inspector General of Prisons stating "Gyasi's mental state is such that he might commit suicide by hanging his head on the iron grill of his cell if a decision on his petition is not taken soon. If he is to be hanged, it should be done without any delay or he should be released". The Inspector General's Office further sent an official to Delhi to expedite the case. Thereafter, this petition was filed for the condemned prisoner. Gyasi Ram, until the orders of this Court passed in these proceedings on the 3rd May, 1989, was kept in the Death Cell and it is only pursuant to the orders of this Court that the prisoner was allowed to stay in the Ordinary Cell during the day time. The petitioner moved this Court on 11th April, 1989 and the notice was issued returnable on 19th April, 1989. Time was taken to file affidavit and the order of this Court dated 3rd May, 1989 was passed. The matter was adjourned for three months. Affidavits have been filed but his Mercy Petition still remains undisposed of. The question is: what is to be done? This question of delay in these matters has been examined by this Court from time to time, and how far delay in execution of death sentence necessitates the commutation of the death sentence or release of the condemned prisoner, has been a matter of some controversy and debate. In *T.V. Vatheeswaran* v. *State of Tamil Nadu*, [1983] 2 SCR 348, a bench of two learned Judges considered this

A aspect. Speaking for this Court, Chinnappa Reddy, J. stated in that decision that Article 21 of the Constitution enjoins that any procedure, which deprives a person of his life or liberty must be just, fair and reasonable. It implies humane conditions of detention, preventive or punitive. 'Procedure established by law' does not end with the pronouncement of sentence; it includes the carrying out of sentence. Pro-
B longed detention to await the execution of a sentence of death is an unjust, unfair and unreasonable procedure and the only way to undo the wrong is to quash the sentence of death. Reddy, J. was of the view that the sentence of death is one thing; sentence of death followed by lengthy imprisonment prior to execution is another. A period of anguish and suffering is an inevitable consequence of sentence of
C death, but a prolongation of it beyond the time necessary for appeal and consideration of reprieve is not. And it was no answer to say that the man would struggle to stay alive. It was, therefore, found in that case that a 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
D sentence of death. This Court did so and substituted the sentence of imprisonment in that case. That decision was rendered on 16th February, 1983. The validity of that decision did not last long. On 24th March, 1983, in *Sher Singh & Ors.* v. *The State of Punjab,* [1983] 2 SCR 582, a bench of three learned Judges of this Court held that the prolonged delay in the execution of a death sentence is unquestionably
E an important consideration for determining whether the sentence should be allowed to be executed. But no hard and fast rule that 'delay exceeding two years in the execution of a sentence of death should be considered sufficient to entitle the personn under sentence of death to invoke Article 21 and demand the quashing of the sentence of death' can be laid down as has been done in *Vatheeswaran's* case (supra). It is
F not necessary, therefore, to go into the aspect of this matter any more. Chief Justice Chandrachud observed that a self imposed rule should be followed by the executive authority rigorously that every mercy petition should be disposed of within a period of three months from the date on which it was received. Long and interminable delay in the disposal of these petitions, it was observed, are serious hurdles in the
G dispensation of justice and indeed, such delays tend to shake the confidence of the people in the very system of justice. The learned Chief Justice stated that undoubtedly, the executive has the power, in appropriate cases, to act under the aforesaid provisions but, all exercise of power is preconditioned by the duty to be fair and quick. Delay defeats justice, it was observed. In this background, we have to con-
H sider the reasons given in the affidavit in this case. We have set out the

reasons advanced on behalf of the Government. They are self explanatory. These do not, in our opinion, indicate any justifiable ground for keeping the Mercy Petitions of Daya Ram and Gyasi Ram pending for such a long time. Indeed, it is not disputed from the affidavit of the Under Secretary, Minisry of Home Affairs, Government of India that in the half-yearly return dated 8th October, 1985 and thereafter in the successive half-yearly returns of the Uttar Pradesh Government upto 16th January, 1989 year after year, the Mercy Petitions of Daya Ram remained unattended and undisposed of and consequently the Mercy Petition made to the President of India by Gyasi Ram was also undisposed. The time and the manner in which the Mercy Petition has been dealt with in this case in respect of Gyasi Ram make sad reading and speak of the deplorable lack of speed and promptitude which in these matters should be there. In the meantime, there is no denying the fact that Gyasi Ram has suffered a great deal of mental pain and agony. His condition has been described by the learned Sessions Judge as indicated hereinbefore. Whether death sentence is the appropriate punishment for the crime of murder, cold blooded in certain cases, is another debate. This Court in *Bachan Singh* v. *State of Punjab*, [1983] 1 SCR 145 at page 221 of the report, observed as follows:

> "To sum up, the question whether or not death penalty serves any penological purpose is a difficult, complex and intractable issue. It has evoked strong, divergent views. For the purpose of testing the constitutionality of the impugned provision as to death penalty in Section 302, IPC on the ground of reasonableness in the light of Articles 19 and 21 of the Constitution,, it is not necessary to express any categorical opinion, one way or the other, as to which of these two antithetical views, held by the Abolitionists and Retentionists, is correct. It is sufficient to say that the very fact that persons of reason, learning and light are rationally and deeply divided in their opinion, on this issue, is a ground among others, for rejecting the petitioners' argument that retention of death penalty in the impugned provision is totally devoid of reason and purpose. If, notwithstanding the view of Abolitionists to the contrary, a very large segment of people, the world over, including sociologists, legislators, jurists, judges and administrators still firmly believe in the worth and necessity of capital punishment for the protection of society, if in the perspective of prevailing crime conditions in India, contemporary public

A opinion channelised through the people's representatives in Parliament, has repeatedly in the last three decades, rejected all attempts, including the one made recently, to abolish or specifically restrict the area of death penalty, if death penalty is still a recognised legal sanction for murder or some types of murder in most of the civilised countries in B the world, if the framers of the Indian Constitution were fully aware ... of the existence of death penalty as punishment for murder, under the Indian Penal Code, if Thirty-fifth Report and subsequent reports of the Law Commission suggesting retention of death penalty, and recommending revision of the Criminal Procedure Code C and the insertion of the new sections 235(2) and 354(3) in that Code providing for pre-sentence hearing and sentencing procedure on conviction for murder and other capital offences were before the Parliament and presumably considered by it when in 1972-73 it look up revision of the Code of 1898 and replaced it by the Code of Criminal Pro- D cedure, 1973, it is not possible to hold that the provision of death penalty as an alternative punishment for murder, in section 302, Penal Code is unreasonable and not in the public interest. We would, therefore, conclude that the impugned provision in section 302, violates neither the letter nor the ethos of Article 19."

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In that decision, Bhagwati, J. (as the learned Chief Justice then was), dissented. He held that death sentence was bad morally as well as constitutionally. It is no longer necessary in view of the majority judgment to deal with these views in detail. This aspect was examined in several cases and a bench of five learned Judges considered this F question again in *Smt. Triveniben* v. *State of Gujarat,* [1989] 1 SCC 678, where Oza, J. speaking for the majority analysed the trend and observed at p. 688 that it was not necessary to go into the jurisprudential theories of punishment deterrent or retributive in view of what has been laid down in *Bachan Singh's* case (supra) with which learned Judges therein agreed. It is well-settled now that undue long delay in G execution of the sentence of death would entitle the condemned person to approach this Court or to be approached under Article 32 of the Constitution, but this Court would only examine the nature of delay caused and circumstances that ensued after sentence was finally confirmed by the judicial proces and will have no jurisdiction to reopen the conclusions reached by the Court while finally maintaining H the sentence of death. But the court is entitled and indeed obliged to

consider the question of inordinate delay in the light of all circumstances of the case to decide whether the execution of sentence should be carried out or should be altered into imprisonment for life. No fixed period of delay can be considered to be decisive. It has been emphasised that Article 21 is relevant in all stages. Speedy trial in criminal cases though may not be fundamental right, is implicit in the broad sweep and content of Article 21. Speedy trial is part of one's fundamental right to life and liberty. This principle is no less important for disposal of mercy petition. It has been universally recognised that a condemned person has to suffer a degree of mental torture even though there is no physical mistreatment and no primitive torture. See the observations of Shetty, J. in *Triveniben's* case (supra) at p. 713-714 of the report, where it has been observed that as between funeral fire and mental worry, it is the latter which is more devastating, for funeral fire burns only the dead body while the mental worry burns the living one. In the instant case, Gyasi Ram has suffered a great deal of mental agony for over eight years. It is not disputed that there has been long delay. We do not find reasons sufficiently commensurate to justify such long delay. The convict has suffered mental agony of living under the shadow of death for long, far too long. He should not suffer that agony any longer.

In the aforesaid facts and the circumstances of the case, therefore, we direct that the death sentence should not be carried out and the sentence imposed upon him be altered to imprisonment for life. We order accordingly.

This Writ Petition is disposed of with the aforesaid direction.

Y.Lal Petition disposed of.