

IN THE SUPREME COURT OF INDIA
CRIMINAL ORIGINAL JURISDICTION

WRIT PETITION (CRIMINAL) NO.261 OF 2020

BALWANT SINGH

Petitioner

VERSUS

UNION OF INDIA & ORS.

Respondents

O R D E R

The basic facts leading to the filing of the instant writ petition were noted in the order dated 24.03.2022 as under:

"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.

2. After recording conviction under the aforesaid offences, the Trial Court sentenced the petitioner and co-accused, Jagtar Singh Hawara to death sentence.

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.

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.

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.

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.

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 aforestated 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 D0 letter dated 29.03.2022 issued by respondent no.1.

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:

- 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:

- 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.

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.

- II. It was submitted that the petitioner himself did not prefer any mercy petition, though certain organizations had preferred mercy petitions on his behalf.

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.

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 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.

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

List the matter for further consideration on 22.07.2022.

.....J.
(UDAY UMESH LALIT)

.....J.
(S. RAVINDRA BHAT)

.....J.
(PAMIDIGHANTAM SRI NARASIMHA)

New Delhi,
May 02, 2022