

YAKUB ABDUL RAZAK MEMON

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v.

STATE OF MAHARASHTRA AND ANR.

WRIT PETITION (CRL.) NO.135 OF 2015

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JULY 30, 2015

**[DIPAK MISRA, PRAFULLA C. PANT AND
AMITAVA ROY, JJ.]**

Mercy petition: 1993 Bombay bomb blasts – Petitioner convicted and awarded death sentence – Mercy petition rejected – Death warrant issued – Writ petition – Legal justifiability of warrant for execution of petitioner on 30.7.2013 assailed and direction sought for stay of execution till disposal of writ petition on the ground of not granting of 14 days' time from the date of receipt of communication of rejection of the mercy petition – Held: Almost 22 years have passed since 1993 when the incident occurred – There was no error in the issue of the death warrant – When the first mercy petition was rejected on 11.04.2014, there was sufficient time available to the petitioner to make arrangement for his family members to meet him in prison and make necessary worldly arrangements – He had adequate time to prepare himself to meet his Maker and to make peace with himself – The family was allowed to meet him whenever they desired as per the Jail Manual – The rejection of the first mercy petition by the President of India could have been assailed before Supreme Court, but it was not done – It was not a case of such nature where it could be said that legal remedy was denied to the petitioner – The first mercy petition was submitted by the brother of the petitioner, but the facts clearly showed that he was aware of the same – The present mercy petition was, therefore, not preferred by the petitioner for the first time and, therefore, 14 days' time should not be granted.

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A **Dismissing the appeal, the Court**

HELD: 1. There is no dispute over the fact that the brother of the petitioner had submitted representation invoking the authority of the President of India under Article 72 of the Constitution of India. The petitioner does not disown the submission of the petition by his brother on his behalf. In fact, he had communicated to the Superintendent, Central Jail, Nagpur, on 07.08.2013, informing him about receipt of the petition by the office of the President of India so as to pursue the same. The said mercy petition stood rejected on 11.04.2014. The petitioner did not challenge the rejection of the mercy petition by the President of India and accepted his fate. [Para 6] [697-A-C]

D 2. The mercy petition was preferred on 6.08.2013 and prior to that, the review petition was dismissed by circulation on 30.07.2013 by the two-Judge Bench of this Court which had decided the appeal on 21.03.2013. As is evident, the constitutional validity of the rule relating to review was called in question before this Court. The Constitution Bench in dealing with the said rule opined that in death cases, the matter should be heard by a three-Judge Bench and the review petition should be heard in the open court by giving maximum time limit of 30 minutes to the convict. Since the petitioner had not filed a curative petition, he was entitled to seek reopening of the review petition, as per the liberty granted to certain categories of cases in *Mohd. Arif Alias Ashfaq*. Accordingly, his review petition was heard by a three-Judge Bench in the open Court. After rejection of the said review petition on 09.04.2015, he filed a curative petition on 22.05.2015 which also got dismissed on 21.07.2015. At this stage, it is imperative to state that

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despite the Constitution Bench saying that there shall be oral hearing of the application for review for a maximum period of 30 minutes, the review petition was heard for almost ten days. The purpose of mentioning the same is that ample opportunity was afforded to the petitioner. After rejection of the curative petition on 21.07.2015, the petitioner submitted a mercy petition to the Governor, Maharashtra which was received on 22.07.2015. He also submitted another mercy petition to the President of India which was received by the President of India at 2.00 p.m. on 29.07.2015. Both these mercy petitions were rejected. [Paras 7 to 9] [697-D-H; 698-A-C]

3. The question that emerges for consideration is whether on the ground of not granting of 14 days' time from the date of receipt of communication of rejection of the mercy petition, should the warrant which is going to be executed at 7.00 a.m. on 30.07.2015 be stayed. The instant petition is a clear expose of the manipulation of the principle of rule of law. The petitioner was tried for which is known as "Bombay Blast Case" and stood convicted in the year 2007. Almost 22 years have passed since 1993 when the incident occurred. There was no error in the issue of the death warrant. When the first mercy petition was rejected on 11.04.2014, there was sufficient time available to the petitioner to make arrangement for his family members to meet him in prison and make necessary worldly arrangements. There was adequate time to prepare himself to meet his Maker and to make peace with himself. The family was allowed to meet the petitioner whenever they desired as per the Jail Manual. [Paras 11, 12] [699-E; 700-A-E]

4. The rejection of the first mercy petition by the

A **President of India could have been assailed before this Court, but it was not done. It is not a case of such nature where it can be said that legal remedy was denied to the petitioner. True it is, the first mercy petition was submitted by the brother of the petitioner, but as the facts**
 B **would clearly show, he was aware of the same. The present mercy petition was therefore not preferred by the petitioner for the first time and, therefore, 14 days' time should not be granted. [Para 13] [700-F-H; 701-A-B]**

C *Shatrughan Chauhan & Anr. v. Union of India & Ors. (2014) 3 SCC 1: 2014 (1) SCR 609; Mohd. Arif alias Ashfaq v. Registrar, Supreme Court of India and Ors. (2014) 9 SCC 737 – referred to.*

Case Law Reference

D	2014 (1) SCR 609	referred to.	Para 4
	(2014) 9 SCC 737	referred to.	Para 7

CRIMINAL ORIGINAL JURISDICTION: Writ Petition (Crl.)
 E No. 135 OF 2015

Under Article 32 of the Constituion of India..

F Anand Grover, Sr. Adv., Yug Chaudhry, Ms. Nithya Ramakrishnan, Ms. Vrinda Grover, Prashant Bhushan, Ms. Anindita Pujari, Rishabh Sancheti, Siddhartha Sharma, Ms. Amritanandamayer, Ms. Tripti, Nishant Gokhale, Naseer Ahmed, Ms. Lubhyathi Raarajan, Ms. Shreya Ratogi, Ms. Preetika Dwivedi, Ms. Sansriti Pathak, S. Ranjit Marar, Siddharth Sharma, Advs. with him for the Petitioner.

G Mukul Rohatgi, Attorney General of India, Nishant Katneshwarkar, Ms. Devanshi Singh, Ms. Ranjeeta Rohatgi, Sameer Rohatgi, Guramer Sistani, Advs., with him for the Respondents.

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The Judgment of the Court was delivered by

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DIPAK MISRA, J. 1. The issue that had seen the end after the day's drill at 4.15 p.m. yesterday, i.e., 29.07.2015, appears to have unending character because precisely after ten hours, about 3.15 a.m. on 30.07.2015, it has risen like a phoenix possibly harbouring the idea that it has the potentiality to urge for a second lease of life as put forth by Mr. Anand Grover, learned Senior Counsel and Mr. Yug Chaudhry, learned counsel, appearing for the petitioner, stating that the assail has become inevitable after the President of India in exercise of his power under Article 72 of the Constitution has rejected the mercy petition preferred by the petitioner. Be it stated, it is contended by the learned counsel for the petitioner that by virtue of the rejection of the mercy petition, the death warrant issued on 30.4.2015 would be executed today, without waiting for 14 days, and hence, there should be a grant of stay.

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2. We may mention that, before the ink in the earlier judgment has dried up, the present writ petition has been filed by the petitioner assailing the legal justifiability of the execution warrant dated 30.04.2015 issued by the Presiding officer, Designated TADA Court, Mumbai, for execution of the petitioner at 7.00 a.m. on 30.07.2015 and further to direct the stay of the petitioner's execution till the instant writ petition is disposed of.

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3. We do not have to adumbrate the facts in entirety as the facts of the instant case have been elaborately stated in W.P. (Crl.) No. 129 of 2015 which has been dismissed on 29.07.2015. In the earlier writ petition, the prayer, in quintessentiality, was made for setting aside the death warrant issued by the Designated TADA Court, Mumbai. The grounds were many but we must state with certitude that they did not find favour with us. Mr. Grover, learned Senior Counsel would

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A submit that it might appear that the prayers in the present
petition are the same and anyone may foster the idea that an
effort has been made in a contrived manner to procrastinate
the date of execution of the convict, but it is not so. He would
further submit that by the occurrence of subsequent events that
B took place after the pronouncement of the judgment, fresh
grounds have emerged which could not have been conceived
of at the time when the matter was argued. It is urged that
though the prayer is the same, yet the grounds are totally
different.

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4. At this juncture, the subsequent event which has been
accentuated upon by Mr. Grover, learned Senior Counsel and
Mr. Chaudhry, learned counsel, needs to be noted. After we
dismissed the earlier writ petition being W.P.(Crl) No. 129 of
D 2015, the President of India rejected the mercy petition of the
petitioner. The fulcrum of the submission of Mr. Grover is that
the petitioner is entitled in law to challenge the same albeit on
a limited ground and, therefore, a three-Judge Bench of this
Court in ***Shatrughan Chauhan & Anr. v. Union of India &***
E ***ors.***¹ has, upon perusal of various jail manuals which exhibited
discrepancies, intended to rationalise by laying down a
minimum period so that the convict can make certain
arrangements. To put it succinctly, when a mercy petition is
F rejected, there has to be a minimum period of 14 days between
its rejection being communicated to the petitioner and his family
and the scheduled date of execution. That apart, minimum
period of 14 days is stipulated between the communication of
the death warrant to the petitioner and the scheduled date of
G execution.

5. Mr. Grover, learned senior Counsel appearing for the
petitioner, would contend that both the conditions are to be
satisfied as they are cumulative in nature. There can be no

H ¹ (2014) 3 SCC 1

cavil over the same. First, to the second condition. The death warrant was issued on 30.04.2015 which was admittedly received by the petitioner on 13.07.2015 and the date of its execution is 30.07.2015, i.e., today. Thus, one of the facets is met with. As far as the first aspect is concerned, in the earlier judgment passed in W.P.(Crl) No. 129/2015, this Court has held thus:-

“After the judgment was pronounced on 21.03.2013, an application for review was filed, which was dismissed by circulation on 30.07.2013. After the rejection of the application for review, Suleman, the brother of the petitioner, represented under Article 72 of the Constitution to the President of India on 06.08.2013, claiming benefits under Article 72(1) of the Constitution. The petitioner on 07.08.2013, wrote to the Superintendent, Central Jail, Nagpur, informing him about receipt of petition by the office of the President of India. On 02.09.2013, the Government of India forwarded the mercy petition of the convict addressed to the President of India, to the Principal Secretary, Home Department, Maharashtra, as per the procedure. The Governor of Maharashtra rejected representation on 14.11.2013 and on 30.09.2013, the State Government informed the Central Government about rejection of the mercy petition by the governor of Maharashtra. On receipt of the said communication from the State Government on 10.03.2014, the summary of the case/mercy petition prepared by the Ministry of Home Affairs under the signatures of Home Minister was forwarded to the Petitioner. The said rejection was communicated to the stipulation that the convict be informed and, accordingly, on 26.05.2014, the petitioner was informed about the rejection of mercy petition by the President of India.”

We have reproduced the whole paragraph as they state

A the facts in completeness. Before we proceed with regard to the necessity for grant of 14 days' time after receipt of communication of the rejection of the mercy petition, it is appropriate to refer to paragraph 241.7 of the ***Shatrughan Chauhan's*** case (supra) which reads as follows:-

B "241.7. Some Prison Manuals do not provide for any minimum period between the rejection of the mercy petition being communicated to the prisoner and his family and the scheduled date of execution. Some Prison
C Manulas have a minimum period of 1 day, others have a minimum period of 14 days. It is necessary that a minimum period of 14 days be stipulated between the receipt of communication of the rejection of the mercy
D petition and the scheduled date of execution for the following reasons:

(a) It allows the prisoner to prepare himself mentally for execution, to make his peace with God, prepare his will and settle other earthly affairs.

E (b) It allows the prisoner to have a last and final meeting with his family members. It also allows the prisoners' family members to make arrangements to travel to the prison which may be located at a distant place and meet the prisoner for the last time. Without sufficient notice of
F the scheduled date of execution, the prisoners' right to avail of judicial remedies will be thwarted and they will be prevented from having a last and final meeting with their families."

G It is urged by Mr. Grover, learned Senior Counsel and Mr. Chaudhry, learned counsel that the first mercy petition was submitted by Suleman, brother of the petitioner, on 06.08.2013 which stood rejected on 11.04.2014 by the President of India and that was communicated to the petitioner on 26.05.2014,
H but the petitioner had not submitted any mercy petition.

6. There is no dispute over the fact that the petitioner had not submitted any representation invoking the authority of the President of India under Article 72 of the Constitution of India. However, it is not in dispute that his brother had submitted. It is also beyond dispute that the petitioner does not disown the submission of the petition by his brother on his behalf. In fact, he had communicated to the Superintendent, Central Jail, Nagpur, on 07.08.2013, informing him about receipt of the petition by the office of the President of India so as to pursue the same. The said mercy petition as has been indicated earlier stood rejected on 11.04.2014. The petitioner did not think it appropriate to challenge the rejection of the mercy petition by the President of India. He accepted his fate.

7. Be it stated here, the mercy petition was preferred on 6.08.2013 and prior to that, the review petition was dismissed by circulation on 30.07.2013 by the two-Judge Bench of this Court which had decided the appeal on 21.03.2013. As is evident, the constitutional validity of the rule relating to review was called in question before this Court. The Constitution Bench in **Mohd. Arif alias Ashfaq v. Registrar, Supreme Court of India and Ors.**² dealing with the said rule opined that in death cases, the matter should be heard by a three-Judge Bench and the review petition should be heard in the open court by giving maximum time limit of 30 minutes to the convict.

8. Since the petitioner had not filed a curative petition, he was entitled to seek reopening of the review petition, as per the liberty granted to certain categories of cases in **Mohd. Arif Alias Ashfaq** (supra). Accordingly, his review petition was heard by a three-Judge Bench in the open Court. After rejection of the said review petition on 09.04.2015, he filed a curative petition on 22.05.2015 which also got dismissed on

² (2014) 9 SCC 737

- A 21.07.2015. At this stage, it is imperative to state that despite the Constitution Bench saying that there shall be oral hearing of the application for review for a maximum period of 30 minutes, the review petition was heard for almost ten days. The purpose of mentioning the same is that ample opportunity
- B was afforded to the petitioner.

9. After rejection of the curative petition on the 21.07.2015, the petitioner submitted a mercy petition to the Governor, Maharashtra which was received on 22.07.2015.

- C He also submitted another mercy petition to the President of India which was received by the President of India at 2.00 p.m. on 29.07.2015. Both these mercy petitions have been rejected.

- D 10. It is submitted by Mr. Grover, learned Senior Counsel, that as per the principle stated in ***Shatrughan Chauhan*** (supra), the petitioner is entitled to claim commutation of death sentence to life imprisonment on the basis of supervening circumstances. For the said purpose, he has referred to paragraphs 28 and 29 of the decision in ***Shatrughan Chauhan*** (supra) which read as under:-
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“28. The petitioners herein have asserted the following events as the supervening circumstances, for communication of death sentence to life imprisonment:

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- (i) Delay
 - (ii) Insanity
 - (iii) Solitary confinement
 - (iv) Judgments declared per incuriam
 - (v) Procedural lapses
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29. All the petitioners have more or less asserted on the aforesaid grounds which, in their opinion, the executive had failed to take note of while rejecting the mercy petitions filed by them. Let us discuss them distinctively

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and come to a conclusion whether each of the
circumstances exclusively or together warrants the
communication of death sentence into life imprisonment.”

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What is submitted today is that the petitioner can
challenge the rejection of the mercy petition only when it is
formally served on him, for the counsel for the petitioner have
only come to know from the news report about the rejection of
the mercy petition by the President of India. Thus, 14 days'
time has not been granted and he has been deprived of the
right to assail the same. As has been stated earlier, the said
stand has been sought to be highlighted on the basis of the
reasons stated in paragraph 241.7 of the case of **Shatrughan
Chauhan** (supra). Pyramiding the said submission, it is
propounded by Mr. Grover, learned Senior Counsel and Mr.
Chaudhry, learned counsel that in the absence of any time to
assail the rejection of the mercy petition, the execution of death
warrant deserves to be stayed.

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11. The question that emerges for consideration is
whether on the ground of not granting of 14 days' time from the
date of receipt of communication of rejection of the mercy
petition, should the warrant which is going to be executed at
7.00 a.m. on 30.07.2015 be stayed. Mr. Mukul Rohatgi, learned
Attorney General for India, appearing for the respondent, would
submit that the mercy petition is considered by the President
of India in exercise of his power under Article 72 of the
Constitution of India and when he has rejected the mercy
petition after due consideration of all the relevant facts on earlier
occasion, if such kind of repetitive mercy petitions are allowed
to be submitted and further challenge to the rejection of the
same is permitted, the danger of the concept of ad infinitum
would enter into the field. Mr. Rohatgi would further contend
that at the drop of a hat, everybody can add a new fact or a
new development and expect the President of India to deal
with it as contemplated under Article 72 of the Constitution of

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A India and, thereafter, challenge the same in a court of law.

12. The instant petition is a clear expose of the manipulation of the principle of rule of law. The petitioner was tried for which is known as "Bombay Blast Case" and stood convicted in the year 2007. Almost 22 years have passed since 1993 when the incident occurred. We have not perceived any error in the issue of the death warrant as per our order dated 29.07.2015 passed in W.P. (CrI) No.129 of 2015. The only exception which has been enthusiastically carved out by Mr. Grover, learned Senior Counsel and Mr. Chaudhry, learned counsel is that they are entitled to get 14 days' time to assail the rejection of the mercy petition. When the first mercy petition was rejected on 11.04.2014, there was sufficient time available to the petitioner to make arrangement for his family members to meet him in prison and make necessary worldly arrangements. There was adequate time to prepare himself to meet his Maker and to make peace with himself. We have been apprised by Mr. Rohatgi, learned Attorney General for India that the family was allowed to meet the petitioner whenever they desired as per the Jail Manual.

13. The residuary part of the submissions put forth by the learned counsel for the petitioner is that the petitioner can still challenge the rejection of his mercy petition. On a first glance, the aforesaid submission may look quite attractive, but in the present case the same does not have much commendation because the rejection of the first mercy petition by the President of India could have been assailed before this Court, but it was not done. We have been apprised that the copy of the order of rejection of the mercy petition has been sent to the petitioner, but the fact remains that after the rejection of the first mercy petition, despite sufficient time, the petitioner chose not to challenge the same. We do not think that it is a case of such nature where it can be said that legal remedy was denied to

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the petitioner. True it is, the first mercy petition was submitted A
by the brother of the petitioner, but as the facts would clearly
show, he was aware of the same. Learned Attorney General
would contend that the petitioner, in fact, had written a letter to
the concerned Superintendent of Jail pertaining to the same. B
Regard being had to the totality of facts and circumstances of
this case, we are not inclined to accept the submission that
the present mercy petition was preferred by the petitioner for
the first time and, therefore, 14 days' time should be granted
so that he can do the needful as per law. In our considered
opinion, to grant him further time to challenge the rejection of C
the second mercy petition for which we have to stay the
execution of the death warrant dated 30.04.2015 would be
nothing but travesty of justice.

14. Resultantly, we do not perceive any merit in this writ D
petition and the same is, accordingly, dismissed.

Devika Gujral

Appeal dismissed.