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NAVNEET KAUR

v.

STATE OF NCT OF DELHI & ANR.

(Curative Petition (Criminal) No. 88 of 2013)

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(Review Petition (Criminal) No. 435 of 2013)

IN

(Writ Petition (Criminal) No. 146 of 2011)

MARCH 31, 2014

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[P. SATHASIVAM, CJI., R.M. LODHA, H.L. DATTU AND
SUDHANSU JYOTI MUKHOPADHAYA, JJ.]

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Sentence/ Sentencing - Commutation of death sentence to life imprisonment - Petitioner's husband convicted under TADA and sentenced to death - Plea for commuting the death sentence to life imprisonment on ground of supervening circumstance of delay of 8 years in disposal of mercy petition - Held: Insanity/mental illness/schizophrenia is also one of the supervening circumstances for commutation of death

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sentence to life imprisonment - Petitioner's husband suffering from acute mental illness and cannot be executed with the said health condition - Death sentence imposed on him commuted into life imprisonment both on the ground of unexplained/ inordinate delay of 8 years in disposal of mercy

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petition and on the ground of insanity - Terrorism and Disruptive Activities (Prevention) Act - Mercy Petition.

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The petitioner's husband was convicted under the Terrorism and Disruptive Activities (Prevention) Act (TADA) and sentenced to death by the trial court. He preferred appeal before this Court which confirmed the death sentence. The petitioner's husband then preferred Review Petition which was also dismissed. Soon after dismissal of the review petition, he submitted a mercy petition dated 14.01.2003 to the President of India under

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Article 72 of the Constitution and prayed for commutation of his sentence. During pendency of the mercy petition, he also filed Curative Petition which was also dismissed by this Court.

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On 30.05.2011, the President of India rejected the mercy petition submitted on behalf of the petitioner's husband. The same was also communicated to the Jail Superintendent on 13.06.2011. On 24.06.2011, the wife of the accused (petitioner herein) preferred a Writ Petition before this Court praying for quashing the communication dated 13.06.2011. This Court dismissed the writ petition. Review Petition thereagainst was also dismissed.

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Subsequently, the petitioner filed the instant Curative Petition praying for setting aside the death sentence imposed upon her husband by commuting the same to imprisonment for life on the ground of supervening circumstance of delay of 8 years in disposal of mercy petition.

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Disposing of the curative petition, the Court

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HELD: 1.1. Very recently, a three-Judge Bench of this Court, in the Shatrughan Chauhan case, commuted the sentence of death imposed on the petitioners therein to imprisonment for life which has a crucial bearing for deciding the petition at hand. In the aforesaid verdict, this Court validated the established principle and held that unexplained/unreasonable/inordinate delay in disposal of mercy petition is one of the supervening circumstances for commutation of death sentence to life imprisonment. [Para 8] [1142-G-H; 1143-A-E]

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1.2. In addition, it is clear from letter dated 08.02.2014 received by the Registry on 12.02.2014 from the Institute of Human Behaviour and Allied Sciences, that the

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A accused herein (i.e. the petitioner's husband) was examined by the Standing Medical Board on 05.02.2014. The report signed by the Director & Chairman as well as four Members of the Medical Board clearly shows that he is suffering from acute mental illness. [Para 12] [1145-E; 1146-C]

B 1.3. The three-Judge Bench in Shatrughan Chauhan held that insanity/mental illness/schizophrenia is also one of the supervening circumstances for commutation of death sentence to life imprisonment. By applying the principle enunciated in Shatrughan Chauhan, the petitioner's husband cannot be executed with the said health condition. It is deemed fit to commute the death sentence imposed on him into life imprisonment both on the ground of unexplained/inordinate delay of 8 years in disposal of mercy petition and on the ground of insanity. [Paras 13, 14] [1146-D-F]

Shatrughan Chauhan & Anr. vs. Union of India & Ors. 2014 (1) SCALE 437 - held applicable.

E *Triveniben vs. State of Gujarat* (1988) 4 SCC 574; *Devender Pal Singh Bhullar vs. State (NCT) of Delhi* (2013) 6 SCC 195 - referred to.

Case Law Reference:

F	2014 (1) SCALE 437	held applicable	Para 8
	(1988) 4 SCC 574	referred to	Para 10
	(2013) 6 SCC 195	referred to	Para 11

G INHERENT JURISDICTION : Curative Petition (Crl.) No. 88 of 2013.

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H Review Petition (Crl.) No. 435 of 2013.

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Writ Petition (Crl.) No. 146 of 2011.

G.E. Vahanvati, AG, Sidharth Luthra, ASG, KTS Tulsi, Raj Kamal, Niraj Gupta, Gaurang Vardhan, Paramjeet Singh, Anoopam Prasad, Tara Narula, Aadil Boparai, Meenakshi Grover, Supriya Juneja, D.S. Mahra, for the appearing parties.

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The Judgment of the Court was delivered by

P. SATHASIVAM, CJI. 1. Navneet Kaur w/o Devender Pal Singh Bhullar, filed the present Curative Petition against the dismissal of Review Petition (Criminal) No.435 of 2013 in Writ Petition (Criminal) No. 146 of 2011 on 13.08.2013, wherein she prayed for setting aside the death sentence imposed upon Devender Pal Singh Bhullar by commuting the same to imprisonment for life on the ground of supervening circumstance of delay of 8 years in disposal of mercy petition.

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2. Considering the limited issue involved, there is no need to traverse all the factual details. The brief background of the case is: By judgment dated 25.08.2001, Devender Pal Singh Bhullar was sentenced to death by the Designated Judge, Delhi. Thereafter, he preferred an appeal being Criminal Appeal No. 993 of 2001 before this Court and by judgment dated 22.03.2002, this Court confirmed the death sentence and dismissed his appeal. Against the dismissal of the appeal by this Court, the accused preferred Review Petition (Criminal) No. 497 of 2002, which was also dismissed by this Court on 17.12.2002.

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3. Soon after the dismissal of the review petition, the accused submitted a mercy petition dated 14.01.2003 to the President of India under Article 72 of the Constitution and prayed for commutation of his sentence. During the pendency of the petition filed under Article 72, he also filed Curative Petition (Criminal) No. 5 of 2003 which was also dismissed by this Court on 12.03.2003.

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A 4. On 30.05.2011, a communication was sent from the
Joint Secretary (Judicial) to the Principal Secretary, Home
Department, Government of NCT of Delhi, stating that the
President of India has rejected the mercy petition submitted on
behalf of Devender Pal Singh Bhullar. The same was also
B communicated to the Superintendent, Central Jail No. 3, Tihar
Jail, New Delhi on 13.06.2011.

5. On 24.06.2011, the wife of the accused (petitioner
herein) preferred a Writ Petition (Criminal) No. 146 of 2011
C before this Court praying for quashing the communication dated
13.06.2011. By order dated 12.04.2013, this Court, after
examining and analyzing the materials brought on record by the
respondents, arrived at the conclusion that there was an
unreasonable delay of 8 years in disposal of mercy petition,
D which is one of the grounds for commutation of death sentence
to life imprisonment as per the established judicial precedents.
However, this Court dismissed the writ petition on the ground
that when the accused is convicted under TADA, there is no
question of showing any sympathy or considering supervening
circumstances for commutation of death sentence.

E 6. Aggrieved by the said dismissal, the wife of the
accused preferred Review Petition being (Criminal) No. 435
of 2013 which was also dismissed by this Court on
13.08.2013. Subsequently, the wife of the accused, petitioner
F herein has filed the above Curative Petition for consideration
by this Court.

7. Heard Mr. KTS Tulsi, learned senior counsel appearing
on behalf of the petitioner and Mr. G.E. Vahanvati, learned
Attorney General for India appearing on behalf of the
G respondents.

8. Very recently, a three-Judge Bench of this Court, in Writ
Petition (Criminal) No. 55 of 2013 Etc., titled Shatrughan
Chauhan & Anr. vs. Union of India & Ors., 2014 (1) SCALE 437,
H by order dated 21.01.2014, commuted the sentence of death

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ANR. [P. SATHASIVAM, CJI.]

imposed on the petitioners therein to imprisonment for life which has a crucial bearing for deciding the petition at hand. In the aforesaid verdict, this Court validated the established principle and held that unexplained/unreasonable/inordinate delay in disposal of mercy petition is one of the supervening circumstances for commutation of death sentence to life imprisonment.

9. While deciding the aforesaid issue in the above decision, the Bench was simultaneously called upon to decide a specific issue viz., whether is there a rationality in distinguishing between an offence under Indian Penal Code, 1860 and Terrorist and Disruptive Activities (Prevention) Act for considering the supervening circumstance for commutation of death sentence to life imprisonment, which was the point of law decided in Writ Petition (Criminal) No. 146 of 2011.

10. The larger Bench in *Shatrughan Chauhan* (supra), after taking note of various aspects including the constitutional right under Article 21 as well as the decision rendered by the Constitution Bench in *Triveniben vs. State of Gujarat* (1988) 4 SCC 574, held:

"57) From the analysis of the arguments of both the counsel, we are of the view that only delay which could not have been avoided even if the matter was proceeded with a sense of urgency or was caused in essential preparations for execution of sentence may be the relevant factors under such petitions in Article 32. Considerations such as the gravity of the crime, extraordinary cruelty involved therein or some horrible consequences for society caused by the offence are not relevant after the Constitution Bench ruled in *Bachan Singh vs. State of Punjab* (1980) 2 SCC 684 that the sentence of death can only be imposed in the rarest of rare cases. Meaning, of course, all death sentences imposed are impliedly the most heinous and barbaric and rarest of its kind. The legal effect of the extraordinary depravity of the offence exhausts itself

A when court sentences the person to death for that offence. Law does not prescribe an additional period of imprisonment in addition to the sentence of death for any such exceptional depravity involved in the offence.

B 58) As rightly pointed out by Mr. Ram Jethmalani, it is open to the legislature in its wisdom to decide by enacting an appropriate law that a certain fixed period of imprisonment in addition to the sentence of death can be imposed in some well defined cases but the result cannot be accomplished by a judicial decision alone. The unconstitutionality of this additional incarceration is itself inexorable and must not be treated as dispensable through a judicial decision."

D "64) In the light of the same, we are of the view that the ratio laid down in *Devender Pal Singh Bhullar* (supra) is per incuriam. There is no dispute that in the same decision this Court has accepted the ratio enunciated in *Triveniben* (supra) (Constitution Bench) and also noted some other judgments following the ratio laid down in those cases that unexplained long delay may be one of the grounds for commutation of sentence of death into life imprisonment. There is no good reason to disqualify all TADA cases as a class from relief on account of delay in execution of death sentence. Each case requires consideration on its own facts."

G "70 Taking guidance from the above principles and in the light of the ratio enunciated in *Triveniben* (Supra), we are of the view that unexplained delay is one of the grounds for commutation of sentence of death into life imprisonment and the said supervening circumstance is applicable to all types of cases including the offences under TADA. The only

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aspect the Courts have to satisfy is that the delay must be unreasonable and unexplained or inordinate at the hands of the executive. The argument of Mr. Luthra, learned ASG that a distinction can be drawn between IPC and non-IPC offences since the nature of the offence is a relevant factor is liable to be rejected at the outset. In view of our conclusion, we are unable to share the views expressed in *Devender Pal Singh Bhullar* (supra)."

11. Learned Attorney General, taking note of the conclusion arrived at in *Shatrughan Chauhan* (supra) wherein this Court held that the ratio laid down in *Devender Pal Singh Bhullar vs. State (NCT) of Delhi* (2013) 6 SCC 195 is per incuriam, fairly admitted that applying the said principle as enunciated in *Shatrughan Chauhan* (supra), death sentence awarded to Devender Pal Singh Bhullar is liable to be commuted to life imprisonment. We appreciate the rationale stand taken by learned Attorney General and accept the same.

12. In addition, it is also brought to our notice by letter dated 08.02.2014, which was received by the Registry on 12.02.2014 from the Institute of Human Behaviour and Allied Sciences, that the accused Devender Pal Singh Bhullar was examined by the Standing Medical Board on 05.02.2014 and the Board opined as under:

"1.The patient has been diagnosed with Severe Depression with Psychotic features (Treatment Refractory Depression) with Hypertension with Dyslipidemia with Lumbo-cervical Spondylosis with Mild Prostatomegaly.

2. He is currently receiving Anti-Depressant, Anti-Psychotic, Anti-anxiety, Anti-Hypertensives, Hypolipidemic, Anti-Convulsant (for Neuropathic pain) and Antacid drugs in adequate doses along with supportive psychotherapy and physiotherapy.

3. Patient has shown partial and inconsistent response to

A the treatment with significant fluctuations in the severity of his clinical condition.

B 4. The treatment comprising of various combinations of pharmacological and non-pharmacological treatments have brought about partial and inconsistent improvement in his clinical condition in the last three years of hospitalization. The scope for effective treatment options is limited and thereby the chances of his recovery remain doubtful in the future course of his illness".

C The above report has been signed by the Director & Chairman as well as four Members of the Medical Board. The report clearly shows that he is suffering from acute mental illness.

D 13. The three-Judge Bench in *Shatrughan Chauhan* (supra) held that insanity/mental illness/schizophrenia is also one of the supervening circumstances for commutation of death sentence to life imprisonment. By applying the principle enunciated in *Shatrughan Chauhan* (supra), the accused cannot be executed with the said health condition.

E 14. In the light of the above discussion and also in view of the ratio laid down in *Shatrughan Chauhan* (supra), we deem it fit to commute the death sentence imposed on Devender Pal Singh Bhullar into life imprisonment both on the ground of unexplained/inordinate delay of 8 years in disposal of mercy petition and on the ground of insanity. To this extent, the Curative Petition stands allowed.