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AKSHAY KUMAR SINGH

v.

UNION OF INDIA & ORS.

(Writ Petition (Criminal) No. 121 of 2020)

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MARCH 19, 2020

**[R. BANUMATHI, ASHOK BHUSHAN
AND A. S. BOPANNA, JJ.]**

C *Nirbhaya Case – Order rejecting mercy petition by the President of India – Judicial review of – Writ petition filed u/Art.32 by one of the convict – Held: Exercise of power of judicial review of the decision taken by the President of India in Mercy Petition is very limited – Considering the grounds raised by the petitioner, no ground to hold that there was non-application of mind by the President of India – Constitution of India – Art.32 – Code of Criminal Procedure, 1973 – ss. 432, 433.*

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Epuru Sudhakar and Another v. Govt. of A.P. and Ors.
(2006) 8 SCC 161 : [2006] 7 Suppl. SCR 81 – relied on.

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Sunil Batra v. Delhi Administration **(1978) 4 SCC 494 : [1979] 1 SCR 392; Shatrughan Chauhan & Anr. v. Union of India & Ors. (2014) 3 SCC 1 : [2014] 1 SCR 609 – referred to.**

Case Law Reference

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[1979] 1 SCR 392	referred to	Para 4
[2006] 7 Suppl. SCR 81	relied on	Para 5
[2014] 1 SCR 609	referred to	Para 5

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CRIMINAL ORIGINAL JURISDICTION: Writ Petition (Criminal) No. 121 of 2020.

(Under Article 32 of The Constitution of India.)

Dr. A. P. Singh, Ms. Geeta Chauhan, V. P. Singh and Sadashiv, Advs. for the Petitioner.

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Tushar Mehta, SG, K. M. Nataraj, ASG, Kanu Agarwal, Ms. Swati Ghidiyal, Sharath Nambiar, B. V. Balram Das and Chirag M. Shroff, Advs. for the Respondents. A

The following Order of the Court was passed:

ORDER

1. We have heard Dr. A.P. Singh, learned counsel appearing for the Akshay Kumar Singh-the convict. B

2. In this writ petition filed under Article 32 of the Constitution of India, the petitioner challenges the order of rejection of his mercy petition by His Excellency the President of India, *inter alia*, on various grounds that the settled principles of consideration of mercy petition have not been followed. C

3. The petitioner has earlier sent the mercy petition on 31.01.2020 and the same was incomplete. In this regard, the petitioner's counsel had also sent a letter on 01.02.2020. The petitioner had again sent mercy petition on 18.03.2020 and the same came to be rejected by His Excellency the President of India on 19.03.2020. D

4. In this writ petition filed under Article 32 of the Constitution of India, the petitioner has, *inter alia*, raised various grounds namely: (i) that there was miscarriage of justice in rejection of the mercy petition (ii) that the petitioner was kept in solitary confinement in violation of Sunil Batra vs. Delhi Administration & Ors. reported in (1978) 4 SCC 494 (iii) the petitioner has been tortured in the prison for which the petitioner has been given treatment; the petitioner had also referred to the nature of treatment and the medication given to him (iv) The persons in position have given interviews to the media and press and according to the petitioner the rejection of the mercy petition is influenced by such views. The petitioner had, *inter alia*, also raised other grounds also. E F

5. The consistent view taken by this Court that the exercise of power of judicial review of the decision taken by His Excellency the President of India in Mercy Petition is very limited. In Epuru Sudhakar and Another v. Govt. of A.P. and Others - 2006 (8) SCC 161 vide paras 34 and 35, the Supreme Court has held as under: G

“34. The position, therefore, is undeniable that judicial review of the order of the President or the Governor under Article 72 or H

A Article 161, as the case may be, is available and their orders can be impugned on the following grounds:

- (a) that the order has been passed without application of mind;
- (b) that the order is mala fide;

B (c) that the order has been passed on extraneous or wholly irrelevant considerations;

- (d) that relevant materials have been kept out of consideration;
- (e) that the order suffers from arbitrariness.

C 35. Two important aspects were also highlighted by learned amicus curiae; one relating to the desirability of indicating reasons in the order granting pardon/remission while the other was an equally more important question relating to power to withdraw the order of granting pardon/remission, if subsequently, materials are placed to show that certain relevant materials were not considered or certain materials of extensive value were kept out of consideration. According to learned amicus curiae, reasons are to be indicated, in the absence of which the exercise of judicial review will be affected.”

E The said decision was followed in the case of Shatrughan Chauhan & Anr. v. Union of India and Ors. reported in (2014) 3 SCC 1.

F 6. Keeping in view the above principles, when we considered the grounds raised by the petitioner, we do not find any ground to hold that there was non-application of mind by the President of India. Insofar as the alleged torture of the petitioner in the prison, as we have held in earlier Writ Petition (criminal) Diary No. 3334 of 2020, the alleged torture in the prison cannot be a ground for review of the order of rejection of the Mercy Petition by the President of India.

G 7. Insofar as the grounds raised by the petitioner that the Press interviews given by the persons in position of authority reported in the newspapers have influenced the decision of the President of India in rejection of the mercy petition is concerned, when the decision has been taken by the highest constitutional authority like the President of India it cannot be said that the President of India was influenced by such interviews reported in the newspapers.

H 8. Dr. A.P. Singh, learned counsel appearing for the petitioner, has also contended that the wife of the petitioner has filed divorce petition

and the same is pending consideration. The contention of learned counsel for the petitioner is that if the death warrants scheduled for 20.03.2020 is executed what will be the fate of the wife who has filed the divorce petition who has averred that she does not want to live as a widow of death row convict. A

9. As we have pointed out earlier while considering the petition seeking judicial review of the order of rejection of the Mercy Petition by the President of India, the exercise of review power is only on the grounds indicated in *Epuru Sudhakar* (supra) and other judgments. The divorce petition said to have been filed by the wife of the petitioner and the petitions filed by the petitioner before the Lieutenant Governor and Chief Minister of Delhi under Sections 432 and 433 Cr.P.C. cannot a ground for exercise of judicial review of the order of the President of India rejecting the Mercy Petition. Nor can it be said that these subsequent events ought to have been taken note of by the President of India who has gone through the records of the case and the evidence and other materials placed before him. B C D

10. Insofar as the contention of learned counsel for the petitioner as to the sustaining of the injuries by the convict-Pawan Kumar Gupta and treatment given to him and the sutures put on head are not relevant consideration of this petition.

11. It is to be pointed out that we have passed a detailed order in *Mukesh Kumar vs. Union of India & Ors.* in Writ Petition (criminal) Diary No. 3334 of 2020 dated 29.01.2020 while dismissing the writ petition challenging the order of rejection of the Mercy Petition by the President of India. The writ petition filed by Vinay Sharma challenging rejection of Mercy Petition was also dismissed by a detailed order. Applying those orders, we do not find any ground to entertain this writ petition warranting any judicial review of the rejection of the order of the Mercy Petition by the President of India. E F

12. The writ petition is accordingly dismissed.