



That till yesterday on 5.4.2013 the petitioner was detained in Rohtak Jail, but in the afternoon he was shifted to Ambala Jail where preparations are being made for executing the death sentence of the petitioner on Saturday afternoon or Sunday.

That at present the Hon'ble Supreme Court of India is seized of the matter that is a case of death sentence convict namely Davinder Pal Singh Bhullar in which the issue raised by him is that due to the delay of his execution of death sentence, as per the Constitutional Bench judgment of the Hon'ble Supreme Court of India i.e. Triveni Behan, he has earned a right to get his death sentence converted into life imprisonment. It is pertinent to mention that alongwith said petition, several other petitions have been tagged and the matter has been finally heard by the Hon'ble Supreme Court on 19.4.2012 and the judgment stands reserved. The Hon'ble Supreme Court is seized of the matter pertaining to all the death sentence convicts whose mercy petitions were pending with e Hon'ble President of India this would be clear from the order passed by the Hon'ble Supreme Court on 15.11.2011 i.e. **Annexure P-1** and the order vide which the matter has been finally heard and the judgment is reserved is dated 19.4.2012 i.e. **Annexure P-2**.

15.11.2011

Ann P-1

19.4.2012

Ann P-2

That recently a public interest litigation was filed in the Hon'ble Supreme Court of India in case titled **Shamik Narain** and others Vs. UOI in which death sentence of 4 convicts who are the aides of Veerapan the sandalwood smugglers and in that matter the Hon'ble Supreme Court of India had ordered that the interim stay granted to the execution of the petitioners No.2 to 5 who were the death sentence convicts shall continue. The Hon'ble Supreme Court had adjourned the said matter to be listed after 6 weeks, in order to enable the other bench to deliver the judgment in the pending matters. The Hon'ble Supreme Court of India ofcourse referring to the judgment reserved in the case of Davinder Pal Singh Bhullar and others. The said order dated 20.2.2013 is being appended herewith as **Annexure P-3**.

20.2.2013

Ann P-3

That the petitioner has been transferred from Rohtak Jail to Ambala Jail and the State of Haryana is working in a hasty manner in order to execute the death sentence of the petitioner and the petitioner may be hanged today afternoon or on Sunday and this could cause a total denial of the fundamental rights as enjoyed by the petitioner under Article 21 of Constitution of India and also denial of the right accrued to the petitioner due to delay in decision of his mercy petition after 14 long years by the President of India. The news published in the Hindustan Times news paper dated 6.4.2013 regarding transfer of the petitioner is being appended

herewith as **Annexure P-4**.

6.4.2013

Ann P-4

Hence the present writ petition for issuance of a writ in the nature of Mandamus or any other appropriate writ, order or direction, **for conversion of the death sentence of the petitioner to life imprisonment**, who was awarded death sentence on 5.5.1997 by the Court of learned Sessions Judge Sonapat and thereafter his **mercy petition** has been rejected by the Hon'ble President of India after delay of 14 years, thereby giving the petitioner a cause of action to approach with the prayer made herein in view of the judgment of the Hon'ble Supreme Court of India in case titled "**Smt Triveni Ben versus State of Gujarat and others**".

**With** a further prayer that this Hon'ble Court may restrain the respondents No. 1 to 3 from execution of death sentence of the petitioner during the pendency of the present petition.

**(NAVKIRAN SINGH)**

P/786/1986

CHANDIGARH: **(RUBINA N.SINGH)(HARJEET SINGH)**

P/71/1988            P/3558/2010

A D V O C A T E S

DATED:06.04.2013

COUNSEL FOR THE PETITIONER

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

**Civil Writ Petition No. \_\_\_\_\_/2013**

Dharam Pal s/o Chander Singh,

r/o Mohalla Panna, V.P.O. Bhains Wala Kalan Bhawla,

Tehsil Gohana, District Sonapat.

(Now confined in Central Jail, Ambala).

.....            Petitioner

Versus

1. State of Haryana through the Secretary,

Home Department, Haryana Civil Secretariat,

Chandigarh.

2. D.G.P. Prisons Haryana, Sector 14, Panchkula.

3. Superintendent, Central Jail, Ambala.

..... Respondents

Civil Writ Petition under Articles 226/227 of the Constitution of India for issuance of a writ in the nature of Mandamus or any other appropriate writ, order or direction, **for conversion of the death sentence of the petitioner to life imprisonment**, who was awarded death sentence on 5.5.1997 by the Court of learned Sessions Judge Sonapat and thereafter his **mercy petition** has been rejected by the Hon'ble President of India after delay of 14 years, thereby giving the petitioner a cause of action to approach with the prayer made herein in view of the judgment of the Hon'ble Supreme Court of India in case titled "**Smt Triveni Ben versus State of Gujarat and others**".

(ii) **With** a further prayer that this Hon'ble Court may restrain the respondents No. 1 to 3 from execution of death sentence of the petitioner during the pendency of the present petition.

...

### **Respectfully Showeth:-**

1. That the petitioner is detained in Central Jail Ambala and was convicted in FIR No. 187 dated 10.6.1993 under Sections 302/34 IPC relating to Police Station Sadar Sonapat and had been awarded death sentence by the Court of learned Sessions Judge Sonapat on 5.5.1997 and his appeal and murder reference were decided by this Hon'ble Court on 29.9.1998 and further his appeal was dismissed by the Hon'ble Supreme Court of India on 18.3.1999.
2. That the petitioner had made a mercy petition to the Hon'ble President of India in April 1999 which has been decided by the President of India 4 days back.

3.

That till yesterday on 5.4.2013 the petitioner was detained in Rohtak Jail, but in the afternoon he was shifted to Ambala Jail where preparations are being made for executing the death sentence of the petitioner on Saturday afternoon or Sunday.

4.

That since it has been the consistent view of the Hon'ble Supreme Court of India which has finally culminated in the Constitutional Bench titled "**Smt Triveni Ben versus State of Gujarat and others**" which was decided by the Hon'ble Supreme Court of India on 7.2.1989 and reported in **1989(1) RCR (Criminal) page 512** in which the Hon'ble Constitutional Bench held that the delay has to be counted from the day the decision is taken by the Hon'ble Court of India, which is the highest court of the land and thereafter in case there is a delay while taking decision by the office of the Hon'ble President of India, the prisoners are entitled to approach the courts for approaching court of law for conversion of their death sentence to life imprisonment. The Hon'ble Supreme Court of India was seized of the matter because of a conflict of two decisions of the Hon'ble Supreme Court of India in the cases of **T.V.Vatheeswaran versus State of Tamil Nadu and Sher Singh versus State of Punjab** and the Hon'ble Supreme Court upheld that the courts were empowered to convert death sentence into sentence to life imprisonment but the delay has to be counted from the day of the decision of the Hon'ble Supreme Court in the appeal filed against the judgment of conviction regarding death sentence.

5.

That the Hon'ble Supreme Court of India in a case which was filed in Public interest by one Madhu Mehta, who had sought directions from the court concerning the prisoner by the name of Shri Gyasi Ram whose mercy petition had not been decided by the Hon'ble Supreme Court interpreted that it amounted to denial of speedy trial and one's fundamental right to life and liberty, which is applicable to mercy petitions also. The said judgment is reported as "**Madhu Mehta vs Union of India, 1990(1) RCR(Criminal) page 253**".

6.

That similarly, in a case where even though the mercy petition was rejected by the Hon'ble President of India after a delay of around 4 years, the Hon'ble Supreme Court of India in a case of triple murder modified the sentence to death to one of the life imprisonment in the judgment titled as "**Shivaji Jai Singh Babar Vs State of Maharashtra, 1991(3) RCR (Criminal), page 698.**"

7.

That while relying upon the above judgment of Hon'ble Supreme Court of India, the Hon'ble Delhi High Court and the Hon'ble Madras High Court followed the suit and the Hon'ble Delhi High Court in a case of even rejection of mercy petition by the Hon'ble President of India after a delay of a **4 years and 8 months** with no proper explanation of

delay, commuted the death sentence to life imprisonment. The said judgment is reported as “**Khem Chand Vs State, 1990(1) RCR (Criminal), page 68.**”

In the similar manner, the Hon'ble Madras High Court in judgment reported as “**Haja Mohideen vs Govt. of India, 1991(2) RCR (Criminal) page 465**”, wherein there was a delay of **2 to 3-1/2 years** was found not acceptable by the Hon'ble Court as the court was of the opinion that the prisoners suffered great deal of mental worry living under the shadow of death and commuted the death sentence to one of life imprisonment.

8. That at present the Hon'ble Supreme Court of India is seized of the matter that is a case of death sentence convict namely Davinder Pal Singh Bhullar in which the issue raised by him is that due to the delay of his execution of death sentence, as per the Constitutional Bench judgment of the Hon'ble Supreme Court of India i.e. Triveni Behan, he has earned a right to get his death sentence converted into life imprisonment. It is pertinent to mention that alongwith said petition, several other petitions have been tagged and the matter has been finally heard by the Hon'ble Supreme Court on 19.4.2012 and the judgment stands reserved. The Hon'ble Supreme Court is seized of the matter pertaining to all the death sentence convicts whose mercy petitions were pending with the Hon'ble President of India this would be clear from the order passed by the Hon'ble Supreme Court on 15.11.2011, a copy of which is being appended herewith as **Annexure P-1** and the order vide which the matter has been finally heard and the judgment is reserved is dated 19.4.2012 and the same is being appended herewith as **Annexure P-2**.

9. That recently a public interest litigation was filed in the Hon'ble Supreme Court of India in case titled **Shamik Narain** and others Vs. UOI in which death sentence of 4 convicts who are the aides of Veerapan the sandalwood smugglers and in that matter the Hon'ble Supreme Court of India had ordered that the interim stay granted to the execution of the petitioners No.2 to 5 who were the death sentence convicts shall continue. The Hon'ble Supreme Court had adjourned the said matter to be listed after 6 weeks, in order to enable the other bench to deliver the judgment in the pending matters. The Hon'ble Supreme Court of India ofcourse referring to the judgment reserved in the case of Davinder Pal Singh Bhullar and others. The said order dated 20.2.2013 is being appended herewith as **Annexure P-3**.

10. That the petitioner has been transferred from Rohtak Jail to Ambala Jail and the State of Haryana is working in a hasty manner in order to execute the death sentence of the petitioner and the petitioner may be hanged today afternoon or on Sunday and this could cause a total denial of the fundamental rights as enjoyed by the petitioner under Article 21 of Constitution of India and also denial of the right accrued to the petitioner due to delay in decision of his mercy petition after 14 long years by the President of India. The news published in the Hindustan Times news paper dated 6.4.2013 regarding transfer of the petitioner is being appended herewith as **Annexure P-4**.

11. That the judgments cited above clearly lay down the law that the Hon'ble Supreme Court of

India as well the various Hon'ble High Courts are all within their powers to decide the matter of commutation of death sentences into life imprisonments even though the death sentences have been upheld by the Hon'ble Supreme Court of India. The judgments clearly lay down that the upholding of conviction by the Hon'ble Supreme Court of India would not be of any consequence while giving a decision on the aspect of commutation on the basis of the long pendency of mercy petitions in the office of the Hon'ble President of India. The judgments are consistent on the aspect that the prisoners are not denuded of their fundamental rights as enshrined under the Constitution of India which ensures every citizen a right to life and liberty which can only be curtailed with due procedure of law as interpreted by the Hon'ble Supreme Court of India and the Hon'ble High Courts, the delay in disposal of the mercy petitions would give a right to the victims to approach the court of law under the writ jurisdiction for securing their fundamental rights as enshrined under the Constitution of India, the case of the petitioner being squarely covered by the judgments of the Hon'ble Supreme Court of India and the Hon'ble Delhi High Court and the Hon'ble Madras High Court had given a cause of action to the petitioner to move this Hon'ble Court in order to secure the fundamental rights of his.

12. That the prisoners who are living a miserable life facing death every day in the four corners of their small dingy cells having been forced to live miserable life away from their relatives and friends not even being allowed any parole or bail since they day of their incarceration. Even they have not been allowed to have a sight of other prisoners. They have already been punished enough and they have no other hope except to approach this Hon'ble Court which has wide powers to come to their rescue and commute their death sentences into life imprisonment and uphold their right to life and liberty under Article 21 of the Constitution of India.

13. That the following substantive questions of law arise from the present writ petition for kind consideration of this Hon'ble Court:-

1. Whether the petitioner who is detained in Central Jail Ambala and his mercy petition has been rejected by the Hon'ble President of India after a delay of 14 years is entitled to commutation of his death sentence to life imprisonment in view of the dictates of Hon'ble Supreme Court of India and other various Hon'ble High Court?
2. Whether the action of the state is discriminatory and ultra-vires of Article 21 of the Constitution of India?

14. That there is no other remedy either by appeal or revision is available with the petitioner except to approach this Hon'ble Court by way of filing the present writ petition.

15. That no such or similar petition has earlier been filed by the petitioner in this Hon'ble Court or in the Hon'ble Supreme Court of India.

16. That the documents attached with the writ petition are true copies of the originals as required under Rule 22 of the Writ Jurisdiction Rules.

In the light of the above given circumstances of the case, it is, therefore, respectfully prayed that the writ petition may be accepted as prayed for and this Hon'ble Court may be pleased to issue:-

1. a writ in the nature of Mandamus or any other appropriate writ, order or direction, **for conversion of the death sentence of the petitioner to life imprisonment**, who was awarded death sentence on 5.5.1997 by the Court of learned Sessions Judge Sonapat and thereafter his **mercy petition** has been rejected by the Hon'ble President of India after delay of 14 years, thereby giving the petitioner a cause of action to approach with the prayer made herein in view of the judgment of the Hon'ble Supreme Court of India in case titled "**Smt Triveni Ben versus State of Gujarat and others**".
2. **With** a further prayer that this Hon'ble Court may restrain the respondents No. 1 to 3 from execution of death sentence of the petitioner during the pendency of the present petition.
3. **With** a further prayer that any other appropriate writ, order or direction as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case, may also be issued.
4. advance notice of the writ petition to the respondents may kindly be dispensed with;
5. filing of the certified copies of the Annexures P-1 to P-4 may also be dispensed with,

6.  
the writ petition may be accepted as prayed for;

**(NAVKIRAN SINGH)**

P/786/1986

CHANDIGARH: **(RUBINA N.SINGH)(HARJEET SINGH)**

P/71/1988      P/3558/2010

A D V O C A T E S

DATED:06.04.2013

COUNSEL FOR THE PETITIONER

Note:- No affidavit and verification is necessary as the petitioner is detained in Central Jail, Ambala.