

Mohinder Singh

Vs

State of Punjab

Criminal Miscellaneous Petition No. 124 Of 1976

(V.R. Krishna Iyer, A.C. Gupta, N.L. Untwalia JJ)

23.01.1976

ORDER

KRISHNA IYER, J. –

1. Shri L. C. Goyal, Counsel for the petitioner, with the art of brinkmanship, has come up at the last moment as he has done on former occasions, to pray for stay of execution of his client's death sentence. Men cling to precious life and try out all strategies to save it and perhaps that counts for this motion before us.

2. The prisoner was sentenced to death as long ago as 1969 and the conviction and sentence have been confirmed right up to highest Court years ago. Indeed, he has moved mercy petitions and consequential writ petitions more than once and has managed to avoid the executioner till now. On the last occasion the same Advocate pleaded that his client's mercy petition was not being forwarded by the Superintendent of the Jail and prayed that he may be directed by this Court to forward it to the President. This Court did so and suspended the hanging for a time as a last chance.

3. It now transpires that an application for clemency by way of commutation has been made by the prisoner and that it has been forwarded and is under consideration of the President of India. This Court has not jurisdiction to deal with the petition which is in the season of the President of India and has no power therefore to pass any order, interim or other. Counsel has to move, if at all, the competent authority, viz., the President for avoiding the lethal noose for nonce. The larger power always implies incidental or ancillary powers.

4. Human life is a noble gift and hanging to death, however legally sanctioned, may sound inhuman, subject of course, to the conspectus of factors relating to the criminal and the crime. Nevertheless, the situation here is aggravated by the distressing circumstance that the death sentence has been gruesomely hovering over his head for around six years. Legal justice belongs to the Court but compassionate commutation belongs to the top executive. Being functus officio, we have no alternative but to say 'no' prayer for stay of execution. So, we dismiss the petition, leaving the prisoner to move the President for any interim orders, if he is so advised. This is the last word of this Court.

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