

SUPREME COURT OF INDIA

Pawan Kumar Gupta

Vs.

State of NCT of Delhi

WP(CrI.)No.122 of 2020

(R.Banumathi,J, Ashok Bhushan and A.S.Bopanna,JJ.,)

20.03.2020

ORDER

1. In this writ petition filed under Article 32 of the Constitution of India, the petitioner Pawan Kumar Gupta has challenged rejection of mercy petition by His Excellency the President of India inter alia on various grounds; that settled principles of consideration of mercy petition have not been followed. The contention of the petitioner is that the petitioner's plea of juvenility has not been finally determined and this aspect was not kept in view by His Excellency the President of India.

2. By the order of Hon'ble the Chief Justice of India, this Bench been constituted and we held the sitting at 2.30 a.m. on 20.03.2020.

3. We have heard Dr. A.P. Singh and Mr. Shams Khwaja, learned counsel appearing for the petitioner/convict Pawan Kumar Gupta. We have also heard Mr. Tushar Mehta, learned Solicitor General appearing for Union of India and also for NCT of Delhi. The matter was heard from 2.30 am till 3.15 a.m.

4. We have carefully gone through the grounds raised by the petitioner and also submissions of the learned counsel appearing for the parties and perused the materials on record.

5. The petitioner has filed a mercy petition on 02.03.2020 and same was rejected by His Excellency the President of India on 04.03.2020. The petitioner has filed the second mercy petition on 18.03.2020 repeating the same grounds.

6. In this writ petition, the petitioner has inter alia raised various grounds, namely:- (i) that there was miscarriage of justice in rejection of the mercy petition; (ii) the petitioner's date of birth is 08.10.1996 and on the date of the incident that is 16.12.2012, he was only aged 16 years and that he was a juvenile and his claim of juvenility has not been finally determined; (iii) the petitioner has been tortured in the prison and had sustained head injuries for which he has not been given proper treatment.

7. The learned counsel for the petitioner Mr. Shams Khwaja has also raised the contention that the petitioner might not have shared common intention along with the other co-

accused and therefore the petitioner cannot be imposed with the grave capital punishment with other co-convicts.

8. Mr. Shams Khwaja has also drawn our attention to the press report as per which His Excellency the President of India is said to have expressed concern about “attacks on women” and also said to have expressed his views that the persons who have been convicted of a crime under Protection of Children from Sexual Offences (POCSO) Act, should not be given the right to file a mercy petition. It was, therefore, submitted that having regard to the above press report, it cannot be said that His Excellency the President of India has considered the mercy petition with an open mind.

9. The learned Solicitor General has submitted that the clippings relied upon by the learned counsel for the petitioner is only a press report and in any event, the views expressed by His Excellency the President of India could only said to be on the line of the reforms insofar as POCSO is concerned.

10. 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 & Another v. Govt. of A.P. & Others*, (2006) 8 SCC 161, this Court held thus:

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

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.”

The decision in *Epuru Sudhakar* (Supra) was followed in *Shatrughan Chauhan & Another v. Union of India & Others*¹.

11. In the light of the above pronouncement, we have considered the submissions of the learned counsel appearing for the petitioners and also the grounds raised in the writ petition.

12. In this writ petition, primarily the writ petitioner has again raised the plea of juvenility by contending that his date of birth is 08.10.1996 and that he was a juvenile on the date of the incident on 16.12.2012. The petitioner relies upon the School Certificate issued by the School, namely, Gayatri Bal Sanskar Shala, Narayanpur, District Ambedkar Nagar, which was issued on 12.12.2019. The learned counsel Dr. A.P. Singh submitted that the petitioner's claim of juvenility has not been finally determined based on the above certificate issued by the said School on 12.12.2019.

13. We do not find merit in the above contention of the learned counsel Dr. A.P. Singh. The petitioner has earlier filed an application on 30.08.2018 raising the plea of juvenility before the Juvenile Justice Board-II, Prayas, Delhi, and after considering the same, the Juvenile Justice Board transferred the petition to the District & Sessions Judge, Patiala House, New Delhi, vide order dated 14.09.2018. By order dated 21.12.2018, the learned Additional Sessions Judge, Patiala House, New Delhi, dismissed the application filed by the petitioner as being not maintainable.

14. Challenging that order, the petitioner has filed Criminal Revision Petition No.1301 of 2019 before the Delhi High Court. By the order dated 19.01.2019, the Delhi High Court dismissed the Criminal Revision Petition. Challenging that order the petitioner had filed the SLP (Crl.) No.547 of 2020. After considering the submissions of the petitioner, this Court had passed the detailed order dismissing the Special Leave Petition on 20.01.2020.

15. The petitioner is not right in contending that the plea of juvenility has not been finally determined by the Courts. The plea of juvenility raised by the petitioner has been duly considered and rejected by the Courts as noted above.

16. The contention of the petitioner is that due to torture in the prison the petitioner had sustained head injuries and that he was sutured with more than 10 sutures and proper treatment was not given to the petitioner. As pointed out earlier, the exercise of judicial review of the order of rejection of the mercy petition by His Excellency the President of India is subject to challenge only on the grounds indicated in Eperu Sudhkar (Supra) and Shatrughan Chauhan (Supra) and other decisions. The learned Solicitor General has submitted that the petitioner was given proper treatment. The learned Solicitor General also denied the torture allegedly meted out to the petitioner. The alleged torture, if any, in the prison cannot be a ground for judicial review of the executive order passed under Article 72 of the Constitution of India rejecting the mercy petition.

17. Insofar as the contention of Mr. Shams Khwaja that the petitioner might not have shared the common intention along with other co-accused and that he cannot be imposed the grave capital punishment is concerned, these grounds have been already considered both by the Trial Court as well as the High Court and by this Court and the petitioner Pawan Kumar Gupta has been found guilty and convicted.

18. While exercising the power of judicial review, this contention raised by the learned counsel Mr. Shams Khwaja cannot be entertained as a ground for judicial review of the order of rejection passed by His Excellency the President of India.

19. We have decided the writ petition filed by the co-convict *Mukesh Kumar in Mukesh Kumar v. Union of India - Writ Petition (Crl.) No..40 of 2020 (29.01.2020)* and the writ petition filed by co-convict Vinay Kumar Sharma in *Vinay Kumar Sharma v. Union of India & Others - Writ Petition (Crl.) No.65 of 2020 (dated 14.02.2020)*, and Writ Petition filed by co-convict Akshay Kumar Singh in *Akshay Kumar Singh v. Union of India & Others - Writ Petition (Crl.) No.121 of 2020 (19.03.2020)* challenging the order of rejection of mercy petition by His Excellency the President of India. We have passed detailed orders while dismissing those writ petitions challenging the order of rejection of mercy petitions by His Excellency the President of India.

20. Applying the ratio of those orders, we do not find any ground to entertain this writ petition warranting judicial review of the order rejecting the mercy petition by His Excellency the President of India.

21. As we have pointed out in the earlier judgments in the above writ petitions, when the power is vested in the very high constitutional authority, it must be presumed that the said authority had acted carefully after considering all the aspects of the matter. It cannot be said that His Excellency the President of India did not consider the mercy petition with open mind filed by the petitioner Pawan Kumar Gupta.

22. The writ petition is accordingly dismissed.

Judgment Referred.

¹(2014) 3 SCC 0001