

**SUPREME
COURT
JUDGEMENT
REPORTER**

**20
23**

VOLUME 1 AND ISSUE 1 OF 2023

INSTITUTE OF LEGAL EDUCATION



Supreme Court Judgement Reporter
(Free Publication and Open Access Journal)

Journal's Home Page – <https://scjr.iledu.in/>

Journal's Editorial Page – <https://scjr.iledu.in/editorial-board/>

Volume 1 and Issue 1 (Access Full Issue on – <https://scjr.iledu.in/category/volume-1-and-issue-1-of-2023/>)

Publisher

Prasanna S,

Chairman of Institute of Legal Education (Established by I.L.E. Educational Trust)

No. 08, Arul Nagar, Seera Thoppu,

Maudhanda Kurichi, Srirangam,

Tiruchirappalli – 620102

Phone : +91 94896 71437 – info@iledu.in / Chairman@iledu.in



© Institute of Legal Education

Copyright Disclaimer: All rights are reserve with Institute of Legal Education. No part of the material published on this website (Articles or Research Papers including those published in this journal) may be reproduced, distributed, or transmitted in any form or by any means, including photocopying, recording, or other electronic or mechanical methods, without the prior written permission of the publisher. For more details refer <https://scjr.iledu.in/terms-and-condition/>



DELAY IN EXECUTION OR CLEMENCY? – A CASE COMMENTARY ON RENUKA @ RINKU @ RATAN KIRAN SHINDE AND ANR. v. UNION OF INDIA AND ORS.

Author – Ravani Ukti Nayudu, Student of Dr. M.G.R. Educational and Research Institute, Chennai

Best Citation – Ravani Ukti Nayudu, DELAY IN EXECUTION OR CLEMENCY? – A CASE COMMENTARY ON RENUKA @ RINKU @ RATAN KIRAN SHINDE AND ANR. v. UNION OF INDIA AND ORS, *SUPREME COURT JUDGEMENT REPORTER*, 1 (1) of 2023, Pg. 01-07, ISBN - 978-81-960677-8-6.

Abstract

What is the purpose of awarding a death sentence? What is the point of a death sentence if it is to be carried out 20 to 25 years later? the Supreme Court recently questioned the State of Maharashtra in response to the latter's appeal of the Bombay High Court's decision to commute the death sentences of two sisters to life imprisonment citing prolonged delay in processing their mercy petitions.

The mercy petition is a last resort provided by the Indian Constitution when a convict is sentenced to death by a court of law. Only when a conviction falls into the category of the rarest of the rare cases will the offender actually serve their sentence.

In India, a mercy petition is not a one-step or one-person remedy; such petitions are processed through a series of procedures involving a hierarchy of departments, culminating in a request for approval from the President or Governor, who is authorised to grant such relief under the Indian Constitution.

Due to the structural rigidity and time-consuming nature of the procedures, there is an inordinate delay in processing mercy petitions, resulting in a delay in determining the eventual outcome of the convict.

This paper evaluates the who and the why for the delay by answering the question, "Delay in

execution or clemency?" via a presentation of a case commentary on the commuted death sentences of the serial killer sisters Renuka Kiran Shinde and Seema Mohan Gavit.

Key Words – Death Sentence, Mercy Petition, Commutation to life imprisonment, Delay in procedures, Infringement of Fundamental Rights

Introduction

In India, the punishment of death sentence, known as the capital punishment, is only imposed in the rarest of circumstances. Yet, the number of criminals who have been given the death penalty is rising steadily; it went from 146 in 2021 to 165 in 2022, and reaching 539 by the end of 2022.

The certainty of the offenders to face the punishment being based on the rarest of the rare principle was conceptualised in the case of Bachchan Singh¹, in which the Supreme Court stated; *resistance to taking a life through the use of legislation is predicated on a genuine and enduring respect for the dignity of human life. Unless in the rarest of circumstances when the alternative option is categorically foreclosed, that shouldn't be done.*

Though not all situations are the rarest of the rare, the following was stated about the

¹ Bachchan Singh v. State of Punjab, (1982) 3 SCC 24

situation of a death row convict in the aforementioned case: *...for persons convicted of murder, life imprisonment is the rule and death sentence an exception.*

In the case that will be discussed, the High Court stated; *The² State represents the interest of the society in the criminal justice system.* The modern concept of the criminal justice expresses an idea that suspects, convicted criminals and victims of crime all have certain rights. Accordingly, both the rights of the innocent and the convicted must be provided for and protected by the State.

One such provision for the death sentence convict is the mercy petition which is guaranteed in the Indian Constitution. A death row inmate has the right to appeal to the Supreme Court. If the Supreme Court rejects the appeal or upholds the death penalty, the condemned or a family member may petition the President of India or the State Governor for mercy.

However, the application process and acceptance of rejection involve a rigid set of guidelines and a hierarchical network of bureaucratic offices. It may occasionally result in a drawn-out procedure that goes more slowly than anticipated, forcing the convict into a position of mental anguish and a do-or-die dilemma.

The case commentary that follows will examine the justification of the causes and reasons of the delay and provide a response to the question of whether there is delay in execution in death sentence or providing clemency to the death sentence convict.

I. Case Details

CASE TITLE	Smt. Renuka @ Rinku @ Ratan Kiran Shinde, Seema @ Devki Mohan Gavit v The Union of India, The State of Maharashtra,
-------------------	---

	The Superintendent of Central Jail, Yerwada, Pune, Maharashtra
CASE NO	NO. 3103 OF 2014
DATE OF THE ORDER	18 January 2022
CITATION	CRIMINAL WRIT PETITION NO. 3103 OF 2014
JURISDICTION	Criminal Appellate Jurisdiction, High Court of Judicature at Bombay
CORAM	Nitin Jamdar and Sarang V. Kotwal, JJ
AUTHOR OF JUDGEMENT	Nitin Jamdar, J
PETITIONER	<ul style="list-style-type: none"> Petitioner No.1- Smt. Renuka Kiran Shinde, Petitioner No.2 - Seema Mohan Gavit
RESPONDENT	<ul style="list-style-type: none"> Respondent No.1 - The Union of India Respondent No.2 - The State of Maharashtra Respondent No.3 - The Superintendent of Central Jail, Yerwada, Pune, Maharashtra Respondent No.4 - The Inspector General of Prisons, Yerwada Central Prison, Pune (Maharashtra) Respondent No.5 - The Superintendent of Central Jail, Yerwada, Pune, Maharashtra

² Refer paragraph 55

ACTS AND SECTIONS INVOLVED	
	<ul style="list-style-type: none"> • Article 161 of the Constitution of India • Article 72 of the Constitution of India • Article 21 of the Constitution of India

II. Background

The following background information will comprise the case commentary's backdrop.

- Background of the Crime
- Background of the Death Sentence
- Background of the Mercy Petition
- Background of the Present Writ Petition

A. Background of the Crime

Renuka Bai and Seema are Anjana Bai's daughters. Renuka has a son Ashish. They all lived in the same house. The two sisters are professional robbers. Renuka was caught red handed once while stealing a purse. But, accompanied by Ashish, she cried foul and claimed that the victim had grabbed her hand using the rationale that she was a mother of a child. The people gathered around her believed her story. Following the lead of this incident, both the sisters, along with their mother and began kidnapping small children in order to flee the thefts they commit.

B. Background of the Death Sentence

The petitioners Renuka, Seema and their mother Anjanabai³, were tried by the learned Additional Sessions⁴ Judge Kolhapur, for having kidnapped 13 children, attempting to kidnap one more child and committing murders of 9 of the 13 children

kidnapped by them in a period starting from June 1990 to October 1996. The learned Sessions Judge convicted them on 28 June 2001, and the Petitioners were sentenced to death. The petitioners filed an appeal⁵ in the High Court.

In 2004⁶, the Division Bench of this Court convicted the Petitioners for the following main offences⁷; criminal conspiracy of kidnapping children and using them for thefts, kidnapping the children from lawful guardianship, the kidnapping of the children intent to cause the child to be secretly and wrongfully confined and for murder. The petitioners were accordingly convicted and sentenced to death.

In 2005⁸, the petitioners filed an appeal before the Supreme Court, which confirmed the death sentence.

C. Background of the Mercy Petition

When steps were being taken to execute the death sentence of the Petitioners, various communications⁹ were received from 1 September 2006 to 8 September 2006 addressed to the President of India to be treated as mercy petitions on behalf of the Petitioners. These were representations from the residents of Canada, Japan, the United States, and India. It was stated that the execution of women is extremely rare, and though the applicants have all the sympathy to the victims, the death penalty would be against the civilized nation and therefore, the President of India should use the power of pardon.

On 15 September 2006¹⁰, the Ministry of Home Affairs (MHA) addressed a communication to the Home Secretary of Maharashtra subjected on *the petitions received from the President's Secretarial on behalf of the condemned prisoners Renuka Kiran Shinde and Seema Mohan Gavit for the commutation of their death penalty.*

⁵ Criminal Appeal No. 718 of 2001

⁶ Judgement ordered and dated 8th September 2004

⁷ Refer paragraph 3

⁸ Criminal Appeal No. 722 of 2005

⁹ Refer paragraph 17

¹⁰ Paragraph 17.2

³ Expired while in custody

⁴ Sessions Cases Nos. 55 and 56 of 1997

In the light of uncertainty¹¹, Petitioner No.1 – Renuka submitted a mercy petition to the President of India on 14 January 2008.

On 26 September 2008¹², Petitioner No.2- Seema filed a mercy petition through an advocate.

On 27 November 2010¹³, Petitioner No.1 yet again filed a mercy petition to the President of India.

On 17 August 2013¹⁴, the mercy petition of Petitioner No.2 – Seema was rejected by the Governor of Maharashtra.

On 7 July 2014¹⁵, mercy petitions of the Petitioners were rejected by the President of India.

D. Background of the Present Writ Petition

Following the aforementioned events, the petitioners filed the current writ petition.

The petitioners prayed that the delay in disposal of the mercy petitions having resulted in infringement of Petitioners fundamental rights, the death sentence be commuted to that of life imprisonment.

III. ORDER¹⁶ OF THE COURT

The court directed the following orders;

- i. The death sentences imposed on the Petitioners – Renuka Kiran Shinde and Seema Mohan Gavit was commuted to one of the life imprisonments.
- ii. The warrant to execute the death sentence of the Petitioners, which was not given effect during the pendency and hearing of this Petition, was cancelled and set aside.

IV. COMMENTS

The comments section will offer viewpoints based on how the above discussed case perceives the authority to grant mercy petitions, the causes of processing delays in mercy

petitions, and if the explanation for the delay reasonable.

A. Powers of President and Governor with regard to Mercy Petitions –

The Constitution of India provides the powers to grant mercy petitions under the Articles 72 and 161 of the Indian Constitution.

The President and Governor have the powers to grant pardons, reprieves, respites or remissions of punishment or to suspend, remit or commute the sentence of death. The powers of president are however extended to other cases whereas the powers of Governor are restricted to the extent of the executive power of the State. Yet, under clause (3) of Article 72, the powers of president shall not affect the powers exercised by the Governor of a State.

The case, however, applies it in a different manner. Through the clarification¹⁷ provided by Ministry of Home Affairs (MHA), it was stated that *once¹⁸ the President of India has exercised the powers under Article 72 of the Constitution of India, it would not be open to the Governor under Article 161 to exercise similar powers in respect of the same cause and even if the convicts want to apply in the change of circumstances, the same should be made to the President of India. Therefore, even if the mercy petitions are made to the President of India, they first are forwarded to the Governor (in the case of the States) for the decision of the Governor.*

B. Reasons for Delay in Procedure –

The judgement scrutinises the causes for the delay in the mercy petition procedures. Some of the essential viewpoints¹⁹ are as follows;

- Demonstration of delayed and casual approach at every stage of the State Government.

¹¹ Refer paragraph 18

¹² Refer paragraph 20

¹³ Refer paragraph 21

¹⁴ Refer paragraph 24.13

¹⁵ Refer paragraph 25.6

¹⁶ Refer paragraphs 56 and 57

¹⁷ regarding the power to be exercised by the Governor of the State under Article 161, as well as the power of the President of India and the position after the President of India rejects the mercy petition under Article 72

¹⁸ Refer paragraph 8

¹⁹ Refer paragraphs 34, 35 and 37

- The State Government's handling of the case; moving the file as if it were a routine file despite several reminders, non-awareness of the gravity of the files, and higher officials such as the Joint Secretary of the Judicial Cell of MHA probing to look into the matter personally and urgently.
- The negligent attitude of the State Government to the extent of sending reminders by the Home Ministry just to submit the documents and information regarding mercy petition and non-realisation of mercy petitions to be dealt with on a priority basis.
- Display of abandonment and non-explanation from the State as to what happened to the mercy petitions
- Non-compliance with Home Ministry's policy of deciding the mercy petition of co-convict together; subsequent rejection of both the mercy petitions separately
- The sequence of events demonstrates that the same pattern of negligence and indifference was repeated.

C. Was the Explanation for Delay Reasonable –

The judgement narrates an affidavit on behalf of the State Government. The High Court in analysing the affidavit²⁰ states;

The affidavit in reply from paragraphs 1 to 67 is only a chronology of movement of paper, with no comments. It only narrates how the files moved. The only explanation given is in paragraphs 67 and 68 of the reply, which reads thus:-

" The Petitioners have filed Mercy Petitions time and again though their petitions were pending before the respective authorities as mentioned above. I further say that whatever delay has been caused has occurred for

complying the procedure as required to be followed at each level."

The Court was unsatisfied with the incomplete explanation. The judgment expressed disagreement with the explanation of delay in compliance with procedure and the critical remark of delay due to repeated filing of mercy petitions by the petitioners, leading to pendency and delay.

Paragraph 43 of the judgement makes the following observations with regard to the above-mentioned statement given by the State government.

- the ground that the delay has occurred in complying with the procedure is incorrect, as the procedure expects expediency.
- there is absolutely no justification in stating that the mercy petitions filed time and again through the petitions were pending. The first ones were on behalf of the Petitioners, which was taken forward for some years and then, without explanation, abandoned.
 - The Court rightly pointed out; *Making repeated representations after their rejection is different, and making a representation in the form of a reminders when no decision is being taken is different.*
 - These are representations of prisoners sentenced to death awaiting their execution who are anxious to know their fate. The delay, in this case, is not due to the Petitioner's fault.
- There is a complete failure on the part of the executive of the State and to some extent of the Union and the matter was delayed at every stage. There is negligence in calling for the records, orders and documents, preparation of the note for approval for the ultimate

²⁰ Refer paragraph 43

decision of the constitutional authorities. The time span of 7 years, ten months and 15 days from 15 September 2006, till 30 July 2014, in the disposal of the mercy petitions is an undue, unexplained and inordinate delay.

To conclude the question of reasonableness, the State's argument ²¹that the Petitioners' death sentences should not be commuted and that they should be executed despite the unexplained and egregious delay cannot be accepted. When the mercy petitions by and on behalf of the Petitioners were made, the legal position that an egregious and inexplicable delay in the disposition of mercy petitions may result in commuting the death sentence already held weight.

V. Related Case Laws

The related case laws will be divided into two segments; case laws discussed and case laws mentioned

A. Case Laws Discussed

- Shatrughan Chauhan and Another v. Union of India and Others, WRIT PETITION (CRIMINAL) NO. 55 OF 2013
- Vivian Rodrick v. State of West Bengal, 1971 AIR 1584
- Sher Singh v. State of Punjab, 1983 AIR 465
- Smt. Triveniben v. State of Gujarat, 1989 AIR 1335
- Bhagwan Patilba Palve v. State of Maharashtra, 1989 Mh.L.J. 1001
- Pratt and Morgan v. Jamaica and Pratt V. Attorney General for Jamaica, (1994) 2 AC
- B. A. Umesh v. The Union of India & Ors., Writ Petition No. 53944/16

B. Case laws Mentioned

- Pradeep Yashwant Kokade v. Union of India and Ors., W.P.No.2607 of 2019
- Purshottam Dashrath Borate v. Union of India and Ors., W.P.No.2609
- Bhagwan Bux Singh v. the State of Uttar Pradesh, AIR 1978 SC 34
- Ram Adhar v. State of U.P., (1979) 3 Supreme Court Cases 774
- Ediga Anamma v. State of Andhra Pradesh, (1974) 4 SCC 443

Conclusion

To summarise the title question of "delay in execution or clemency," it is evident from the discussions that the delay in execution affects the delay in clemency and vice versa. The execution order is stayed when a mercy petition is filed for consideration. However, due to the stringent procedures and the dormant discharge of duties by the legally mandated authorities, there is a prolonged delay in which neither reason nor remedy is provided. This aspect has been covered in the judgement, where it is stated that; *If ²²the State Government was serious about executing the death sentence as being argued before us, it should have ensured that it does not create a situation that attracts a legal position leading to commuting the death sentence.*

Given the contemporary concept of the criminal justice system, which guarantees rights for both the innocent and the convicted, and because he is in a do-or-die situation with his mercy petition, emphasis must be placed on the psychological aspect of the convict regardless of the severity of the crime. By quoting a section of the Shatrughan case judgement, the court addressed this aspect in its ruling, where it is stated that *Keeping²³ a convict in suspense while consideration of his mercy petition by the President for many years is certainly an agony for him/her. It creates adverse physical conditions and psychological stresses on the*

²¹ Refer paragraphs 52 and 55

²² Refer paragraph 52

²³ Refer paragraph 4



convict under sentence of death. Indisputably, this Court, while considering the rejection of the clemency petition by the President, under Article 32 read with Article 21 of the Constitution, cannot excuse the agonizing delay caused to the convict only on the basis of the gravity of the crime.

References

- Himanshi Dhawan, *165 sentenced to death in 2022, highest in 2 decades*, THE TIMES OF INDIA, (Jan 30, 2023, 13:29 IST), <https://timesofindia.indiatimes.com/india/165-sentenced-to-death-in-2022-highest-in-2-decades/articleshow/97424728.cms>
- RENUKA @ RINKU @ RATAN KIRAN SHINDE AND ANR. Vs UNION OF INDIA AND ORS., CRI.WP-3103.2014, High Court of Bombay, https://bombayhighcourt.nic.in/ord_qry_webcoram.php
- LiveLaw News Network, *What Is The Use Of Death Sentence, If It Is To Be Executed After 20-25 Years? : Supreme Court Asks On Plea Challenging Commutation*, (14 Dec 2022 6:00 PM), <https://www.livelaw.in/top-stories/supreme-court-death-penalty-commutation-delay-mercy-petition-disposal-216721>