Reportable

IN THE SUPREME COURT OF INDIA

CRIMINAL ORIGINAL JURISDICTION

WRIT PETITION (CRL.) NO.129 OF 2015

Yakub Abdul Razak Memon **Petitioner(s)**

Versus

State of Maharashtra, Thr. the Secretary, Home Department and Others **Respondent(s)**

J U D G M E N T

Dipak Misra, J.

Invoking the jurisdiction of this Court under Article 32 of the Constitution of India, the petitioner, who has been sentenced to death, has prayed for issue of a mandamus or appropriate writ or direction for setting aside the order dated 30th April, 2015, passed by the Presiding Officer, Designated Court under TADA (P) Act, 1987, for Bombay Blast Cases and the order bearing No.S-0113/C.R.652/13/PRS-3 dated 13th

July, 2015, passed by the Government of Maharashtra, Home Department and the communication bearing O.W. No.ASJ/DEATH SENTENCE/222/2015 dated 13th July, 2015, issued by the Superintendent, Nagpur Central Prison, Nagpur, in terms whereof the death sentence awarded to the petitioner has been directed to be executed on 30th July, 2015, at 7.00 a.m.; issue a writ of prohibition prohibiting the respondents and each one of them along with their subordinates/agents/assigns from taking steps in pursuance of the orders dated 30th April, 2015 and 13th July, 2015, and, further to stay the execution of the death sentence awarded to him in terms of the judgment dated 25th October, 2007 of the Designated TADA Court, Bombay in BBC No.1/1993, which has been confirmed by this Court *vide* judgment dated 21st March, 2013 in Criminal Appeal No.1728 of 2007, till the petitioner has exhausted all the legal remedies available to him, to have the sentence of death awarded commuted to that of life imprisonment including the remedies under Articles 72 and 161 of the Constitution of India.

2. Before we advert to the factual assertions made in the writ petition by the petitioner and the stand and stance put

forth by the respondents, we are obliged to refer to certain developments that took place in the judicial proceedings before this Court. In course of hearing of the writ petition, the matter was listed before a two-Judge Bench. It was heard for some days. After hearing, Anil R. Dave, J. passed the following order:

> "Heard the learned senior counsel appearing for both the sides at length.
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> It is a fact that the conviction of the petitioner has been confirmed by this Court and the Review Petition as well as the Curative Petition filed by the petitioner have also been dismissed by this Court. Moreover, His Excellency Hon'ble The President of India and His Excellency The Governor of Maharashtra have also rejected applications for pardon made by the petitioner, possibly because of the gravity of the offence committed by the petitioner.
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> It has been submitted by the learned counsel appearing for the petitioner that one more application made to His Excellency The Governor of Maharashtra is still pending.
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> If it is so, it would be open to His Excellency The Governor of Maharashtra to dispose of the said application before the date on which the sentence is to be executed, if His Excellency wants to favour the petitioner. Submissions made about the Curative Petition do not appeal to me as they are irrelevant and there is no substance in them.
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> In these circumstances, the Writ Petition is dismissed."

3. Kurian Joseph, J., disagreed with Anil R. Dave, J. The basis of disagreement as is evincible from his judgment is that the curative petition that was decided by a Bench of three senior-most Judges of this Court on 21st July, 2015, was not appositely constituted as required under Rule 4 of Order XLVIII of the Supreme Court Rules, 2013 (for short, 'the Rules'). After referring to Rule 4(1) and (2) of the said Rules and the term 'judgment' as defined in Order I Rule 2(k) of the Rules, the learned Judge has held thus:

> "It may not also be totally out of context to note that the order dated 09.04.2015 in the Review Petition is captioned as a Judgment, apparently, in terms of the definition of 'judgment' under the Supreme Court Rules. Thus, it is found that the procedure prescribed under the law has been violated while dealing with the Curative Petition and that too, dealing with life of a person. There is an error apparent on the face of the order in the Curative Petition. The mandatory procedure prescribed under law has not been followed.
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> Though the learned senior counsel and the learned Attorney General referred to various grounds available in a Curative Petition, in the nature of the view I have taken in the matter that the Curative Petition itself has not been decided in accordance with the Rules prescribed by this Court, that defect needs to be cured first. Otherwise, there is a

clear violation of Article 21 of the Constitution of India in the instant case.

The learned Attorney General, inter alia , contended that this is not an issue raised in the writ proceedings. I do not think that such a technicality should stand in the way of justice being done. When this Court as the protector of the life of the persons under the Constitution has come to take note of a situation where a procedure established by law has not been followed while depriving the life of a person, no technicality shall stand in the way of justice being done. After all, law is for man and law is never helpless and the Court particularly the repository of such high constitutional powers like Supreme Court shall not be rendered powerless.

In the above circumstances, I find that the order dated 21.07.2015 passed in the Curative Petition is not as per the procedure prescribed under the Rules. Hence, the Curative Petition has to be considered afresh in terms of the mandatory requirement under Rule 4 of Order XLVIII of the Supreme Court Rules, 2013.

In that view of the matter, the death warrant issued pursuant to the Judgment of the TADA Court dated 12.09.2006, as confirmed by this Court by its Judgment dated 21.03.2013, of which the Review Petition has been dismissed on 09.04.2015, is stayed till a decision afresh in accordance with law is taken in the Curative Petition.

After a decision is taken on the matter, as abovesaid, the Writ Petition be placed for consideration before the Court."

On the basis of difference of opinion between the two learned Judges, the matter has been placed before us.

4. As is evident, Dave, J. has dismissed the writ petition, but has not adverted to the submissions made as regards the curative petition and only opined that they were irrelevant and there was no substance in them. Kurian Joseph, J. as is patent from his order has addressed at length to the same and kept the writ petition alive.

5. First, we shall address the question whether the curative petition was listed before a Bench in violation of the Rules. Be it clarified here, we restrain and refrain ourselves from addressing whether such an order could at all be challenged under Article 32 of the Constitution of India. As it seems, such a plea was not taken in the petition preferred by the petitioner. However, the learned Judge thought it appropriate to advert to the same and dwelt upon that and, therefore, the reference has arisen. Hence, the necessity to answer the same.

6. The creation of curative jurisdiction by this Court is based on the Constitution Bench judgment in *Rupa Ashok*

Hurra vs. Ashok Hurra, 2002 (4) SCC 388. Prior to the said judgment, the decisions in certain matters used to be challenged under Article 32 of the Constitution. The majority speaking through Quadri, J., opined that Article 32 petition could not be entertained as the same was not maintainable. Be it stated, the said statement of law was conceded to by the learned counsel who appeared for the parties. However, it was also conceded that some principle has to be evolved in that regard. On that basis the curative principle was evolved. While evolving the said principle, the majority noted as follows:

> "48. In the cases discussed above this Court reconsidered its earlier judgments, inter alia, under Articles 129 and 142 which confer very wide powers on this Court to do complete justice between the parties. We have already indicated above the scope of the power of this Court under Article 129 as a court of record and also adverted to the extent of power under Article 142 of the Constitution.
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> 49. The upshot of the discussion in our view is that this Court, to prevent abuse of its process and to cure a gross miscarriage of justice, may reconsider its judgments in exercise of its inherent power.
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> 50. The next step is to specify the requirements to entertain such a curative petition under the inherent power of this Court so that floodgates are not opened for filing a second review petition as a matter of course in the guise of a

> curative petition under inherent power. It is common ground that except when very strong reasons exist, the Court should not entertain an application seeking reconsideration of an order of this Court which has become final on dismissal of a review petition. It is neither advisable nor possible to enumerate all the grounds on which such a petition may be entertained.
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> 51. Nevertheless, we think that a petitioner is entitled to relief ex debito justitiae if he establishes (1) violation of principles of natural justice in that he was not a party to the lis but the judgement adversely affected his interests or, if he was a party to the lis, he was not served with notice of the proceedings and the matter proceeded as if he had notice and (2) where in the proceedings a learned Judge failed to disclose his connection with the subject-matter or the parties giving scope for an apprehension of bias and the judgment adversely affects the petitioner."

7. We have referred to the aforesaid paragraphs to indicate that though the majority has stated that it is neither advisable nor possible to enumerate all the grounds on which such a petition may be entertained, yet the Bench laid down the *ex debito justitiae* principle and further enumerated two grounds.

8. Learned senior counsel appearing for the petitioner have submitted that apart from those grounds, other grounds

can also be taken. We do not intend to dwell upon the same as we are only required to deal with the reference in a limited manner, that is, whether the curative petition had been decided by the Bench duly constituted as per the Rules. In this regard, it is necessary to understand what has been stated in *Rupa Ashok Hurra* case. Paragraph 52 of the said decision reads as follows:

> "The petitioner, in the curative petition, shall aver specifically that the grounds mentioned therein had been taken in the review petition and that it was dismissed by circulation. The curative petition shall contain a certification by a Senior Advocate with regard to the fulfilment of the above requirements."

9. Paragraph 52 clearly lays down that the curative petition shall aver specifically that the ground mentioned therein had been taken in the review petition and that it was dismissed by circulation. The curative petition shall contain a certification by a senior advocate with regard to the fulfillment of the above requirements. The constitution of the Bench has been laid down in paragraph 53. The relevant part of the said paragraph is as follows:

> "We are of the view that since the matter relates to re-examination of a final judgment of this Court, though on limited ground, the

> curative petition has to be first circulated to a Bench of the three senior-most Judges and the Judges who passed the judgment complained of, if available. It is only when a majority of the learned Judges on this Bench conclude that the matter needs hearing that it should be listed before the same Bench (as far as possible) which may pass appropriate orders."

10. Regard being had to what has been stated by the Constitution Bench, the Rule position of Order XLVIII which deals with the curative petition has to be appreciated. For the sake of appropriate appreciation, the entire Rule is reproduced below:

> "1. Curative Petitions shall be governed by Judgment of the Court dated 10th April, 2002 delivered in the case of Rupa Ashok Hurrah v. Ashok Hurrah and Ors. in Writ Petition (C) No.509 of 1997.
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> 2.(1) The petitioner, in the curative petition, shall aver specifically that the grounds mentioned therein had been taken in the Review Petition and that it was dismissed by circulation.
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> (2) A Curative Petition shall be accompanied by a certificate of the Senior Advocate that the petition meets the requirements delineated in the above case.
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> (3) A curative petition shall be accompanied by a certificate of the Advocate on Record to the effect that it is the first curative petition in the impugned matter.

> 3. The Curative Petition shall be filed within reasonable time from the date of Judgment or Order passed in the Review Petition.
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> 4.(1) The curative petition shall be first circulated to a Bench of the three senior-most judges and the judges who passed the judgment complained of, if available.
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> (2) Unless otherwise ordered by the Court, a curative petition shall be disposed of by circulation, without any oral arguments but the petitioner may supplement his petition by additional written arguments.
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> (3) If the bench before which a curative petition was circulated concludes by a majority that the matter needs bearing then it shall be listed before the same Bench, as far as possible.
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> (4) If the Court, at any stage, comes to the conclusion that the petition is without any merit and vexatious, it may impose exemplary costs on the petitioner."

11. It is submitted by Mr. Raju Ramachandran, learned senior counsel appearing for the petitioner that the view expressed by Kurian, J. is absolutely in consonance with the Rule, inasmuch as the learned Judges who decided the review petition were not parties to the Bench that decided the curative petition. He has given immense emphasis on Rule 4(1) and the dictionary clause in Rule 2(1)(k), which defines the term "judgment". The same reads as follows:

> "2.(1) In these rules, unless the context otherwise requires -
>
> (k) 'judgment' includes decree, order, sentence or determination of any Court, Tribunal, Judge or Judicial Officer."

12. The question, in essence, would be whether the term 'order' which forms a part of the definition of 'judgment' as stipulated under Order I Rule 2(1)(k) would mean that the order in review or the judgment passed in the main judgment. On a studied scrutiny of paragraph 53 of *Rupa Ashok Hurra* (supra) and the preceding paragraph which we have reproduced herein-above, the curative petition has to be circulated to a Bench of three senior-most Judges, and the Judges who had passed the judgment complained of. Needless to say, the availability has been mentioned therein. The rule has been framed in accord with the principle laid down by the Constitution Bench.

13. We are required to understand what is meant by the words "judgment complained of". According to *Rupa Ashok Hurra* (supra) principle, a second review is not permissible. However, a curative petition is evolved in exercise of power under Article 142 of the Constitution of India to avoid

miscarriage of justice and to see that in the highest Court, there is no violation of principle of natural justice, and bias does not creep in which is also fundamentally a facet of natural justice in a different way. We reiterate at the cost of repetition, whether other grounds can be taken or not, need not be adverted to by us. The principle of review as is known is to re-look or re-examine the principal judgment. It is not a virgin ground as has been held by Krishna Iyer, J. in *Sow Chandra Kante and Another vs. Sheikh Habib (1975) 1 SCC 674.* The said principle has been reiterated in many an authority. Thus, it is luculent that while this Court exercises the jurisdiction in respect of a curative petition, it is actually the principal judgment/main judgment, which is under assail.

14. The said judgment is the main judgment and in actuality attaches finality to the conviction in a case and the matter of re-examination is different. The curative petition is filed against the main judgment which is really complained of. The words "complained of" has to be understood in the context in which the Constitution Bench has used. The majority of the Constitution Bench, as we understand, was absolutely of the firm opinion that a review of a review would not lie and an

Article 32 petition would not be maintainable and, therefore, such a method was innovated.

15. Mr. Raju Ramachandran, learned senior counsel would submit that the learned senior counsel who appeared for the various petitioners in the said case always thought of an amalgam. *Per contra,* Mr. Mukul Rohatgi, learned Attorney General would submit that there may be an amalgam, but the three senior-most Judges have been categorically stated to be parties to the Bench and the Judges of the "judgment complained of" are to be parties and if they are not available, it is the prerogative of the Chief Justice of India to include some other Judges; however, if it is dealt with by three senior-most Judges, as in this case by the Chief Justice of India and two senior-most Judges, the order would not become void. In our considered opinion, the submissions canvassed by the Mr. Mukul Rohatgi, learned Attorney General, deserves acceptation and, accordingly, we hold that the curative petition that was decided by three senior-most Judges of this Court, can neither be regarded as void or nullity nor can it be said that there has been any impropriety in the constitution of the Bench. The Judges, who delivered the main judgment admittedly were not

available in office. If as a principle it is laid down that the Judges who decide the review in the absence of the judges who have demitted the office, are to be made parties by a judicial imperative, that would not be appropriate. We are absolutely conscious that a judgment is not to be read as a statute, but definitely a judgment has to be understood in proper perspective. We emphasize on the judgment as the rules have been framed in consonance with the judgment and not in deviation thereof. Thus, we disagree with the view expressed by Kurian Joseph, J. in this regard. Mr. Raju Ramachandran, learned senior counsel, would emphasise on the word 'judgment' as the dismissal of the review petition has been captioned as 'judgment'. The nomenclature, in our considered opinion, is not relevant. For the sake of example, we may say, an order in certain cases can assume the status of a decree and in certain cases a decree may not be a decree as per Section 2 of the Code of Civil Procedure. The purpose of saying so is that solely because the dismissal of the review petition has been nomenclatured as 'judgment', it will not come within the ambit and sweep of the concept of 'judgment complained of'.

16. At this juncture, it is condign to state that Kurian, J., as is vivid from his decision has not dealt with the petition under Article 32 of the Constitution, but directed that the curative petition has to be considered afresh in terms of the mandatory rules. We have already recorded our disagreement with the same. Therefore, the next stage has to be delineation of the writ petition on merits. As a sequitur, the dismissal of the curative petition by the three senior-most Judges of this Court has to be treated as correct and not vitiated by any kind of procedural irregularity.

17. Coming to the main petition, we have already stated about the prayers made therein. To appreciate the prayers, we have to refer to certain facts as they are absolutely necessitous. The petitioner was tried for various offences before the TADA Court which imposed the death penalty on him. In appeal, a two-Judge Bench of this Court adverted to the charges, various submissions and eventually concurred with the view expressed by the TADA Court.

18. After the judgment was pronounced on 21st March,

2013, an application for review was filed, which was dismissed by circulation on 30th July, 2013. After the rejection of the application for review, Suleman, the brother of the petitioner, represented under Article 72 of the Constitution to the President of India on 6th August, 2013, claiming benefits under Article 72(1) of the Constitution. The petitioner on 7th August, 2013, wrote to the Superintendent, Central Jail, Nagpur, informing him about receipt of petition by the office of the President of India. On 2nd September, 2013, the Government of India forwarded the mercy petition of the convict addressed to the President of India, to the Principal Secretary, Home Department, Maharashtra, as per the procedure. The Governor of Maharashtra rejected representation on 14th November, 2013 and on 30th September, 2013, the State Government informed the Central Government about rejection of mercy petition by the Governor of Maharashtra. On receipt of the said communication from the State Government on 10th March, 2014, the summary of the case/mercy petition prepared by the Ministry of Home Affairs under the signatures of Home Minister was forwarded to the President of India. On 11th April, 2014, the President of India, rejected the mercy petition of the

petitioner. The said rejection was communicated to the State Government on 17/21.04.2014, with the stipulation that the convict be informed and, accordingly, on 26th May, 2014, the petitioner was informed about the rejection of mercy petition by the President of India.

19. While the aforesaid development took place, the petitioner along with other accused in *Mohd. Arif alias Ashfaq vs. Registrar, Supreme Court of India and Others* (2014) 9 SCC 737, had assailed the constitutional validity of Order XL Rule 3 of the Supreme Court Rules, 1966, as unconstitutional. The main ground urged was that hearing of the review petition should not be by circulation, but should be only in open Court and hearing of cases in which death sentence has been awarded should be by a Bench of at least three, if not five, Supreme Court Judges. The Constitution Bench after hearing the learned counsel for the parties opined that there should be a limited oral hearing even at the review stage in all death sentence cases. We think it appropriate to reproduce paragraphs 39 and 40, as Mr. Mukul Rohatgi, learned Attorney General has emphasized on an aspect which we shall advert to slightly later on. The said paragraphs read as follows:

"39. Henceforth, in all cases in which death sentence has been awarded by the High Court in appeals pending before the Supreme Court, only a bench of three Hon'ble Judges will hear the same. This is for the reason that at least three judicially trained minds need to apply their minds at the final stage of the journey of a convict on death row, given the vagaries of the sentencing procedure outlined above. At present, we are not persuaded to have a minimum of 5 learned Judges hear all death sentence cases. Further, we agree with the submission of Shri Luthra that a review is ordinarily to be heard only by the same bench which originally heard the criminal appeal. This is obviously for the reason that in order that a review succeeds, errors apparent on the record have to be found. It is axiomatic that the same learned Judges alleged to have committed the error be called upon now to rectify such error. We, therefore, turn down Shri Venugopal's plea that two additional Judges be added at the review stage in death sentence cases.

40. We do not think it necessary to advert to Shri Jaspal Singh's arguments since we are accepting that a limited oral review be granted in all death sentence cases including TADA cases. We accept what is pointed out by the learned counsel for the petitioner in Writ Petition No.39/2013 and provide for an outer limit of 30 minutes in all such cases. When we come to P. N. Eswara Iyer's case which was heavily relied upon by the learned Solicitor General, we find that the reason for upholding the newly introduced Order XL Rule 3 in the Supreme Court Rules is basically because of severe stress of the Supreme Court workload. We may add that that stress has been multiplied several fold since the year 1980.

> Despite that, as we have held above, we feel that the fundamental right to life and the irreversibility of a death sentence mandate that oral hearing be given at the review stage in death sentence cases, as a just, fair and reasonable procedure under Article 21 mandates such hearing, and cannot give way to the severe stress of the workload of the Supreme Court. Interestingly, in P.N. Eswara Iyer's case itself, two interesting observations are to be found. In para 19, Krishna Iyer, J. says that "…presentation can be written or oral, depending upon the justice of the situation." And again in para 25, the learned Judge said that "…the problem really is to find out which class of cases may, without risk of injustice, be disposed of without oral presentation."

20. It is apt to note here that certain class of cases were covered to be heard for limited oral hearing. The same are postulated in paragraph 46, which reads as follows:

> "46. We make it clear that the law laid down in this judgment, viz., the right of a limited oral hearing in review petitions where death sentence is given, shall be applicable only in pending review petitions and such petitions filed in future. It will also apply where a review petition is already dismissed but the death sentence is not executed so far. In such cases, the petitioners can apply for the reopening of their review petition within one month from the date of this judgment. However, in those cases where even a curative petition is dismissed, it would not be proper to reopen such matters."

21. In those type of cases also, 30 minutes oral hearing was to be given. It is submitted by Mr. Rohtagi, learned Attorney General, that as per the admission made by the petitioner, a review petition was filed in pursuance of the decision in Mohd. Arif alias Ashfaq (supra) and it was heard for almost 10 days. It will be seemly to reproduce the order passed in the Review Petition as under :

> "We have heard the learned senior counsel appearing for the review petitioner and the learned senior counsel length. appearing for the respondent, at We have gone through the judgment sought to be reviewed and we have considered the arguments advanced on both sides. As requested, we have also gone through the judgment of the trial court, in order to appreciate the contention on conviction and sentence. advanced considered by in We the find that review detail sought to be reviewed. in all the petitioner the judgment arguments have been which is Hence, we do not find any error apparent on the face of record or any other ground so as to warrant interference in exercise of our review jurisdiction.
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> The review petition is hence dismissed. "

22. The review petition was dismissed on 09.04.2015. It is submitted by Mr. Rohtagi that it is a second review petition. In oppugnation, Mr. Raju Ramachandran would submit that this

was really reopening of the review petition as per the judgment in *Arif* and, therefore, it cannot be called a second review petition. Be that as it may, after the rejection of the review petition by the learned Judges on 09.04.2015, the petitioner filed a curative petition on 22.05.2015 which was dismissed vide order dated 21.07.2015.

23. At this juncture, we are required to sit in a time machine to appreciate certain other facts. After the review petition by the Judges who had decided the appeal was dismissed, a death warrant was issued on 14.08.2013 and the mercy petition was rejected on 11.04.2014. After rejection of the review petition by the three Judges by giving him open hearing on 21.04.2015, the petitioner was communicated to file a curative petition and, as is manifest, he had filed a curative petition. The grievance of the petitioner, as canvassed by Mr. Raju Ramachandran, which has been echoed with quite vehemence by Mr. Andhyarujina and Mr. Grover, learned senior counsel, who have intervened in the matter on behalf of certain institutions is that there has been a procedural violation inasmuch as the TADA Court on 30.04.2015 had issued death warrant directing execution on 30.07.2015 while the curative

petition was yet to be filed. Submission of the learned senior counsel for the petitioner as well as Mr. Andhyarujina and Mr. Grover is that though the TADA Court granted 90 days, yet the petitioner was served only on 13.07.2015 which suffers from incurable procedural illegality and warrants quashment of the death warrant. They have placed heavy reliance on *Shatrughan Chauhan & Anr.* vs. *Union of India & Ors.* [(2014) 3 SCC 1] and *Shabnam* vs. *Union of India & Ors.* [2015 (7) SCALE 1]. Paragraph 241.7 of *Shatrughan Chauhan* is the gravamen of submission of Mr. Raju Ramachandran, learned senior counsel appearing for the petitioner. The said paragraph reads as follows:

> "241.7. Some prison manuals do not provide for any minimum period between the rejection of the mercy petition being communicated to the prisoner and his family and the scheduled date of execution. Some prison manuals have a minimum period of 1 day, others have a minimum period of 14 days. It is necessary that a minimum period of 14 days be stipulated between the receipt of communication of the rejection of the mercy petition and the scheduled date of execution for the following reasons:-
>
> (a) It allows the prisoner to prepare himself mentally for execution, to make his peace with god, prepare his will and settle other earthly affairs.

> (b) It allows the prisoner to have a last and final meeting with his family members. It also allows the prisoners' family members to make arrangements to travel to the prison which may be located at a distant place and meet the prisoner for the last time. Without sufficient notice of the scheduled date of execution, the prisoners' right to avail of judicial remedies will be thwarted and they will be prevented from having a last and final meeting with their families. "

29. It is urged by Mr. Raju Ramachandran, learned senior counsel, that there has been non-compliance with the same inasmuch as though the TADA Court has given 90 days' time to the petitioner, yet the same has been curtailed by the State authorities for unfathomable reason. Per contra, Mr. Rohtagi, learned Attorney General would submit that the rejection of mercy petition was communicated on 26.05.2014. Therefore, the mandate in the said paragraph would not vitiate the warrant.

25. At this stage, we are under obligation to note that the fulcrum of submission of Mr. Raju Ramachandran, learned senior counsel, which has also received support from Mr. Andhyarujina and Mr. Grover, learned senior counsel is that after rejection of the curative petition, the petitioner has

submitted a second mercy petition to the Governor of Maharashtra on 22.07.2015 and until that is decided, the warrant cannot be executed. We shall advert to the same at a later stage. As far as the compliance of period of 14 days from the scheduled date of execution is concerned, it meets the time limit.

26. The next aspect that has been highlighted by the learned senior counsel for the petitioner is that on the date the death warrant was issued, the TADA Court did not hear him, as a result of which the fundamental right enshrined under Article 21 of the Constitution has been violated. To bolster the said submission, he has commended us to paragraph 11 of the decision in *Shabnam* (supra). The said paragraph is extracted below :

> "11) On the other hand, in so far as the present case is concerned, the stage of petition for mercy has not yet come inasmuch as the convicts have right to file an application for review in this Court seeking review of the Judgment dated 15.05.2015, vide which, the appeals of both the convicts were dismissed. He has also drawn our attention to the Judgment of the Division Bench of the Allahabad High Court in a matter titled as Peoples' Union for Democratic Rights (PUDR) v. Union of India & Ors. (PIL No.57810 of 2014

decided on 28.01.2015). He has submitted that in the said case, the High Court has mandated the following procedure which has to be followed before the execution of the death sentence. The said portion from the judgment is extracted below:

> "We are affirmatively of the view that in a civilized society, the execution of the sentence of death cannot be carried out in such an arbitrary manner, keeping the prisoner in the dark and without allowing him recourse and information. Essential safeguards must be observed. Firstly, the principles of natural justice must be read into the provisions of Sections 413 and 414 of Cr.P.C. and sufficient notice ought to be given to the convict before the issuance of a warrant of death by the sessions court that would enable the convict to consult his advocates and to be represented in the proceedings. Secondly, the warrant must specify the exact date and time for execution and not a range of dates which places a prisoner in a state of uncertainty. Thirdly, a reasonable period of time must elapse between the date of the order on the execution warrant and the date fixed or appointed in the warrant for the execution so that the convict will have a reasonable opportunity to pursue legal recourse against the warrant and to have a final meeting with the members of his family before the date fixed for execution. Fourthly, a copy of the execution warrant must be immediately supplied to the convict. Fifthly, in those cases, where a convict is not in a position to offer a legal assistance, legal aid must be provided. These are essential procedural safeguards which must be observed if the right to life under Article 21 is not to be denuded of its meaning and content."

27. It is submitted by Mr. Raju Ramachandran, learned senior counsel, that this Court has given the stamp of approval to what has been stated by the Division Bench of the High Court of Allahabad and, therefore, it is a declaration of law under Article 141 of the Constitution. It is urged by him that the principles of natural justice are to be read into the provisions of Chapter 413 and 414. The convict has to be heard at the time of issuance of warrant. The learned Attorney General, in his turn, would contend that the said judgment was pronounced on 27.05.2015 whereas the warrant in this case was issued on 30.04.2015 and that is why the learned TADA Court could not have applied the same principle. In essence, the submission of Mr. Rohtagi is that the principles laid down in the said judgment have to apply prospectively. In our considered opinion, the postulates made in the said judgment can be best understood from paragraphs 20 and 21 of the said judgment. They read as follows :

> "20) Thus, we hold that condemned prisoners also have a right to dignity and execution of death sentence cannot be carried out in a arbitrary, hurried and secret manner without allowing the convicts to exhaust all legal

remedies.

> 21) We find that the procedure prescribed by the High Court of Allahabad in PUDR's case (supra) is in consonance with Article 21 of the Constitution. While executing the death sentence, it is mandatory to follow the said procedure and it is also necessary for the authorities to keep in mind the guidelines contained in the judgment of this Court in Shatrughan Chauhan's case (supra). "

28. Thus viewed, it would become a declaration of law under Article 141 of the Constitution and unless the Court says it is prospectively applicable, it would always be deemed to be applicable. However, it is also to be seen what is the purpose and purport behind the said principle and whether that would affect the issuance of death warrant in this case. The Court has held that sufficient notice is to be given to the convict before issuance of death warrant by the Sessions Court so that it would enable him to consult his advocates and to be represented in the proceedings. That being the purpose, it has to be viewed in the present exposition of facts. In this case, after the warrant was issued, though it has been served on the petitioner on 13.07.2015, yet he had filed the curative petition on 22.05.2015 and, therefore, he cannot take the plea that he had not availed the legal remedies. The curative petition, as

has been mentioned earlier, has been dismissed on 21.07.2015. In our view, the purpose behind the said mandate has been complied with in this case. We may explain slightly elaborately. In *Shatrughan Chauhan's case*, after the appeal was dismissed, warrant was issued six days later. Indubitably, that was not in accord with any principle in such a case. Needless to say, the same principles would be applicable but in the case at hand, the said principles cannot be stretched to state that the issuance of warrant by the TADA Court would be void on the basis of non-compliance of one of the facets of the procedure. We are inclined to hold so as the petitioner had availed series of opportunities to assail the conviction and as accepted he was offered ten days when the review petition was heard.

29. We had already stated that we would be dealing with the facet of second mercy petition which has been submitted on 22.07.2015. It is urged by Mr. Raju Ramachandran, learned senior counsel for the petitioner, and Mr. Andhyarujina and Mr. Grover supporting him that the submission of delineation of mercy petition is a constitutional right as per Articles 72 and 161 of the Constitution of India. To buttress the said submission, they refer to few passages from *Chauhan's case*. In

the said case, it has been stated that it is a constitutional right. A convict, after his conviction, at any stage, can make a representation to the constitutional authority seeking pardon or remission or other reliefs as have been provided under the said Articles. In the instant case, the brother of the petitioner had submitted the mercy petition to the President of India. The petitioner was absolutely in know of the same. He was communicated by the competent authority that the President of India has rejected the same on 11.04.2014. A contention has been raised that it was the brother who had submitted the mercy petition and not the petitioner. The said fact is accepted and is also evident from the communication dated 07.08.2013 to the Superintendent, Central Jail, Nagpur. There cannot be any cavil that another mercy petition can be filed in certain situations. It is put forth by Mr. Raju Ramachandran that the petitioner has taken additional grounds which include suffering from schizophrenia. It is urged they are to be considered under the Constitution by the President of India. Mr. Rohtagi, learned Attorney General, has disputed the same.

30. We are obligated to state that dealing with the mercy petition is by the Executive. True it is, on certain limited

grounds, as per *Shatrughan Chauhan* (supra), it can be challenged. We need not delve into that realm. After the first mercy petition was rejected, the petitioner did not challenge that. He has submitted the mercy petition, as per his version, on 22.07.2015. How that mercy petition is going to be dealt with, we are not inclined to dwell upon the same. We only hold that issuance of death warrant is in order and we do not find any kind of infirmity in the same.

31. In view of the aforesaid analysis, we conclude that the curative petition which is decided by three senior most Judges of this Court cannot be flawed and the issue of death warrant by the TADA Court on 30.04 2015 cannot be found fault with. In the result, the writ petition, being sans merit, stands dismissed.

.....J.
[Dipak Misra]

.....J.
[Prafulla C. Pant]

.....J.
[Amitava Roy]

New Delhi
July 29, 2015