
(2011) 09 GAU CK 0022

In the Gauhati High Court

Case No : Writ Petition (Criminal) No. 17 of 2011

Kusumbala Tarun Das

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 08-09-2011

Acts Referred:

Constitution of India, 1950 — Article 14, 161, 21, 226, 32
Criminal Procedure Code, 1973 (CrPC) — Section 303, 304, 320(4), 330(2), 335(1)
Penal Code, 1860 (IPC) — Section 302, 324, 448
Prisons Act, 1894 — Section 30(2)

Citation : (2011) 4 GLT 481

Hon'ble Judges : I. A. Ansari, J;H. Baruah, J

Bench : Division Bench

Advocate : A.K. Bhattacharjee, Mr. A.C. Borbora, Mrs. R. Borbora, Ms. N. Sarma, Mr. U. Choudhury, Mr. M. Smith and Mr. D.K. Bhattacharjee, for the Appellant; R. Sharma, ASG, Mr. R.K. Bora, GA and Mr. B.D. Konwar, for the Respondent

Final Decision : Dismissed

Judgement

I.A. Ansari, J.—With the help of this writ petition, made under Article 226 of the Constitution of India, the petitioner, being mother of the convict, who stands sentenced to death and whose mercy petition also stands rejected by the President, has put to challenge the rejection of the mercy petition and she seeks issuance of appropriate writ(s) commanding the respondents to commute the sentence of death into one of imprisonment for a reasonable period of time.

2. Before we come to the important issues, which have been raised in this writ petition, it is apposite to correctly take note of the background in which the issues have been raised. For this purpose, the material facts and various stages, which have led to filing of the present writ petition, need to be fully appreciated. With this end in view, the material facts and various stages, leading to this writ petition, are, in brief, set out as under:

(i) The history of the present case is traceable to Bharalumukh Police Station Case No.286/1990. The petitioner's son, Mohendra Das @ Gobinda, came to be arrested, on 25.12.1990, in connection with the said case. On completion of investigation, police laid charge-sheet against the accused under Sections 448/302 IPC. The case, on being committed to the Court of Sessions, came to be registered as Sessions Case No.80 (K)/1996 u/s 302 IPC.

(ii) During trial, when charges under Sections 448 and 302 IPC were framed, the accused pleaded not guilty thereto. The accused was, however, allowed to go on bail on 26.02.1991. The case, which was so registered against the accused, ended in conviction of the accused u/s 302 IPC and the accused was sentenced to suffer imprisonment for life with fine of Rs. 10,000/- and, in default of payment of fine, to suffer rigorous imprisonment for a period of four years. The accused was so convicted and sentenced by judgment and order, dated 12.02.1998, passed, in Sessions Case No.80(K)/1996, by the learned Sessions Judge, Kamrup.

(iii) The accused, while undergoing the sentence of imprisonment for life, as indicated above, preferred an appeal from jail, which came to be registered as Criminal Appeal No. 2(J)/1998. What the prosecution's case, against the accused was, can be best described in the language of the Division Bench of this Court, which had decided the appeal. D. Biswas, J, who spoke for the Division Bench, described the case against the accused as under:

2. The incident took place on 24.12.1990 at about 12 noon in the office of the Assam Motor Workers' Union situated at Bharalu-mukh in the city of Guwahati. At the relevant time, deceased Rajen Das, who was then Secretary of the Assam Motor Workers' Union, was taking tea along with Digambar Kalita, Salim Haque Choudhury and Islamuddin Ahmed. The appellant Gobinda Das, an expelled member of the Union, arrived there and had some conversation with Dibambar Kalita. All of a sudden, the appellant slapped a mug of water on the person of Rajen Das and simultaneously, stabbed Rajen Das with a dagger. Rajen Das ran out of the office to save himself but the accused followed him to the main road and caused multiple stab injuries on his person. On an alarm being raised by the informant and other onlookers, police from nearby police station came and apprehended the accused. The injured Rajen Das was immediately shifted to MMC Hospital, but he succumbed to his injuries on way to the hospital.

(Emphasis supplied)

(iv) As the finding of guilt, reached against the accused u/s 302 IPC, was upheld by the Division Bench, the appeal was dismissed by the judgment and order, dated 12.02.1998, passed in Criminal Appeal No. 2(J)/98, and the conviction of the accused as well as the sentence passed against him were maintained, (v) While accused Gobinda Das was on bail, as indicated above, he came to be arrested in connection with another case, namely, Pan Bazar Police Station Case No. 141/96 u/s 302 IPC. On being committed to the Court of Session, the second

case came to be registered as Sessions Case No. 144 (K)/1996 and the same has become basis of this writ petition.

(vi) During trial, charge u/s 302 IPC was framed against the accused, but the accused pleaded not guilty thereto. This trial too ended in conviction of the accused u/s 302 IPC on 18.08.1997 and he was sentenced to death. The learned trial Court succinctly described the case of the prosecution against the accused in the following words:

It was an usual morning hour on the street of the metropolis Guwahati named after the great apostle of peace, Mahatma Gandhi. The day was 24th April, 1996, and the time was around 7 AM. The street has just witnessed a sordid incident of violence. Hara Kanta Das, a truck owner and some others i.e. driver, truck broker etc, were having their morning cup of tea on the corner tea stall of FD Road and Chamber Road. They were standing on the road side sipping their tea and having their usual conversation. Suddenly, accused Mahendra Das alias Gobinda Das, a young man aged about 33 years, arrived at the scene with sword like weapon and butchered Hara Kanta Das on the neck. The head was severed from the trunk. The body fell down whereupon accused dealt more blows amputating the right hand also. Thereafter, the accused picked up the severed head of Hara Kanta in one hand and with a blood dripping weapon on the other hand, exile majestically towards Fancy Bazar Police Out Post.

2. At the Fancy Bazar Police Out Post, which is under Panbazar Police Station, the sweeper Ratan Rai PW1 was busy in cleaning the premises and while standing on the footpath, this witness saw the accused entering into the outpost. Sepoy Amrit Thakuria (since deceased) and Ratneswar Barman PW2 were on duty. Seeing this bizarre scene, PW1 went and informed the matter to the In-Charge of the TOP Purnanand Baruah (PW10). The accused asked PW2 as to where he should keep the head and the weapon. These were placed at the verandah and thereafter constable Amrit Thakuria arrested the accused. In the meantime, PW10 arrived. He seized the weapon vide seizure list Ext. 1 and held inquest over the head. A GD Entry No.739 was made in the General Diary Registrar maintained in the police station. Ext.1(1) is the relevant entry. There were blood marks on the sporting ganji worn by the accused. The same was seized vide seizure list Ext.3. Thereafter, on being led by the accused. PW10 came to the place of occurrence and found a headless trunk lying at the place of occurrence. The right hand of the body was also found completely severed. A sketch map was prepared and the police officer conducted separate inquest on the trunk and the severed hand. The hand was brought from the PS and after assembling the entire body another inquest was made. The dead body was sent for post mortem examination and the seized weapon and sporting ganji were sent Forensic Science Laboratory, who found human blood on material Ext 1 and 2. After collection of the reports and after completion of investigation, charge-sheet u/s 302 IPC was submitted against the accused.

[Emphasis supplied]

(vii) Aggrieved by his conviction and the sentence of death passed against him, the accused preferred an appeal from jail, which gave rise to Criminal Appeal No.254 (J)/1997. As the accused stood sentenced to death, a Death Reference too came to be registered, the reference being Death Reference No. 2/1997.

(viii) Before proceeding further, we may also take note of the manner in which the gruesome second occurrence of murder was described by a Division Bench of this Court in the appeal. The description reads as under;

6. The occurrence took place around 7 or 7.30 in the morning on 24.4.1996. The place of occurrence is Chamber Road, Fancy Bazar in Guwahati. It is alleged that the accused. Mahendra Das (a). Gobinda Das came with a sword like weapon and butchered one Hara Kanta Das chopping off his neck. The head was severed from the neck. Hara Kanta was assaulted, he fell to the ground whereupon the accused still persisted in dealing more blows, amputating his right hand also. Thereafter, the accused picked up the severed head of Hara Kanta by one hand with blood dripping weapon in the other and proceeded to nearby police Outpost situated in Fancy Bazar. There is a small tea stall patronized by truck drivers, cleaners, handimen who invariably used to take tea at this stall. Even at the time of occurrence, some of them had been standing around the tea stall. The accused entered the police outpost shouting the slogan "joy Assam". He was asked by the police constable too keep aside the severed head and the weapon. On being asked the accused declared his name as Mahendra Nath Das. Constrable Amrit Thakuria (since deceased) asked Ratneswar Barman PW2 to arrest the accused, which he accordingly did. Almost simultaneously, the matter was telephonically reported to Panbazar Police Station. On receiving information, PW10 arrived at the outpost, he seized the dao, as per exhibit 1 and the blood stained cloths (underwear) of the accused as per exhibit-3. In the meanwhile, a report exhibit 4 was lodged at Panbazar Police Station. On the basis of this report, a case u/s 302 IPC was registered and taken under investigation. On completion of investigation, the accused was charged and tried for the above offence, his defence at the time of trial as can be gathered from his statement as recognized u/s 313 Cr.PC was one of plain denial, at the same time adding that the trial was vitiated on account of refusal of bail. The trial Court, however, found him guilty and sentenced him, as already noted above, hence this appeal, and the connected death reference.

[Emphasis supplied]

(ix) By judgment and order, dated 03.02.1998, this High Court dismissed the appeal, maintained the conviction of the accused and also the sentence of death passed against him. The Death Reference was accordingly answered in the affirmative. The accused, then, carried the matter, in appeal, to the Supreme Court, which has been reported in Sri Mahendra Nath Das @ Sri Gobinda Das Vs. State of Assam,

(x) By its judgment and order, dated 14.05.1999, the Supreme Court dismissed

the appeal and upheld the death sentence. The convict, then, filed a mercy petition under Article 72 of the Constitution of India, addressed to the President of India through Superintendent, Central Jail, Guwahati, on 04.06.1999. Similar petitions seeking mercy were also filed by three other organizations. The Union of India, on 25.06.1999, referred the mercy petition to the State Government for consideration. Thereafter, Govt. of India requested, on 20.07.1999, the State Government to stay execution of the death sentence. On 07.04.2000, Governor of Assam, in exercise of his power under Article 161 of the Constitution of India, rejected the mercy petition made by the convict to the Governor of Assam under Article 161 of the Constitution. The State Government, then, on 26.04.2000, forwarded, along with necessary papers, to the Govt. of India the mercy petitions of the convict as well as of the three other organizations made, under Article 72 of the Constitution of India, for consideration thereof by the President of India. The Govt. of India, then, on 04.09.2000, asked for the relevant records pertaining to the first case of the murder committed by the son of the present petitioner. Further correspondences continued between the Govt. of India and the State Government from 05.02.2001 to 16.02.2001 and it was in June, 2001, that the concerned file was submitted to the President's Secretariat with recommendation for rejection of the mercy petition.

(xi) It was, thereafter, in July, 2004, that the concerned file was returned by the President's Secretariat, for re-examination of the case, to the Ministry of Home Affairs (hereinafter referred to as the "MHA"), Govt. of India. The President's Secretariat received the file for the second time in April, 2005. While the matter was pending with the President's Secretariat, the first reminder, in this regard, was submitted, on 04.10.2005, by the convict addressed to the President of India. The first reminder to the mercy petition was also forwarded to the State Government by the Inspector General of Prisons, Assam, on 03.03.2006. The first reminder to the mercy petition was, then, referred, on 22.05.2006, by the Department of Home to the Judicial Department. The Judicial Department, on 05.06.2006, informed that they had already taken action on a similar copy of the mercy petition, which was received from the Governor's Secretariat, Assam. A letter was, then, issued, on 09.03.2006, addressed to the Joint Secretary to the Government of Assam advising that since the mercy petition is pending before the President, the Governor may like to reserve the same for consideration. The second reminder to the mercy petition was made by the convict addressed to the President of India on 18.12.2006 through Superintendent of Central Jail, Guwahati. On 26.04.2007, the Inspector General of Prisons, Assam, forwarded the second reminder to the mercy petition. The second reminder was submitted by the petitioner on behalf of the accused on 25.08.2008. The State Government forwarded this reminder, which the present petitioner, as mother of the convict, had submitted, to the Govt. of India on 04.03.2009. Thereafter, the file was called back for review by the Ministry of Home Affairs, Govt. of India, on 27.09.2010. The file was, then, submitted third time for review on 19.10.2010. On 08.05.2011, the mercy petition was rejected by the President of India. The

Govt. of India communicated, on 12.05.2011, the Presidential order of rejection of the mercy petition submitted by the convict. The State Government accordingly, on 27.05.2011, informed the convict about the rejection of his mercy petition by the President. On 06.06.2011, an officer was deputed to Uttar Pradesh to escort a hangman from Lucknow to Jorhat to carry out the execution of the death sentence. It was, at this stage, that a Public Interest Litigation, which gave rise to PILNo.41/2011, was registered and an interim order was made, on 07.06.2011, by this Court staying execution of the death sentence. However, on 21.07.2011, the PIL was dismissed. It was, then, that the present writ petition was filed by the mother of the convict.

3. We have heard Mr. A.K. Bhattacharjee, learned Senior counsel, and Dr. Y. Choudhury, learned counsel, for the petitioner, Mr. R. Sharma, learned Assistant Solicitor General, and Mr. Z. Kamar, learned Public Prosecutor, Assam. We have also heard and Mr. B.D. Konwar, learned counsel, who has appeared on behalf of the son, whose father was killed by the petitioner's said son. The son of the deceased is hereinafter referred to as the "victim's son".

4. Presenting the case on behalf of the petitioner, Mr. A.K. Bhattacharjee, learned Senior counsel, submits that Article 21 guarantees fair, just and reasonable procedure not only at the stage of investigation or trial, but even at the stage of execution of sentence. Sentence of death cannot, therefore, according to Mr. Bhattacharjee, be executed if such execution becomes unjust or unfair.

5. As a corollary thereto, Mr. Bhattacharjee submits that if there is inordinate, unreasonable, unexplained or unjustified delay in execution of a death sentence, the execution, if carried out, would deny the guarantee of fairness, which Article 21 provides to every person. Inordinate delay in execution of the death sentence, which may occur, contends Mr. Bhattacharjee, after judicial process of determination of guilt of an accused is complete, would be as fatal as it would be for trial. In support of his submission that delay in execution of sentence of death may, in itself, be sufficient not to allow execution to be carried out, Mr. Bhattacharjee has placed reliance on a large number of decisions, namely, *Khem Chand Vs. State*, , *Haja Moideen and etc. Vs. Government of India and Others*, etc., , *Autar Singh Vs. Emperor*, reported in 14 Cri. LJ. 642 (1913)4, AIR 1944 1 (Federal Court) , *Sher Singh and Others Vs. State of Punjab*, , *Javed Ahmed Abdul Hamid Pawala Vs. State of Maharashtra*, , *Triveniben Vs. State of Gujarat*, , *Madhu Mehta Vs. Union of India and Others*, , *Jumman Khan Vs. State of U.P.*, , *Jagdish Vs. State of Madhya Pradesh*, , and *Vivian Rodrick Vs. The State of West Bengal*,

6. It is also submitted by Mr. Bhattacharjee that post-conviction delay is material and necessary to be taken into account for the purpose of determining whether a death sentence shall or shall not be allowed to be executed. What is relevant and must not be ignored, submits Mr. Bhattacharjee, in determining the question as to whether or not a sentence of death needs to be commuted to a sentence of imprisonment for life, are the circumstances or events, subsequent to the judicial

process of determination of not only conviction, but of passing of the sentence of death. Consequently, points out Mr. Bhattacharjee, the circumstances surrounding the commission of an offence, would not be material, while determining whether a death sentence shall or shall not be commuted to imprisonment for life on the ground of inordinate delay.

7. In the present case, submits Mr. Bhattacharjee, there is no explanation for delay in executing the death sentence. The Union of India has, contends Mr. Bhattacharjee, miserably failed to explain as to why delay of as long as 11 years has taken place between the dismissal of the petitioner's appeal by the Supreme Court and the rejection of the mercy petition.

8. Taking us elaborately through various stages, which the mercy petition has passed, Mr. Bhattacharjee submits that the Union of India is liable to give reasonable explanation before this Court as to why death sentence could not be executed for as long a period as 11 years and it is, in fact, points out Mr. Bhattacharjee, the convict himself, who reminded the Union of India that he would go on hunger strike if a decision on the mercy petition is not taken by the President. It is also important to bear in mind, submits Mr. Bhattacharjee, that at no stage, the petitioner's son, as a convict, has contributed to this delay and, having miserably failed to explain the delay, which has occurred in execution of the death sentence, and, having miserably failed to take any decision on the mercy petition for so much as 11 years, the State cannot be allowed, in the facts and circumstances of the present case, to execute the death sentence. In fact, contends Mr. Bhattacharjee, allowing execution of death sentence, in the present case, would be unfair, unreasonable and unjustified. The petitioner's son, submits Mr. Bhattacharjee, has been passing his days in great mental agony, because he used to get up every morning wondering as to whether his mercy petition would or would not be allowed. When a person is incarcerated in a death cell for a long time of 11 years, this, in itself, is sufficient, according to Mr. Bhattacharjee, not to execute the death sentence, because such a person, as the petitioner's son, has already undergone indescribable mental torture and agony.

9. Appearing on behalf of the Union of India, Mr. R. Sharma, learned ASG has elaborately taken us through various steps, which the Govt. of India has taken. According to Mr. Sharma, consideration of the question as to whether a death sentence, passed against a person, shall or shall not be commuted to life is a serious question and many factors enter into process of making of the decision. For the purpose of arriving at a just decision, in the present case too, the Government of India has taken into account various aspects and gathered information inasmuch as the mercy petition, which the petitioner's son had made, did not disclose the fact that he had committed the murder, while he was on bail and had, in fact, jumped the bail. Mr. Sharma points out, in this regard, that the decision of the Supreme Court, rejecting the petitioner's son's appeal and upholding the sentence of death, was passed on 14.05.99. Thereafter, the petitioner addressed a mercy petition to the Governor of Assam under Article 161

of the Constitution of India. This mercy petition, points out Mr. Sharma, was rejected on 17.04.2000.

10. It was, points out Mr. Sharma, in the month of June, 2001, that the mercy petition was, for the first time, submitted by the Union of India to the President's Secretariat after due considerations. The President of India, points out Mr. Sharma, returned the file for re-examination by the MHA in July, 2004. Thus, the mercy petition remained with the President's Secretariat for about three years. The Constitution, submits Mr. Sharma, does not prescribe any particular period for the President to take a decision in the matter. Whatever could have been done by the MHA, as regards taking of a decision on the mercy petition, was done and the file was submitted, at the earliest, to the President's Secretariat, but the matter remained with the President Secretariat, which is not under the control of the MHA. Be that as it may, submits Mr. Sharma, having considered, for the second time, as had been suggested by the President, the Union Government reiterated its recommendation for rejection of the mercy petition in the month of April, 2005. It was on 27.09.2010, points out Mr. Sharma, that the file was called back by the MHA and, having examined the matter, the file was submitted, for the third time, on 19.10.2010, to the President Secretariat recommending rejection of the mercy petition and it was on 08.05.2011 that the mercy petition was rejected by the President of India and the decision was communicated, on 12.05.2011, to the Govt. of India.

11. It is, no doubt, true, submits Mr. Sharma, that it has taken several years for the mercy petition to be disposed of, but there are several factors, which are required to be taken into account in considering a mercy petition and there can be no uniform period for disposal of the mercy petition inasmuch as a number of factors, reiterates Mr. Sharma, enter into consideration depending upon the nature of a case and the nature of the issues involved. It may also depend, according to Mr. Sharma, on the number of mercy petitions, which are submitted to, and required to be considered by, the Government. The circumstances, whereunder the offence was committed by the petitioner's son, points out Mr. Sharma, does not warrant commutation of death sentence inasmuch as the petitioner's son, having been released in connection with a murder case, jumped bail and while he was absconding, he, in fact, committed the murder, which resulted into passing of the death sentence against him. Thus, while in the latter case, he has been sentenced to death, he was sentenced for life imprisonment in the first case.

12. Assigning reasons as to why the mercy petition could not be allowed, Mr. Sharma submits that the petitioner's son repeated the offence of murder and, in fact, he committed murder, in the present case, after he had jumped bail and was absconding. The Supreme Court has described, points out Mr. Sharma, that the murder by the petitioner's son was "extremely gruesome, heinous, cold blooded and cruel". Mr. Sharma submits that the manner, in which murder was committed, was atrocious and shocking inasmuch as after giving blows with a

sword to the deceased, when he fell down, the appellant amputated his hand, severed his head from the body, carried it through the road to the police station by holding the head majestically in one hand and the blood dripping weapon on the other hand. Mr. Sharma points out that the petitioner has availed of all legal as well as constitutional remedies. Mr. Sharma further submits that though it has been alleged that the petitioner's son had been in solitary confinement, in a death cell, for the last 11 years, this is untrue inasmuch as he was not kept in the Death Cell, when his mercy petition was pending for consideration and he has been put into solitary confinement only after the Government of Assam was informed about the rejection of the mercy petition. In such circumstances, according to Mr. Sharma, the petitioner has not been able to make out any case warranting interference by this Court and the writ petition may, therefore, be rejected. Lastly, Mr. Sharma submits that the convict, having not challenged the rejection of the mercy petition, his mother cannot, in the absence of any sustainable reason suggesting that the convict has been suffering from any legal disability, challenge the rejection of the mercy petition by way of the present writ petition made under Article 226 of the Constitution.

13. Coming to the State Government, it may be noted that Mr. Kamar, learned Public Prosecutor, has taken this Court through various decisions to impress upon this Court that delay, in itself, is not sufficient to warrant commutation of death sentence to imprisonment for life inasmuch as the murder, in the present case, which was committed by the petitioner's son, was not only gruesome and revolting, but it was committed in extremely cruel manner, which shocked the conscience of the society and if his sentence of death is commuted to imprisonment for life, it would meet with serious disapproval by the society at large and the society would lose faith in the efficacy of criminal justice administration. It is for this reason necessary, pleads Mr. Kamar, that the writ petition be dismissed and the rejection of the mercy petition be upheld.

14. Explaining the events, which led to the rejection of the mercy petition, learned Public Prosecutor has submitted that the sentence of death was passed by the learned trial Court on 18.08.97 and this was affirmed by the High Court on 03.02.1998 and, in the appeal, decided on 14.05.1999, the Supreme Court upheld the death sentence and dismissed the appeal. The mercy petition, addressed to the President of India, was made, on 04.06.99, after the mercy petition, addressed to the Governor of Assam, stood rejected. The petitioner's mercy petition, dated 04.06.99, addressed to the President of India was, points out the learned Public Prosecutor, forwarded to the Government of India on 26.04.2000 and, on 12.05.2011, the Governor of Assam informed the State Government that the President has rejected the mercy petition.

15. Strongly rejecting the submissions made on behalf of the petitioner that her son had been kept in solitary confinement, the learned Public Prosecutor submits that the petitioner's son was never put in solitary confinement until the time his mercy petition was rejected. The fact, according to the learned Public Prosecutor,

is that all through this period, the petitioner's son was kept in association with other prisoners and it is only after receipt of the Presidential Order rejecting the mercy petition that he has been confined, in a cell, in terms of Section 30(2) of the Prisons Act, 1894, which mandates that a prisoner, under sentence of death, shall be confined, in a cell, apart from all other prisoners and shall remain, by day and by night, under the charge of a guard. As explained in *Sunil Batra Vs. Delhi Administration and Others etc.*, the expression "prisoner under sentence of death" in the context of Section 30(2) of the Prisons Act, 1894, shall mean, submits the learned Public Prosecutor, only a prisoner, whose sentence of death has become final, conclusive and indefeasible, which cannot be annulled or avoided by any judicial or constitutional procedure. As such, a prisoner, sentenced to death, is not subjected to confinement in cell until the sentence of death becomes executable on rejection of appeals as well as mercy petitions, if any.

16. The learned Public Prosecutor has also pointed out that the mercy petitions, on behalf of the petitioner's son, were also submitted by three organizations, namely, Guwahati Mini City Bus Workers Union, All Assam Tourist Transport Workers Union, Guwahati, and All Assam Goods Carrier Truck Drivers & Handymen Union, directly to the President of India and the Government of India, vide its letter, dated 25.06.99, referred these mercy petitions to the State Government with the request that the said mercy petitions, submitted by the three organizations, along with the mercy petition, submitted by the convict, be considered by the State Government and, in the event of rejection, the mercy petition of the convict, addressed to the President, be forwarded to the Govt. of India along with other relevant records. By its letter, dated 20.07.99, Govt. of India also requested the State Government to stay execution of the death sentence of the petitioner's son till a decision is taken by the President of India in the matter. Learned Public Prosecutor further points out that the mercy petitions, submitted by the petitioner as well as by the three organizations, were considered by the State Government and after careful consideration, the same were rejected by the Governor of Assam on 07.04.2000.

17. There was, thus, no unreasonable delay, on the part of the State Government, in taking a decision on the petitioner's son's mercy petition and the decision of the State Government was conveyed, vide letter, dated 26.04.2000, to the Govt. of India and, on noticing that there are two appellate judgments of this Court relating to conviction of the petitioner's son in two separate cases of murder, the Government of India, vide its letter, dated 04.09.2000, asked for relevant papers pertaining to the first case of murder, wherein the petitioner's son had been sentenced to imprisonment for life. This shows, points out the learned Public Prosecutor, that the petitioner had not disclosed, in his mercy petition, that he had already been undergoing imprisonment for life, when he was found by the Court to have committed the second murder and, that too, in most gruesome and cruel manner.

18. The learned Public Prosecutor has further pointed out that the first reminder to the mercy petition was made by the petitioner's son, on 04.10.2005, addressed to the President of India with a copy to the Governor of Assam and the matter was referred by the Home Department to the Judicial Department and the Judicial Department informed the Home Department that whatever actions were required to be taken by the State Government in the matter had already been taken. Learned Public Prosecutor points out that the second reminder to the mercy petition was given by the petitioner's son, on 18.12.2006, addressed to the President and a reminder to the mercy petition was also received by the State Government from the petitioner, which was made by the petitioner on 25.08.2008 and, then, another reminder was made by the petitioner's son, on 17.11.2009, which, too, was forwarded to the Government of India and, on receiving the Government of India's letter, dated 12.05.2011, communicating the President's rejection of the mercy petition, the State Government informed the petitioner's son, by its letter, dated 27.05.2011.

19. The learned Public Prosecutor points out that it has been stoutly denied by the State Government, in its affidavit, that the petitioner's son had been kept in solitary confinement since 18.08.97 and that the allegation of solitary confinement is wholly incorrect. As a matter of fact, submits learned Public Prosecutor, that all through these years, the petitioner's son was kept in association with other prisoners until the State Government received the Presidential order rejecting the mercy petition and it was, thereafter, reiterates the learned Public Prosecutor, that he has been confined to a cell as provided by Section 30(2) of the Prisons Act, 1894. There was, thus, submits learned Public Prosecutor, no delay, at any stage, at the end of the State Government, and the delay, if any, is required to be explained by the Central Government

20. Placing the case before this Court on behalf of the victim's son, who stands impleaded in this writ petition, Mr. B.D. Konwar, learned counsel, submits that the present one, as the decision of the Supreme Court shows, was so gruesome and heinous a murder that it warranted, in the facts of the present case, not only conviction of the petitioner's son u/s 302 IPC, but also sentence of death. It needs to be borne in mind, submits Mr. Konwar, that the petitioner is a threat to the society inasmuch he did not hesitate, even for a moment, to commit the second murder, which has given rise to this writ petition, when he was on bail in the first case of murder and had, in fact, jumped bail. Thus, as a matter of fact, submits Mr. Konwar, the petitioner's son is not an ordinary criminal, but a criminal, who, according to Mr. Konwar, is a threat to the peaceful existence of the society and if given a chance, nobody can claim that the petitioner's son would not cause any harm to anyone anymore.

21. A society, contends Mr. Konwar, cannot take the risk of allowing a person, such as, the petitioner's son, to survive. This apart, submits Mr. Konwar, the victim's family and also the society have been waiting with as much eagerness to the outcome of the mercy petition as the petitioner and her son. Mr. Konwar

submits that if the petitioner and her son had been undergoing mental agony, because of the uncertainty of the outcome of the mercy petition every day and their every day of existence was a torture, because they did not know whether the petitioner's son would or would not survive and as to what would be the outcome of the mercy petition, the situation of the victim's family and of the society was no different, because everyday victim's family used to wake up in the morning awaiting the decision on the mercy petition. Article 21, points out Mr. Konwar, is not a one way traffic and not meant for the accused and his family only, but is as much relevant as the victim and his family. Article 21, submits Mr. Konwar, gathers, within its ambit, the victim as well as his family and their anxiety and tension, as regards the outcome of the mercy petition, is not only difficult, but impossible to describe. Deciding, therefore, this writ petition, according to Mr. Konwar, merely from the standpoint of the petitioner and/or her son would do great injustice and would amount to denial of equality of treatment, which Article 14 guarantees and Article 21 provides. In support of his submission that Article 21 is not only meant for an accused, but also includes, within its sweep, the victim and his family, Mr. Konwar refers to State of West Bengal and Others Vs. The Committee for Protection of Democratic Rights, West Bengal and Others,

22. It is also submitted by Mr. Konwar that in the face of the fact that the appeal against conviction and the sentence of death stand dismissed by the Supreme Court, there can be no escape from the conclusion that the case, against the petitioner's son, is such, that it warrants death sentence. Mr. Konwar submits that it would be great injustice if he Court remains concerned only with the petitioner's son and completely ignores the mental suffering and agony, which the family members of the victim are undergoing since the time the victim was gruesomely put to death by the petitioner's son. When the victim's family has not contributed to the delay, if any, in execution of the sentence of death, it would be, according to Mr. Konwar, highly unjust to interfere with the execution of the death sentence merely because there was delay and thereby forget the cruel and revolting manner in which the murder was committed by the petitioner's son.

23. Mr. Konwar submits that victimology is an aspect of law, which started awakening the legal fraternity, the Court and the legislature, in India, during the last couple of years, but victimology is nevertheless, according to Mr. Konwar, is an aspect of law, which is as much relevant for meaningful existence of criminal justice system and as may be relevant for an accused and his family. The Court, therefore, pleads Mr. Konwar, must not keep its eyes closed from the devastating effect, which the merciless killing of the victim's father has caused to his family and its impact on the society. The petitioner's son carried, submits Mr. Konwar, the severed head of the victim in one hand and a sword, with blood dripping therefrom, on the other hand, demonstrating to the world that he does not believe in maintaining orderliness in the society and notwithstanding the restrictions, which the law imposed on him, he does not mind in disobeying

them, flouting them and throwing them into the wind and he manner, in which the petitioner's son committed the murder, and the manner in which he carried the head and the weapon of offence to the police station through the streets of Guwahati, according to Mr. Konwar, amount to shouting from the roof top that he does not consider that the law, which the society has made to maintain orderliness, applies to him and that he does not care to break the law and suffer the consequences thereof. A person, who has made such a statement by his action, does not, submits Mr. Konwar, deserve leniency or mercy. Making such a man survive, according to Mr. Konwar, will send negative signals to the very peaceful existence of the society.

24. Challenging the very maintainability of the writ petition, Mr. Konwar submits that the present writ petition is not maintainable inasmuch as the petitioner has no locus standi to challenge the President's decision on the mercy petition of her son inasmuch as violation, if any, was a violation of the right of the petitioner's son and not of the petitioner. In such circumstances, the petitioner may be an interested person and so can be the members of the society; but she cannot be regarded as an aggrieved person and she cannot be treated to have the locus standi to challenge the Presidential decision on the mercy petition, made by her son, particularly, when the petitioner's son is not shown to suffer from any disability, legal or otherwise. Mr. Konwar submits that there is no explanation given by the petitioner nor is there any explanation discernible from the materials on record as to why the petitioner has not, at least, obtained an authorization from her son for filing this writ petition. We do not even know, points out Mr. Konwar, whether the petitioner's son has given his consent to the writ petition, which his mother has filed. In such circumstances, the present writ petition may not, submits Mr. Konwar, be sustained. In support of the submission that the present writ petition is not maintainable, Mr. Konwar has referred to *Simranjit Singh Mann Vs. Union of India* and another, , *Karamjeet Singh Vs. Union of India*, , *Jasbhai Motibhai Desai Vs. Roshan Kumar*, *Haji Bashir Ahmed and Others*, , and *Bar Council of Maharashtra Vs. M.V. Dabholkar and Others*,

25. Lastly, it is submitted by Mr. Konwar, that the omission, on the part of the convict, to challenge the rejection of the mercy petition is an indication of the fact that he is not aggrieved by the decision inasmuch as it is not impossible for a person to have either a sense of remorse for his past crime or defiance in the rules of law. A defiant person would not ask, for the second time, for mercy, he would have remorse for the offence he has committed; on the other hand, a remorseful person would, ordinarily, prefer to suffer the punishment for his wrong act, which is but the beginning of reformation of the person. In the present case, submits Mr. Konwar, either of these reasons might have made the petitioner's son to decide not to challenge the Presidential order of rejection of his mercy petition. The present petitioner has, therefore, no right, submits Mr. Konwar, to agitate before this Court, by way of this writ petition, that her son's sentence of death be commuted to imprisonment for life.

26. Repelling the submissions made on behalf of the victim's son, Mr. AK Bhattacharjee, learned Senior counsel, submits that the petitioner is, undoubtedly, an interested person and there is no bar, in law, in the mother of the convict bringing to the notice of this Court, the violation of the guarantee, which Article 21 provides. Mr. Bhattacharjee submits that the petitioner does have the locus standi, in the facts and attending circumstances of the present case, to impugn the legality and validity of the rejection of the mercy petition of her son by the President. Mr. Bhattacharjee also reiterates that the delay, in the present case, is inordinate, the same has not been explained and, in such circumstances, inordinate and unjustifiable delay in disposal of the mercy petition constitute enough reason to hold that there has been denial of the petitioner's son's right, under Article 21, and his sentence of death cannot, therefore, be executed. In support of his submission that the petitioner does have the locus standi, Mr. Bhattacharjee places reliance on S.P. Gupta Vs. President of India and Others,

27. Seeking to strengthen the submissions made on behalf of the petitioner, Dr. Y. Choudhury, learned counsel, points out that Triveniben's is a case, wherein it was against the rejection of the mercy petition that the writ petition was filed by the mother of the prisoner and in Daya Singh's case, it was the brother of the convict, who had filed the writ petition. This shows, contends Dr. Choudhury, that the mother or brother or any member of the family of a convict can file a writ petition challenging the rejection of a mercy petition.

28. If the case of the petitioner, as presented by Mr. Bhattacharjee, is borne in mind, it becomes clear that according to the case, which has been presented, on behalf of the petitioner, is that inordinate, unexplainable or unexplained delay in taking final decision on a mercy petition by the President is denial of the guarantee, which Article 21 provides to every person that he would not be deprived of his life except in accordance with the law as may be prescribed, the law being fair, just and reasonable and one of the indispensable ingredients of the just, fair and reasonable trial would be that Article 21 shall be treated to guarantee not merely speedy trial, but also speedy execution of the sentence against a person, who has been found guilty of an offence, and, in a case of present nature, Article 21 demands execution of the death sentence, if passed, at the earliest and would, therefore, require a decision, on the mercy petition, without any delay.

29. In short, what is contended, on behalf of the petitioner, is that the guarantee of fair trial, which Article 21 provides, holds, within its fold, expeditious execution of the death sentence and, hence, a mercy petition, if made, shall be disposed of without any delay and when this requirement is not followed and no convincing reason is assigned for such a lapse, such delay is, in itself, sufficient to interfere with the decision of rejection of mercy petition.

30. Because of the fact that it is the right of the petitioner's son, guaranteed under Article 21, which has allegedly been violated in the present case, Mr. B.D.

Konwar, learned counsel, appearing on behalf of the victim's son, submits, as already indicated above, that the present petition is not maintainable in law inasmuch as the right, which has allegedly been violated, was that of the petitioner's son and not of the petitioner and, hence, the petitioner cannot be an aggrieved person and she has no locus standi to move this writ petition, under Article 226, seeking to get set aside and quashed the decision on the mercy petition, which the President has taken, particularly, when the petitioner has not placed, on record, any authorization from her son to file this writ petition nor has it been pleaded, in the writ petition, that the petitioner's son's consent exists in making of this writ petition or that this writ petition has been filed with the knowledge and consent of the petitioner's son.

31. There can be no doubt that the violation, if any, of the rights, guaranteed under Article 21, is that of the petitioner's son.

32. There is no provision in the CrPC, which permits an accused to be represented by a person other than a lawyer. We may point out, in this regard., that it has been submitted by Mr. Bhattacharjee, learned Senior counsel, that the judgment of conviction, which was passed against the petitioner's son by the learned trial Court, shows that no counsel had appeared on behalf of the petitioner at the time, when the trial v/as conducted against the petitioner. While considering this submission, it needs to be noted, as has been rightly pointed out by Mr. Konwar, that even in the appeal against the conviction and sentence of death, it had been agitated before this Court, on behalf of the accused by the learned amicus curiae appointed by the Court, that the accused-appellant was denied a reasonable opportunity of defending himself against the charge by providing him with legal aid.

33. Dealing with the above point, raised by the learned amicus curiae, in the appeal against the conviction of the petitioner's son that there was denial of legal aid to the accused-appellant at the State expense, the Division Bench, in its decision, in Mahendra Nath Das @ Gobinda Das Vs. State of Assam, , had this to observe and hold:

10. Now taking up the first point as raised by the learned amicus curiae, namely, denial of legal aid to the accused appellant at the State expense, we would like to note that we are fully conscious of the constitutional mandate as contained in Article 39 a introduced by the Constitution (Forty-Fourth Amendment) of 1976 and the provisions contained in Section 304 of the Code of Criminal Procedure, 1973, as also by series of decision on the point starting from (i) Hussainara Vs. The State of Bihar, AIR 1979 ,1369, (ii) Madhav Hayawadanrao Hoskot Vs. State of Maharashtra, , (iii) State of Haryana Vs. Darshana, AIR 1979 SC 885 , (iv) Khatri and Others Vs. State of Bihar and Others, and (v) Suk Das Vs. Union Territory of Arunachal Pradesh, . But the real question is whether the accused appellant was in fact denied legal aid at the State expense. Let us turn to the findings recorded by the trial Court, the trial Court has noted "it may be mentioned here that the accused was represented by counsel engaged by him.

However, at the stage of argument, the accused disengaged his counsel Shri L.C. Kalita (vide order dated 27.06.97). The accused tried to engage Advocate Shri Hari Deka for which time was allowed and thereafter he engaged Advocate A.N. Zaman. After taking adjournment the said counsel ceased to appear before Court. Thereafter, one Shri Singh, Advocate was engaged, but the said counsel also refused to accept the vakalatnama from the accused. The accused was offered the services of a State Defence Counsel, but he declined to accept (vide order dated 29.07.97). Thereafter, the arguments of the Public Prosecutor were heard and the accused was given opportunity to make his submission, if any, through counsel on or before the date of delivery of the judgment. But no oral arguments were made on behalf of the accused. I have perused the case record and the materials."

11. In view of the above unassailed and unassailable position as noted by the trial Court, there is no substance in the submission made by the Amicus Curiae. It is a point of pure academics, on facts as found it cannot be said by any stretch of imagination that the accused appellant was denied legal aid at State expense.

(Emphasis is added)

34. From the above observations made in Mahendra Nath Das (supra), it becomes clear that the petitioner's son was not denied legal aid at the State expense.

35. As already indicated above that there can be no doubt that the violation, if any, of the rights, guaranteed under Article 21, is that of the petitioner's son.

36. It is true that the petitioner, being the mother of the convict, whose mercy petition has been rejected, is an interested person; but every interested person cannot be regarded as the aggrieved person. In the case at hand, it is, admittedly, not any of the petitioner's right, which is alleged to have been violated. The person, whose rights, if any, which have been violated, are of the petitioner's son and not of anyone else. What cannot be ignored is that the petitioner's son has not even authorized the present petitioner to file the present writ petition. In fact, the convict is not before this Court either as a petitioner or as a person, who has authorized filing of this writ petition. There is nothing, in the writ petition, to show that the petitioner has obtained consent of her son to file this writ petition. Going a little further, one can safely say that there is nothing to indicate in this writ petition that the petitioner's son's consent exists in filing of this writ petition or that he even has the knowledge that this writ petition has been filed.

37. As none of the rights, constitutional or otherwise, has not been violated, she cannot be said to have locus standi to maintain this writ petition.

38. Ordinarily, it is an aggrieved party, affected by an order, who has the right to seek redress by questioning the legality, validity or correctness of the order. Unless such a person is minor or insane or is suffering from any other disability,

which the law recognizes as sufficient to permit another person, for example, his guardian or next friend, to move the Court on his behalf, no other person has the right to question the legality, validity or correctness of the order. If a guardian or a next friend initiates proceedings for and on behalf of a disabled aggrieved party, it is, in fact, a proceeding initiated by the party aggrieved.

39. In the present case, no fundamental right of the petitioner has been violated; if at all, the case, sought to be made out, is that fundamental rights of the convict, guaranteed under Article 21, has been violated. Merely because of the fact that the convict is the son of the petitioner, the petitioner could not have filed this writ petition, when the petitioner's son has not been suffering from any disability, legal, medical or otherwise. When the petitioner's son has not even authorized the petitioner and when his consent has not been obtained for moving this writ petition, it is impermissible to hold that the present writ petition is maintainable. The cases, which have ended in conviction by the orders of the Supreme Court, after full fledged trial, and mercy petition, made by the convict, has been considered and rejected by the President, cannot be re-opened by comparing or treating such a decision with an application for bail, or preventive detention, which permits the next of kin or even a friend to seek a writ of habeas corpus. The present one is not a Public Interest Litigation (PIL). In fact, the PIL, which had been filed, this regard, challenging the decision of the President, has been dismissed by a Division Bench of this Court. A decision, arising out of a criminal trial and decided eventually by the Supreme Court, was challenged by an applicant, under Article 32, in *Simranjit Singh Mann Vs. Union of India and another*, . The challenge to the conviction and sentence was posed on the ground of violation of Article 14 and 21. Dismissing the petition, the Supreme Court, in *Simranjit Singh Mann* (supra), observed and held as follows:

5. We now proceed to deal with the present petition. As stated earlier this is a petition under Article 32 of the Constitution. That article which finds a place in Part III of the Constitution entitled "Fundamental Rights" provides that the right to move the Supreme Court for the enforcement of the rights conferred in that part is guaranteed. It empowers the Supreme Court to issue directions or orders or writs for the enforcement of any of the fundamental rights. The petitioner does not seek to enforce any of his fundamental rights nor does he complain that any of his fundamental rights is violated. He seeks to enforce the fundamental rights of others, namely, the two condemned convicts who themselves do not complain of their violation.

6. Under the Code of Criminal Procedure, Sections 303 and 304, a right is conferred on a person accused of an offence before a Criminal Court or against whom proceedings are instituted under the Code, to be defended by a pleader of his choice and an obligation is cast on the Court to assign to such person a pleader for his defence at State expense if he is not represented by a pleader or where it appears that he has no means to engage one of his choice. Similarly, Sections 384, 385 and 386 of the Code provide for affording an opportunity to

the appellant-accused's pleader to be heard in support of his appeal. So also Order XXI of the Supreme Court Rules makes provision for assigning an advocate to an accused who is unrepresented. But there is no provision in the Code or the Rules which permits an accused to be represented by a person other than a lawyer, like the petitioner before us. There is nothing on record to suggest that the two convicts have authorised the petitioner to move this Court on their behalf.

7. Ordinarily, the aggrieved party which is affected by any order has the right to seek redress by questioning the legality, validity or correctness of the order, unless such party is a minor, an insane person or is suffering from any other disability which the law recognises as sufficient to permit another person, e.g. next friend, to move the Court on his behalf. If a guardian or a next friend initiates proceedings for and on behalf of such a disabled aggrieved party, it is in effect proceedings initiated by the party aggrieved and not by a total stranger who has no direct personal stake in the outcome thereof. In the present case no fundamental right of the petitioner before us is violated; if at all the case sought to be made out is that the fundamental rights of the two convicts have been violated. The two convicts could, if so minded, have raised the contention in the earlier proceedings but a third party, a total stranger to the trial commenced against the two convicts, cannot be permitted to question the correctness of the conviction recorded against them. If that were permitted any and every person could challenge convictions recorded day in and day out by courts even if the persons convicted do not desire to do so and are inclined to acquiesce in the decision. If the aggrieved party invokes the jurisdiction of this Court under Article 32 of the Constitution, that may stand on a different footing as in the case of *A.R. Antulay v. R.S. Nayak*. However, we should not be understood to say that in all such cases the aggrieved party has a remedy under Article 32 of the Constitution. Unless an aggrieved party is under some disability recognised by law, it would be unsafe and hazardous to allow any third party to question the decision against him. Take for example a case where a person accused u/s 302, IPC is convicted for a lesser offence u/s 324, IPC. The accused is quite satisfied with the decision but a third party questions it under Article 32 and succeeds. The conviction is set aside and a fresh trial commenced ends up in the conviction of the accused u/s 302, IPC. The person to suffer for the unilateral act of the third party would be the accused. Many such situations can be pointed out to emphasise the hazard involved if such third party's unsolicited action is entertained. Cases which have ended in conviction by the apex court after a full gamut of litigation are not comparable with preventive detention cases where a friend or next of kin is permitted to seek a writ of habeas corpus. We are, therefore, satisfied that neither under the provisions of the Code nor under any other statute is a third party stranger permitted to question the correctness of the conviction and sentence imposed by the Court after a regular trial. On first principles we find it difficult to accept Mr. Sodhi's contention that such a public interest litigation commenced by a leader of a recognised political party who has a genuine interest in the future of the convicts should be entertained. In *S.P.*

Gupta v. Union of India 2, Bhagwati, J. observed: (SCC p. 219, para 24)

But we must be careful to see that the member of the public, who approaches the court in cases of this kind, is acting bona fide and not for personal gain or private profit or political motivation or other oblique consideration. The court must not allow its process to be abused by politicians and others....

These observations were made while discussing the question of "locus standi" in public interest litigation. These words of caution were uttered while expanding the scope of the "locus standi" rule. These words should deter us from entertaining this petition. This accords with the view expressed by this Court in Krishna Swami Vs. Union of India.

8. More apposite is the view expressed by a Division Bench of this Court in Janata Dal v. H.S. Chowdhary 4. That was a public interest litigation for quashing an FIR lodged by the CBI on January 22, 1990 based on the core allegation that certain named and unnamed persons had entered into a criminal conspiracy in pursuance whereof they had secured illegal gratification of crores of rupees from Bofors, a Swiss Company, through their agents as a motive or reward. The CBI had moved an application before the learned Judge, Delhi, for the issuance of a letter rogatory to the Swiss authorities for assistance in conducting investigation, which request was conceded. An advocate, Shri Harinder Singh Chowdhary, filed a criminal revision application before the High Court of Delhi for quashing the FIR and the letter rogatory on certain grounds. Several questions of law and fact were raised in support of the challenge. The High Court came to the conclusion that the said third party litigant had no "locus standi" to maintain the action and so also the interveners had no right to seek impleadment/ intervention in the said proceeding. However, the learned Judge took suo motu cognizance of the matter and for reasons stated in his order directed issue of show cause notice to the CBI and the State why the FIR should not be quashed. On appeal this Court came to the conclusion that the learned Judge in the High Court was right in holding that the advocate litigant as well as the interveners had no "locus standi". The relevant observations found in paragraph 45 of the judgment read as under: (SCC p. 329, para 45)

Even if there are million questions of law to be deeply gone into and examined in a criminal case of this nature registered against specified accused persons, it is for them and them alone to raise all such questions and challenge the proceedings initiated against them at the appropriate time before the proper forum and not for third parties under the garb of public interest litigants.

(emphasis supplied)

In that case besides the advocate litigant certain political parties like the Janata Dal, the CPI (Marxist), the Indian Congress (Socialist) and one Dr P. Nalla Thampy Thera also approached this Court questioning the High Court's rejection of their request for impleadment/intervention. It was in this context that this Court was required to examine the question whether third parties had any "locus

standi" in criminal proceedings and answered the same as stated above. This decision clearly negatives the submission made by Mr Sodhi in support of the maintainability of this petition. We are, however, in respectful agreement with the view expressed in the observations extracted hereinbefore.

40. In the same tune as in *Simranjit Singh Mann* (supra), a Division Bench of the Supreme Court, in *Karamjeet Singh Vs. Union of India*, too, has pointed out that when the convicts are not minors and they are not suffering from any disability recognized by law as a disability, no third person is entitled to move the Court, on behalf of the convict, seeking enforcement of the fundamental rights, if any, of the convict. The observations of the Supreme Court read asunder:

3. Learned counsel for the petitioner contended that the petitioner had filed this petition as the next friend of the two convicts who were under a legal disability due to their intense obsession that the person who was responsible for desecrating the Harmandir Sahib cannot be allowed to survive and has no right to live being guilty of such a high act of sacrilege against divinity. He submitted that the said obsession led the two convicts to believe that the perpetrator of the sacrilege against divinity was the Government of the day and justice could not be expected from it and hence they would themselves have to mete out the "punishment" to the said authorities responsible for the demolition of the Akaal Takht. He submitted that the two convicts were under such legal disability and hence the petitioner, as their next friend, was entitled to move this petition under Article 32 of the Constitution. In support of the contention that the petitioner was the next friend of the two convicts" reliance was placed at the hearing on a letter purported to have been written on March 30, 1992 by one of the convicts Harjinder Singh @ Jinda to Balwinder Singh wherein a reference was made to the petitioner.

We assume that the petitioner is a friend of the two convicts and had brushed shoulders with them during Kar Seva, at Harmandir Sahib. Learned counsel, therefore, invited our attention to the observations in paragraph 7 of the judgment in *Simranjit Singh Mann* case wherein we observed:

Ordinarily, the aggrieved party which is affected by any order has the right to seek redress by questioning the legality, validity or correctness of the order, unless such party is a minor, an insane person or is suffering from any other disability which the law recognises as sufficient to permit another person, e.g. next friend, to move the Court on his behalf. If a guardian or a next friend initiates proceedings for and on behalf of such a disabled aggrieved party, it is in effect proceedings initiated by the party aggrieved and not by a total stranger who has no direct personal stake in the outcome thereof.

We are afraid these observations do not permit a mere friend like the petitioner to initiate the proceedings of the present nature under Article 32 of the Constitution. The observations relied upon relate to a minor or an insane or one who is suffering from any other disability which the law recognises as sufficient

to permit another person, e.g. next friend, to move the Court on his behalf; for example see : Sections 320(4)(a), 330(2) read with Section 335(1)(b) and 339 of the Code of Criminal Procedure. Admittedly, it is not the case of the petitioner that the two convicts are minors or insane persons but the learned counsel argued that since they were suffering from an acute obsession such obsession amounts to a legal disability which permits the next friend to initiate proceedings under Article 32 of the Constitution. We do not think that such a contention is tenable. The disability must be one which the law recognises. A mere obsession based on religious belief or any other personal philosophy cannot be regarded as a legal disability of the type recognised by the Code of Criminal Procedure or any other law which would permit initiation of proceedings by a third party, be he a friend. It must be remembered that the repercussions of permitting such a third party to challenge the findings of the Court can be serious, e.g. in the instant case itself the co-accused who have been acquitted by the Designated Court and whose acquittal has been confirmed by this Court would run the risk of a fresh trial and a possible conviction. It is, therefore, hazardous to allow a third party to initiate proceedings under Article 32 challenging the order passed by the Designated Court and confirmed by this Court on the mere ground that the convicts had acted under such an obsession. Such a submission, argued the learned Additional Solicitor General, is fraught with grave consequences and would, we agree, shake the very foundation of the rule of law on which a civilised society is based if the aggrieved person is allowed to take the law in his own hands and later plead disability on the ground that his action emanated from an acute obsession that his victim had by his action forfeited the right to live and deserved to be punished with death. Such a submission cannot be countenanced.

4. Lastly it was submitted that this case differed from the earlier case because the petitioner has come as a next friend. He also submitted that the sentiments of the entire Sikh community expressed through their leaders of all hues should be taken note of by the Court. We appreciate their sentiments but that cannot alter the legal position. Besides, as a matter of record we may also state that even Simranjit Singh Mann had in the earlier petition by his affidavit dated August 25, 1992 contended that he was filing the writ petition as the next friend of the condemned prisoners. That petition was dismissed for want of "locus standi" and we see no distinguishing feature in the present petition to take a different view.

41. Though it has not been pointed out, on behalf of the petitioner, we have the duty to point out that Karamjeet Singh Vs. Union of India, are not cases arising out of rejection of a mercy petition made under Article 161 or 72 of the Constitution of India. The principle nevertheless of maintaining a writ petition under Article 32, which is meant for enforcement of fundamental rights, has been clarified by the Supreme Court by pointing out, most importantly, that if such a petition is allowed to be entertained, nothing would stop anyone in the society to question conviction and sentence of an accused by invoking Article 32, though the person convicted may not desire to challenge the decision and even is

inclined to acquiesce to the decision. Similar is the position in the present case. There is nothing on record to show nor is it even pleaded, in the writ petition, that the petitioner's son is aggrieved by the rejection of his mercy petition.

42. Rejection of a mercy petition may have, as correctly pointed out by Mr. Konwar, two distinctly different effects on a convict, who may have made a mercy petition. He may not feel aggrieved by the rejection of the mercy petition. It is not impossible, in the present case, that the petitioner's son, who has been determined by a valid judicial process liable to be sentenced to death, may, now, suffer from a sense of remorse and may have acquiesced to the decision given by the President and may have chosen to abide by the decision. At the same time, it is also not impossible that the petitioner's son might have still been defiant of the law of the land and by not approaching this Court or any Court challenging the President's decision wants to convey to the society, at least, symbolically that he does not care for the law and would not, therefore, seek any further relief by resorting to any legal means. In either case, therefore, the petitioner's son may have chosen not to come to this Court or give consent to move this writ petition. No wonder, therefore, that there is no authorization given by the petitioner's son to the petitioner to file this writ petition and it is not even faintly indicated, in the writ petition, that the petitioner's son has the knowledge of this writ petition or is awaiting for the outcome of this writ petition with anxiety.

43. There is no indication at all, in the present writ petition, as to why the convict has not filed the writ petition. Absence of any reason, in this regard, is too disquieting to ignore. There is no assertion, if we may repeat, that this writ petition is authorized by the convict or that his consent exists to the filing of this writ petition. It is very difficult to imagine a situation, where a decision, on a mercy petition, can be challenged by a person without the consent, authorization or even knowledge of the convict himself, whose mercy petition has been rejected. It is not impossible, as has been contended by Mr. Konwar, that the convict has acquiesced to the rejection of the mercy petition, because of a sense of remorse that he ought not to have done what he has done or he might be still so defiant of law and the society that by not approaching this Court, he is giving a signal that he does not care that his mercy petition has been rejected. In either case, therefore, he would not come to the Court himself with a petition and has not come to this Court himself. In such circumstances, the fact that no consent from the convict or no authority from the convict in favour of his mother authorizing her to move this Court by way of writ petition cannot be taken lightly or ignored, particularly, when we do not even know that the convict has the knowledge of the present writ petition. In a situation, such as the present one, the present writ petition, which the convict's mother has filed, cannot be held to be maintainable.

44. To counter the resistance to the writ petition on the question of maintainability on the ground that the petitioner has no locus standi, Mr.

Bhattacharjee, as already indicated above, has heavily relied upon *S.P. Gupta Vs. President of India and Others*,

45. We do not find that any observation, made in *S.P. Gupta (supra)*, would help the Court to entertain a writ petition calling for interference with a decision on a mercy petition. Ordinarily, an applicant for judicial redress must have suffered a legal wrong or injury in order to entitle him to maintain an action for such redress. There is no doubt that the concept of locus standi has undergone a change in the sense that locus standi has not remained as rigid as in the past and stands relaxed to a large extent. In a situation, where a person, who has suffered a legal wrong or legal injury or whose legal right or legally protected interest stands violated, is unable to approach a Court on account of some disability or it is not practicable for him to move the Court for some other sufficient reasons, such as, his socially or economically disadvantaged position, can be the circumstances, whereunder a Court may allow a third person to file a writ petition seeking remedy of the legal wrong or injury caused to a person. The observations, made in para 16 of *S.P. Gupta (supra)*, which Mr. Bhattacharjee relies upon, nowhere, supports the case of the petitioner inasmuch as it, nowhere, lays down that in the absence of any evidence or indication that a convict suffers from any kind of disability or any kind of restriction in moving the Court, a writ petition, under Article 226, can be filed by a person seeking enforcement of the fundamental right of the convict, particularly, a convict, who has, otherwise, remained very vigilant at every stage. In such circumstances, the petitioner cannot be said to have locus standi to challenge without even the consent of her son having placed on record or an authorization having been placed on record to the rejection of the mercy petition. One may pause here and look into the observations made, in para 16 of *S.P. Gupta (supra)*, which read as under:

16. There is also another exception which has been carved out of this strict rule of standing which requires that the applicant for judicial redress must have suffered a legal wrong or injury in order to entitle him to maintain an action for such redress. It is clear that, having regard to this rule, no one can ordinarily seek judicial redress for legal injury suffered by another person; it is only such other person who must bring action for judicial redress. It is on this principle that the Supreme Court of the United States held in *U.S. v. Raines* that a litigant may only assert his own constitutional rights or immunities and save in exceptional cases, no person can claim standing to vindicate the constitutional rights of a third party. But it must now be regarded as well settled law where a person who has suffered a legal wrong or a legal injury or whose legal right or legally protected interest is violated, is unable to approach the court on account of some disability or it is not practicable for him to move the court for some other sufficient reasons, such as his socially or economically disadvantaged position, some other person can invoke assistance of the court for the purpose of providing judicial redress to the person wronged or injured, so that the legal wrong or injury caused to such person does not go unredressed and justice is

done to him. Take for example, the case of a minor to whom a legal wrong has been done or a legal injury caused. He obviously cannot on his own approach the court because of his disability arising from minority. The law therefore provides that any other person acting as his next friend may bring an action in his name for judicial redress, vide: Order 32 of the Code of Civil Procedure. So also where a person is detained and is therefore not in a position to move the court for securing his release, any other person may file an application for a writ of habeas corpus challenging the legality of his detention. Of course, this Court has ruled in a number of cases that a prisoner is entitled to address a communication directly to the court complaining against his detention and seeking release and if he addresses any such communication to the court, the Superintendent of the prison is bound to forward it to the court and, in fact, there have been numerous instances where this Court has acted on such communication received from a prisoner and treating it as an application for a writ of habeas corpus, called upon the detaining authority to justify the legality of such detention and on the failure of the detaining authority to do so, released the prisoner. But since a person detained would ordinarily be unable to communicate with the outside world, the law presumes that he will not be able to approach the court and hence permits any other person to move the court for judicial redress by filing an application for a writ of habeas corpus. Similarly, where a transaction is entered into by the Board of Directors of a company which is illegal or ultra vires the company, but the majority of the shareholders are in favour of it and hence it is not possible for the company to sue for setting aside the transaction, any shareholder may file an action impugning the transaction. Here it is the company which suffers a legal wrong or a legal injury by reason of the illegal or ultra vires transaction impugned in the action, but an individual shareholder is permitted to sue for redressing such legal wrong or injury to the company, because otherwise the company being under the control of the majority shareholders would be without judicial redress, vide: *Atwood v. Merryweather*. The Judicial Committee of the Privy Council also affirmed this exception to the strict rule of standing in *Durayappah v. Fernando*. There what happened was that the Jaffna Municipal Council was dissolved by the Minister of Local Government without giving it an opportunity to be heard. The order of dissolution was therefore voidable at the instance of the Council, but the Council did not complain. The appellant was a mayor at the time of the dissolution and he petitioned for a writ in the nature of certiorari to quash the order of dissolution. Lord Upjohn speaking on behalf of the Judicial Committee denied standing to the appellant in the following words:

The appellant was no doubt mayor at the time of its dissolution but that does not give him any right to complain independently of the council. He must show that he is representing the council or suing on its behalf or that by reason of certain circumstances -- such for example as that the council could not use its seal because it is in the possession of the Municipal Commissioner, or that for other reasons it has been impracticable for the members of the council to meet to pass the necessary resolutions -- the council cannot be the plaintiff.

The Judicial Committee thus clearly laid down that for a legal wrong or legal injury caused to the council, it is only the council which can sue but if a member of the council can show that for some sufficient reasons it is not possible for the council to take action for challenging the order of dissolution, he can file an application for a writ to assert the right of the council and to redress the legal wrong or injury done to the council. We find that in the United States of America also this exception has been recognised and the strict rule of standing has been liberalised in the interest of justice. In *Barrows v. Jackson* the defendant was sued for breach of a restrictive covenant binding the defendant not to sell his property to non-Caucasians and claiming damages. The defendant raised the plea that the judgment of the court allowing damages for breach of the covenant would constitute denial of the equal protection clause to non-Caucasians, because a prospective seller of restricted land would either refuse to sell to non-Caucasians or else would require non-Caucasians to pay a higher price to meet the damages which the seller may have to pay. The argument put forward in answer to this plea was that the defendant was not entitled to plead in defence the constitutional rights of non-Caucasians. But the Supreme Court of the United States negated this argument observing: "We are faced with a unique situation in which it is an action of the State court which might result in a denial of constitutional rights and in which it would be difficult if not impossible for the persons whose rights are asserted to present their grievance before any court." Even in our own country we have recognised this departure from the strict rule of locus standi in cases where there has been a violation of the constitutional or legal rights of persons who by reason of their socially or economically disadvantaged position are unable to approach the court for judicial redress. We have in such cases permitted a member of the public to move the court for enforcement of the constitutional or legal rights of such persons and judicial redress for the legal wrong or legal injury caused to them. Take for example, the decision of this Court in *Sunil Batra (II) v. Delhi Administration* where this Court accepted the habeas corpus petition of a prisoner complaining of brutal assault by a head warden on another prisoner. It may be incidentally mentioned -- and this is a point of some importance in the area of judicial remedies -- that in this case the court broadened the scope of habeas corpus by making it available to a prisoner, not only for seeking his liberty, but also for the enforcement of a constitutional right to which he was lawfully entitled even in confinement. Similarly, in *Dr Upendra Baxi v. State of U.P.* when it was found that the inmates of the Protective Home at Agra were living in inhuman and degrading conditions in blatant violation of Article 21 of the Constitution and by reason of their socially and economically disadvantaged position, they were not in a position to move the court for judicial redress, two law Professors of the Delhi University addressed a letter to this Court seeking enforcement of the constitutional right of the inmates under Article 21 by improvement of the living conditions in the Protective Home, so that the inmates can live with human dignity in the Protective Home. This Court treated the letter as a writ petition and permitted the two law Professors to maintain an action for an appropriate writ for the

purpose of enforcing the constitutional right of the inmates of the Protective Home and providing judicial redress to them. This Court has also entertained a letter addressed by a journalist claiming relief against demolition of hutments of pavement dwellers by the Municipal Corporation of Bombay and this letter has been treated as a writ petition by a Bench presided over by the Chief Justice of India and interim relief has been granted to the pavement dwellers.

17. It may therefore now be taken as well established that where a legal wrong or a legal injury is caused to a person or to a determinate class of persons by reason of violation of any constitutional or legal right or any burden is imposed in contravention of any constitutional or legal provision or without authority of law or any such legal wrong or legal injury or illegal burden is threatened and such person or determinate class of persons is by reason of poverty, helplessness or disability or socially or economically disadvantaged position, unable to approach the court for relief, any member of the public can maintain an application for an appropriate direction, order or writ in the High Court under Article 226 and in case of breach of any fundamental right of such person or determinate class of persons, in this Court under Article 32 seeking judicial redress for the legal wrong or injury caused to such person or determinate class of persons. Where the weaker sections of the community are concerned, such as under trial prisoners languishing in jails without a trial, inmates of the Protective Home in Agra, or Harijan workers engaged in road construction in the district of Ajmer, who are living in poverty and destitution, who are barely eking out a miserable existence with their sweat and toil, who are helpless victims of an exploitative society and who do not have easy access to justice, this Court will not insist on a regular writ petition to be filed by the public-spirited individual espousing their cause and seeking relief for them. This Court will readily respond even to a letter addressed by such individual acting pro bono publico. It is true that there are rules made by this Court prescribing the procedure for moving this Court for relief under Article 32 and they require various formalities to be gone through by a person seeking to approach this Court. But it must not be forgotten that procedure is but a handmaiden of justice and the cause of justice can never be allowed to be thwarted by any procedural technicalities. The court would therefore unhesitatingly and without the slightest qualms of conscience cast aside the technical rules of procedure in the exercise of its dispensing power and treat the letter of the public-minded individual as a writ petition and act upon it. Today a vast revolution is taking place in the judicial process; the theatre of the law is fast changing and the problems of the poor are coming to the forefront. The court has to innovate new methods and devise new strategies for the purpose of providing access to justice to large masses of people who are denied their basic human rights and to whom freedom and liberty have no meaning. The only way in which this can be done is by entertaining writ petitions and even letters from public-spirited individuals seeking judicial redress for the benefit of persons who have suffered a legal wrong or a legal injury or whose constitutional or legal right has been violated but who by reason of their poverty or socially or

economically disadvantaged position are unable to approach the court for relief. It is in this spirit that the court has been entertaining letters for judicial redress and treating them as writ petitions and we hope and trust that the High Courts of the country will also adopt this pro-active, goal-oriented approach. But we must hasten to make it clear that the individual who moves the court for judicial redress in cases of mis kind must be acting bona fide with a view to vindicating the cause of justice and if he is acting for personal gain or private profit or out of political motivation or other oblique consideration, the court should not allow itself to be activated at the instance of such person and must reject his application at the threshold, whether it be in the form of a letter addressed to the court or even in the form of a regular writ petition filed in court. We may also point out that as a matter of prudence and not as a rule of law, the court may confine this strategic exercise of jurisdiction to cases where legal wrong or legal injury is caused to a determinate class or group of persons or the constitutional or legal right of such determinate class or group of persons is violated and as far as possible, not entertain cases of individual wrong or injury at the instance of a third party, where there is an effective legal-aid organisation which can take care of such cases.

46. From the observations made above, in *S.P. Gupta* (supra), it becomes clear that where a legal wrong or legal injury is caused to a person or to a determinate class of persons by reason of violation of any constitutional or legal right or any burden is imposed in contravention of any constitutional or legal provision or without the authority of law or any such legal wrong or legal injury or illegal burden is even threatened and such a person or determinate class of persons is, by reason of poverty or disability or socially or economically disadvantaged position, unable to approach the Court for relief, any member of the public can maintain an application for appropriate relief under Article 226 or Article 32. In the present case, the mercy petition was made by the convict and the reminder, for final decision on the mercy petition, was also made by the convict. In such circumstances, there is no reason as to why the convict has not filed the writ petition if he is really aggrieved by the decision rendered by the President. This aspect of the case, as rightly pointed out by Mr. Konwar, cannot be ignored by this Court, particularly, when the writ petition is wholly silent. All these facts, and most importantly, as we have indicated above, it is not even known, in the light of the materials placed before this Court, if the convict has the knowledge of this writ petition. As observed by a three Judge Bench in *Jasbhai Motibhai Desai Vs. Roshan Kumar, Haji Bashir Ahmed and Others*, .

34. This Court has laid down in a number of decisions that in order to have the locus standi to invoke the extraordinary jurisdiction under Article 226, an applicant should ordinarily be one who has a personal or individual right in the subject-matter of the application, though in the case of some of the writs like habeas corpus or quo warranto this rule is relaxed or modified. In other words as a general rule, infringement of some legal right or prejudice to some legal interest inhering in the petitioner is necessary to give him a locus standi in the

matter, (see *State of Orissa v. Madan Gopal Rungta*; *Calcutta Gas Co. v. State of W.B.*; *Ram Umeshwari Suthoo v. Member, Board of Revenue, Orissa*; *Gadde Venkateswara Rao v. Government of A.R.*; *State of Orissa v. Rajasaheb Chandanmall*; *Satyanarayana Sinha Dr v. S. Lal & Co.*).

35. The expression "ordinarily" indicates that this is not a cast-iron rule. It is flexible enough to take in those cases where the applicant has been prejudicially affected by an act or omission of an authority, even though he has no proprietary or even a fiduciary interest in the subject-matter. That apart, in exceptional cases even a stranger or a person who was not a party to the proceedings before the authority, but has a substantial and genuine interest in the subject-matter of the proceedings will be covered by this rule. The principles enunciated in the English cases noticed above, are not inconsistent with it.

36. In the United States of America, also, the law on the point is substantially the same.

"No matter how seriously infringement of the Constitution may be said called into question said, Justice Frankfurter in *Coleman v. Miller*"

this is not the tribunal for its challenge except by those who have some specialised interest of their own to vindicate apart from a political concern which belongs to all.

To have a "standing to sue", which means locus standi to ask for relief in a court independently of a statutory remedy, the plaintiff must show that he is injured, that is, subjected to or threatened with a legal wrong. Courts can intervene only where legal rights are invaded. "Legal wrong" requires a judicially enforceable right and the touchstone to judiciability is injury to a legally protected right. A nominal or a highly speculative adverse affect on the interest or right of a person has been held to be insufficient to give him the "standing to sue" for judicial review of administrative action. Again the "adverse affect" requisite for "standing to sue" must be an "illegal effect" Thus, in the undermentioned cases, it was held that injury resulting from lawful competition not being a legal wrong, cannot furnish a "standing to sue" for judicial relief.

37. It will be seen that in the context of locus standi to apply for a writ of certiorari, an applicant may ordinarily fall in any of these categories: (i) "person aggrieved"; (ii) "stranger"; (iii) busybody or meddlesome interloper. Persons in the last category are easily distinguishable from those coming under the first two categories. Such persons interfere in things which do not concern them. They masquerade as crusaders for justice. They pretend to act in the name of pro bono publico, though they have no interest of the public or even of their own to protect. They indulge in the pastime of meddling with the judicial process either by force of habit or from improper motives. Often, they are actuated by a desire to win notoriety or cheap popularity; while the ulterior intent of some applicants in this category, may be no more than spooking the wheels of administration. The High Court should do well to reject the applications of such busybodies at

the threshold.

39. To distinguish such applicants from "strangers", among them, some broad tests may be deduced from the conspectus made above. These tests are not absolute and ultimate. Their efficacy varies according to the circumstances of the case, including the statutory context in which the matter falls to be considered. These are: Whether the applicant is a person whose legal right has been infringed? Has he suffered a legal wrong or injury, in the sense, that his interest, recognised by law, has been prejudicially and directly affected by the act or omission of the authority, complained of? Is he a person who has suffered a legal grievance, a person

against whom a decision has been pronounced which has wrongfully deprived him of something or wrongfully refused him something, or wrongfully affected his title to something?

Has he a special and substantial grievance of his own beyond some grievance or inconvenience suffered by him in common with the rest of the public? Was he entitled to object and be heard by the authority before it took the impugned action? If so, was he prejudicially affected in the exercise of that right by the act of usurpation of jurisdiction on the part of the authority? Is the statute, in the context of which the scope of the words "person aggrieved" is being considered, a social welfare measure designed to lay down ethical or professional standards of conduct for the community? Or is it a statute dealing with private rights of particular individuals?

47. When the petitioner has not been denied or deprived of, legal right, she has not sustained any legal injury, she has not obtained consent of her son and her son does not suffer from any disability, legal or otherwise, it is not only difficult but also impossible to hold that the petitioner is a person competent to sustain this writ petition by questioning the correctness of the decision of the President in rejecting her son's mercy petition. It is, no doubt, true that in order to maintain a writ petition under Article 226, a person himself need not necessarily file a writ petition if his right is violated under the law; but the person, whose right has been violated, has to be a person, who suffers from some legal disability. If he does not suffer from any legal disability, it is difficult to imagine a situation that a writ petition can be maintained by a person, who himself is not aggrieved by a decision, particularly, a decision given on his mercy petition.

48. In the present case, the petitioner's son is a conscious person in the light of the decision of the Supreme Court and there can be no escape from the conclusion that the petitioner's son is guilty of the offence u/s 302 IPC. He had not suffered from any disability, legal or otherwise, until the time his conviction and sentence were upheld by the Supreme Court. He has not suffered from any legal disability thereafter too inasmuch as he has made the mercy petition from the jail itself. Not only that he has made the mercy petition, the materials on record reveal that he is very much conscious and aware that a decision has to be

given on his mercy petition and he sent reminders for a decision on his mercy petition. A person, who makes a mercy petition and sends reminder cannot be described, in the absence of any disability, legal or otherwise, as a handicapped person incapable of making a writ petition. Merely because of the fact that the petitioner, in the present case, happens to be the mother of the convict instead of a victim and is an interested person, she cannot maintain a writ petition under Article 226, when her rights, if any, under Article 21, has not been violated and the person, whose right is alleged to have been violated, does not even claim that his right has been violated, when he does not give his consent to the moving of this writ petition, when he does not authorize his mother to move this writ petition. Considered from all angles, we are unable to hold and we, therefore, hold, that the petitioner has no locus standi, in the present case, to maintain this writ petition.

49. It has been pointed out by Dr. Choudhury, learned counsel for the petitioner, that in *Triveniben Vs. State of Gujarat*, and *Daya Singh Vs. Union of India* and others, it is the mother and brother, respectively, of the convicts, who filed the writ petition challenging the rejection of the mercy petition. Suffice it to point out, in this regard, that it was on the basis of a letter, received from the prisoner, Daya Singh, himself from Alipur Central Jail, Kolkata, where he was kept detained pending execution of his death sentence, that the Supreme Court treated the letter as a writ petition and decided the matter. We have not been able to gather from the case of *Daya Singh (supra)* that it was a case, where the writ petition was filed by the brother of the convict, Daya Singh. As far as the case of *Triveniben (supra)* is concerned, it is difficult to gather that the petitioner therein was the mother of the convict.

50. Be that as it may, let us assume, for a moment, that what had been submitted on behalf of the petitioner, namely, that *Daya Singh's* case (*supra*), was on the instance of *Daya Singh's* brother and, in *Triveniben's* case, it was at the instance of the mother of the convict, it is our duty to point that in none of the cases, or in none of the cases, which Mr. Bhattacharjee has relied upon [(except the case of *SP Gupta (supra)*], the question of the locus standi of the petitioner was an issue raised or decided, when the question was not raised at all, the question of rendering a decision thereon did not arise.

51. What has not been commented upon or decided in any of the decisions, which have been relied upon on behalf of the petitioner, is that it is open to this Court to decide the question as to whether rejection of a mercy petition can be challenged by way of a writ petition, under Article 226 of the Constitution, by a person without consent, authorization or knowledge of the convict himself, particularly, when the convict does not suffer from any disability, legal or otherwise.

52. In the present case, the petitioner is agitating against the rejection of her son's mercy petition. Until the time her son feels aggrieved by the rejection of the mercy petition, no one, not even the mother of the convict, can challenge the

rejection of the mercy petition, particularly, when the convict does not even have the knowledge that this writ petition has been filed and that he does not suffer from any disability, legal or otherwise.

53. We have patiently and dispassionately considered the question of locus standi of the present petitioner and, in our considered view, as reflected above, the petitioner, in the context of the facts of the present case, is not entitled to file the present writ petition. For the conclusion that we have reached, there could have been no escape from the conclusion, and there is no escape from the conclusion, that the present writ petition is not maintainable.

54. In the present case, the question, which has been raised, is not the adequacy of the sentence, but the rejection of mercy petition. We do not find, nor has it been contended before us, that the victim's son (sic) not be heard as to what the victim's family has to say on the challenge posed to the rejection of the mercy petition by the President. In fact, in *State of West Bengal and Others Vs. The Committee for Protection of Democratic Rights, West Bengal and Others*, the Court has clearly held that Article 21 not only confers right on an accused, but also on the victim. The State has the duty to enforce human rights of every citizen, be such citizen a victim or an accused. Article 21 does not vest in only an accused the right to demand fair trial, but it also vests an equally important right, fundamental in nature, in the victim, to demand a fair trial. Article 21 does not, thus, confer fundamental right on the accused alone, but it also confers, on the victim of an offence, the right, fundamental in nature, to demand fair trial. When the victim has the right to demand fair trial, there is no reason to hold that the victim will have no say on a writ application, which is filed by a convict against rejection of his mercy petition.

55. There can be no doubt that no mercy petition or petition, seeking commutation of sentence of death to imprisonment of life, can be made by anyone without the consent and knowledge of the convict unless the convict suffers from disability, legal or otherwise, which would make it impossible for the convict to give his consent thereto. Not even the parents of a convict can make an application either under Article 72 or under Article 161 of the Constitution of India without the consent and knowledge of the convict. When no application, under Article 72 or under Article 161 of the Constitution of India, can be made by anyone including the parents of a convict without his consent and/or knowledge, an order, made by the Governor or the President, as the case may be, on such an application, cannot be put to challenge by way of Article 32 or 226 of the Constitution of India without the consent and/or knowledge of the convict

56. Though the present petitioner is the mother of the convict and her anxiety to save the life of her son can be well understood, yet it is not only difficult, but impossible to hold that she would have the right to file an application under Article 226 seeking to get set aside and quashed the order of the President on the application made under Article 72 without the consent, authority or even knowledge of the convict, when the convict does not, admittedly, suffer from any

disability, legal or otherwise. Sad though, this Court is constrained to hold, and does hold, that the petitioner has no locus standi to maintain this writ petition.

57. Because of the fact that we have already held that the present petitioner cannot maintain this writ petition, we do not deem it appropriate to comment on the correctness or otherwise of the rival submissions, which have been made on behalf of the parties concerned, as regards the merit of this writ petition.

58. In the result and for the reasons discussed above, this writ petition fails, the same is held as not maintainable and shall accordingly stand dismissed.

59. No order as to costs.