

PETITION UNDER ARTICLE 72 OF THE CONSTITUTION OF INDIA

Her Excellency Mrs. Pratibha Devi Singh Patil
Hon'ble The President of India
Rashtrapati Bhawan,
New Delhi

IN THE MATTER OF:-

Bhai Balwant Singh Rajoana
S/o Malkiat Singh
Convicted and sentenced to
Death by learned Additional
Sessions Judge, Camp at Burail
Jail, Chandigarh
Currently lodged in the
Patiala Central Jail
Patiala (Punjab); which
conviction & sentence has been
affirmed by the
Hon'ble Punjab & Haryana High Court
at Chandigarh.

AND

IN THE MATTER OF:-

Shiromani Gurudwara Prabandhak Committee
Through its President S. Avtar Singh Makkar,
Teja Singh Samundri Hall, Shri Harmandir Sahib,
Amritsar.

...Applicant

MAY IT PLEASE YOUR EXCELLENCY

1. Due to the unusual circumstances involved in the present case, the present petition under Article 72 of the Constitution of India is being moved before Your Excellency by the Shiromani Gurudwara Prabandhak Committee (SGPC) on behalf of the condemned prisoner Bhai Balwant Singh Rajoana, who has sought to hasten the execution of the death sentence imposed upon him, by moving an application before the Ld. Trial Court in that regard. The applicant, Shiromani Gurudwara Prabandhak Committee (SGPC) is the Supreme Temporal Body of Sikhs representing the interests of the Sikh community all over the world.
2. Briefly put, the facts are that an incident occurred on 31.08.1995 in the porch of the Punjab Secretariat, Chandigarh in which the then Chief Minister of

Punjab met a violent end, alongwith 16 other persons. On the very same day, i.e. 31.08.1995, two separate FIRs came to be lodged under Sections 302, 307 read with 120-B IPC & Sections 3 & 4 of the Explosive Substances Act, firstly by the Chandigarh Police and then by the Central Bureau of Investigation. Out of the total 15 accused in the case, 8 accused were put to trial in Sessions Case No. 2-A, instituted on 18.12.1995 before the Ld Sessions Judge, Chandigarh. The rest of the accused were declared proclaimed offenders. Bhai Balwant Singh Rajoana did not prefer to be represented by Counsel at any stage of the trial, despite being offered legal services, voluntarily as well by the Ld. Trial Court. After a protracted trial lasting for over 12 years, the Ld. Trial Court at Chandigarh, i.e. the Court of Sh. Ravi Kumar Sondhi, Additional Sessions Judge, Chandigarh by its judgment dated 27.07.2007, acquitted one accused while another accused (who escaped during trial), was declared as a proclaimed offender; the remaining 6 accused were convicted and sentenced as under:-

Name of the accused	Under Section	Sentenced to
1.Nasib Singh	5(b) of Explosive Substances Act	To undergo RI for 10 years and to pay a fine of Rs.10,000/- failing which to further undergo simple imprisonment for three years.
2.Balwant Singh and Jagtar Singh Hawara	1. 302 r/w s. 120-B IPC	Sentence to death and both of them be hanged by neck till they are dead. They are also sentenced to pay a fine of Rs.7,000/-each, and in default of payment of fine, to further undergo simple imprisonment for a period of three years each
	2. 307 r/w S. 120-B IPC	RI for 10 years and to pay a fine of Rs.5,000/- each and in default of payment of fine to further undergo simple imprisonment for a period of three years each.
	3. 306 r/w s.109 r/w S 120-B IPC	R.I. for 10 years and to pay a fine of Rs.5,000/- each, and in default of payment of fine, to further undergo simple imprisonment for a period of three years each.
	4. 3(b) r/w S.6 of Explosive Substances Act.	R.I. for 10 years and to pay a fine of Rs.5,000/- each, and in default of payment of fine, to further undergo simple imprisonment for a period of three years each.
	5. 4(b)(ii) r/w S.6 of	R.I. for 10 years and to pay a fine of Rs.5,000/-

	Explosive Substance Act	each, and in default of payment of fine, to further undergo simple imprisonment for a period of three years each.
	6. 5(b) r/w S. 6 of Explosive Substances Act	R.I. for 10 years and to pay a fine of Rs.5,000/- each, and in default of payment of fine, to further undergo simple imprisonment for a period of three years each.
3. Gurmit Singh, Lakhwinder Singh and Shamsher Singh	1. 302 r/w 120-B IPC	Imprisonment for life each and to pay a fine of Rs.10,000/- each and in default of payment of fine to further undergo simple imprisonment for three years each.
	2. 307 r/w S. 120-B IPC	R.I. for 10 years and to pay a fine of Rs.5,000/- each, and in default of payment of fine, to further undergo simple imprisonment for a period of three years each.
	3. 306 r/w S. 109 r/w S 120-B IPC	R.I. for 10 years and to pay a fine of Rs.5,000/- each, and in default of payment of fine, to further undergo simple imprisonment for a period of three years each.
	4. 3(b) r/w S. 6 of Explosive Substance Act	R.I. for 10 years and to pay a fine of Rs.5,000/- each, and in default of payment of fine, to further undergo simple imprisonment for a period of three years each.
	5. 4(b)(ii) r/w S. 6 of Explosive Substance Act	R.I. for 10 years and to pay a fine of Rs.5,000/- each, and in default of payment of fine, to further undergo simple imprisonment for a period of three years each.
	6. 5(b) r/w S. 6 of Explosives Substances Act	R.I. for 10 years and to pay a fine of Rs.5,000/- each, and in default of payment of fine, to further undergo simple imprisonment for a period of three years each.

As can be seen from the above table, in respect of the convictions for offences under Section 302 IPC read with Section 120-B IPC, the Ld. Additional Sessions Judge Chandigarh awarded death sentences to Bhai Balwant Singh Rajoana and Jagtar Singh Hawara, while their convictions for other offences carried sentences varying from life imprisonment to imprisonment for 10 years with fine.

Upon institution of a joint appeal bearing Criminal Appeal No. 731-DB-2007 by 4 of the convicted (except Bhai Balwant Singh Rajoana), before the Hon'ble Punjab & Haryana High Court at Chandigarh, which appeal was

heard and decided along-with the Murder Reference No. 6 of 2007, (in respect of Bhai Balwant Singh Rajoana and Jagtar Singh Hawara) the death sentence awarded to Bhai Balwant Singh Rajoana came to be affirmed by the Hon'ble Punjab & Haryana High Court vide its judgment dated 12.10.2010, while the death sentence of Jagtar Singh Hawara was reduced to a sentence of imprisonment for life. The convictions and sentences of the remaining appellants were maintained by the Hon'ble Punjab & Haryana High Court by the same judgment dated 12.10.2010. Even before the Hon'ble High Court, Bhai Balwant Singh Rajoana refused legal representation and thus there was no occasion for raising of any defence, let alone an effective defence on his behalf before either the Ld. Trial Court or the Hon'ble High Court.

3. The aforementioned decision by the Hon'ble Punjab & Haryana High Court, has been carried in appeal to the Hon'ble Supreme Court, firstly by the Central Bureau of Investigation (CBI) in respect of Jagtar Singh Hawara in Criminal Appeal No. 2277 of 2011, titled as "*State TH: CBI V/s Jagtar Singh Hawara*" which is pending before the Hon'ble Supreme Court as on date. The second appeal by Lakhwinder Singh is Criminal Appeal No. 1464 of 2011, titled as "*Lakhwinder Singh @ Lakha V/s State TR: CBI*" is also pending final adjudication before the Hon'ble Supreme Court. The petitioner learns that another of the accused, Paramjit Singh, who had been declared as a proclaimed offender initially but was ultimately arrested and put to trial has also preferred an appeal against his conviction and sentence which is pending before the Hon'ble Supreme Court.
4. Firstly, the petitioner submits to Your Excellency that capital punishment is regarded as a form of retribution. Retribution in turn, is just a sanitised form of vengeance. It can safely be said that vengeance, factored with vindictiveness, remains a major ingredient in the concept of capital punishment. Retribution in the form of the death penalty is not fair, because the anticipatory suffering of the criminal before execution would probably outweigh the anticipatory suffering of the victim of their crime. Moreover, the death penalty delivers a 'double punishment'; that of the execution and the preceding wait, and this is a mismatch to the crime. Capital punishment brutalises society in a different and even more fundamental way, one that has implications for the Sovereign State's relationship with all citizens. Capital punishment is said to produce an unacceptable link between the law and violence.

However, “just- retribution”, designed to re-establish justice, could be achieved in the present case by granting Clemency to Bhai Balwant Singh Rajoana since he has already undergone more than 16 long years of incarceration behind bars. Such a course of action by Your Excellency, in exercise of the powers under Article 72 of the Constitution would easily distinguish “just retribution” from vengeance and vindictiveness.

5. The following facts and circumstances are very relevant for the exercise of the power under Article 72 of the Constitution of India by your Excellency:-
 - a) The incident for which the death sentence has been imposed upon Bhai Balwant Singh Rajoana occurred on 31.08.1995, more than 17 years ago. The long protracted trial lasted around 12 years and the decision of the appeal/murder reference in the Hon'ble High Court took more than 4 years in coming, after the trial was over. Now the matter is pending before the Hon'ble Supreme Court.
 - b) Bhai Balwant Singh Rajoana was arrested on 14.01.1996 and has remained behind bars since then. His total period of incarceration till date is already more than 16 years in all.
 - c) More than anything else, various self-incriminating and emotional statements attributed to him at different points of time (without the benefit of any legal representation or the benefit of any defence raised on his behalf) have led to his conviction in the case. A peculiar stance taken by him is that (as seen in his statement under Section 313 Cr.P.C.), he seeks to exonerate his fellow convicts by maintaining that he and the dead Dilawar Singh (who was stated to be the human bomb) had acted on their own and that the others were innocent and had no role to play. Thus there is an attempt on the part of Bhai Balwant Singh Rajoana to sacrifice his own life and an endeavour to shield the other accused/convicted.
 - d) He preferred not to be represented by counsel during trial before the Ld. Trial Court, choosing not to contest the case. Thereafter Bhai Balwant Singh Rajoana did not file any appeal before the Hon'ble High Court against the award of death sentence to him. Even when the Hon'ble High Court appointed a Counsel as an Amicus on his behalf, he did not give his consent and in-fact distanced himself from any

attempt to represent him, and resultantly, the said Amicus could not appear on his behalf and thus the Hon'ble High Court could not have the benefit to hear any arguments on his behalf and nor was there any attempt to bring forth before the Hon'ble High Court the evidence in the favour of Bhai Balwant Singh Rajoana which could have resulted in a different outcome for the case in so far as Bhai Balwant Singh Rajoana is concerned. In this case the relevant evidence has not been considered or appreciated by the Courts. On the contrary, irrelevant evidence has been relied upon by the Courts to condemn Bhai Balwant Singh Rajoana. Moreover, whatever evidence has been noticed, has been misconstrued and has not been properly appreciated which has resulted in the present situation where there are two sentences for the same offence. While Jagtar Singh Hawara (who is stated to be the master mind behind the incident), has now been given the reprieve of life imprisonment, the death sentence of Bhai Balwant Singh Rajoana has been maintained without taking into consideration the relevant evidence which clearly proves that the award of death sentence is erroneous and not warranted in law. Thus the prejudice caused to Bhai Balwant Singh Rajoana is clearly seen.

- e) His various applications before the Ld. Trial Court and the Hon'ble High Court reveal his steadfast stand of sticking to his beliefs and emotions. Even before the Hon'ble High Court he addressed applications which were to the effect that he did not want to "beg for life" and wanted "independence".
- f) The very filing of an application before the Ld. Trial Court seeking execution of death sentence upon himself, shows his emotional state of mind which is infact welcoming death. But this eagerness has its roots in the fact that he is totally bitter and disillusioned with the State actions in totality. This hard reality should not be lost sight of, by Your Excellency while considering the points raised in the present petition and exercising the powers under Article 72.

6 As per the dictum of Constitution Bench Judgement of the Hon'ble Supreme Court in Kehar Singh's case, 1989(1)SCC 204, while exercising the power under Article 72, Your Excellency is entitled to examine the record of the evidence of the case against Bhai Balwant Singh Rajoana and determine

whether the case is one deserving the grant of the relief falling within the power under Article 72. Your Excellency is entitled to scrutinize the evidence on record in the criminal case and come to a conclusion different from that recorded by the Ld. Trial Court as well as the Hon'ble High Court in regard to the guilt of, and the sentence imposed on, the presently condemned Bhai Balwant Singh Rajoana. In this case the relevant evidence has not been considered or appreciated by the Courts. On the contrary, irrelevant evidence has been relied upon by the Courts to condemn Bhai Balwant Singh Rajoana. Moreover, whatever evidence has been noticed, has been misconstrued and has not been properly appreciated which has resulted in the present situation where there are two sentences for the same offence. While Jagtar Singh Hawara (who is stated to be the master mind behind the incident), has now been given the reprieve of life imprisonment, the death sentence of Bhai Balwant Singh Rajoana has been maintained without taking into consideration the relevant evidence which clearly proves that the award of death sentence is erroneous and not warranted in law. All the erroneous and wrong conclusions have been arrived at due to non-consideration & no appreciation of the relevant evidence.

7. The above stated facts and circumstances leave no manner of doubt that the acceptance of his request at this stage (when the appeals regarding his co-accused/convicted are pending consideration before the Hon'ble Supreme Court), would validly give rise to concerns regarding propriety of a Sovereign State acting not out of a sense of justice but out of a sense of revenge and vindictiveness, particularly when legally speaking, the matter has not attained finality.
8. It is also possible that the emotions of Bhai Balwant Singh Rajoana are the reasons for his self-sacrificing goal to save his other co-accused/convicted by taking the entire blame and onus upon himself. However, the State cannot silently allow such a course of action to continue in the interest of justice and equity.
9. His obvious disdain with the laws of the land and utter lack of faith in the judiciary can be viewed as a manifestation of his ideological beliefs. Howsoever much the State might disagree with his beliefs, yet the Sovereign State cannot persuade itself to take his life in the manner being contemplated. The very ethos of a democratic and free society and nation is

that it does not permit itself such vices as retribution, revenge or vindictiveness.

10. While exercising the powers under Article 72 of the Constitution of India, Your Excellency can certainly take into account the fact that the appeals regarding the co-accused/convicts of Bhai Balwant Singh Rajoana are pending before the Hon'ble Supreme Court and in such a situation, the dictum laid down by the Hon'ble Supreme Court would squarely apply. The Hon'ble Supreme Court in Harbans Singh's case - 1982 (2) SCC 101 observed that it would be a sheer travesty of justice, if for the very same offence one had to pay the extreme penalty of death whereas the other accused was to get life imprisonment.

Moreover, the Hon'ble Supreme Court in Bachan Singh's case - 2008 (12) SCC 23 extended the benefit of the judgment to the co-accused who had not filed any appeal. In Bijoy Singh's case - 2002 (9) SCC 147, the Hon'ble Supreme Court acquitted the co-accused although he had not filed an appeal holding him to be entitled to the benefit of the judgment. It was further held that where on evaluation of the case if the court reaches the conclusion that no conviction of any accused is possible, the benefit of the decision must be extended to the co-accused, similarly situated though he has not challenged the order by way of an appeal. The same principles of law would apply in regard to parity in the matter of sentencing.

11. The family background of Bhai Balwant Singh Rajoana also deserves to be taken into account. While he was service of the State as a police Constable, since 1987, his father and uncle were gunned down during the turbulent times in Punjab. His mother is also not alive. He is not married and thus does not have a family of his own. At the moment, his immediate kith and kin consists of one real brother though there is a foster sister as well. The disturbing and violent times in Punjab have had a deep impact upon him and resultantly he has no faith in the Constitutional & Judicial System of India. Rather than attempting to restore his faith in the democratic systems by taking corrective actions, the State action of executing Bhai Balwant Singh Rajoana would not heal the old wounds but only reopen them.
12. One of the fundamentals of the Indian criminal justice delivery system, under which Bhai Balwant Singh Rajoana has been condemned to death, rests upon the salutary principle that no man shall be condemned unheard. In the

present case, there has been no attempt by Bhai Balwant Singh Rajoana to defend himself by any means. At all stages, right from the trial to the murder reference in the Hon'ble High court, he has refused to be represented by a counsel either of his choice or by a Court appointed Amicus. However, his consistent refusal to accept legal representation before the Courts could not have been a ground for the State to deny him the benefit of the equality before the law. It is not a right which is capable of being waived. One of his co-convicted, Jagtar Singh Hawara has been attributed the role of being the master mind behind the conspiracy to assassinate the former Chief Minister of Punjab, S. Beant Singh. However, in the appeal / murder reference before the Hon'ble High Court, Jagtar Singh Hawara, (who was awarded death sentence as well), has been giving the benefit of a substituted life imprisonment even though the Hon'ble Punjab and Haryana High Court noticed that he was the master mind of the conspiracy to assassinate the former Chief Minister Punjab. However, after weighing the evidence, facts and circumstances, as presented before it by the Counsel representing Jagtar Singh Hawara, the Hon'ble High Court reached the conclusion that the case of Jagtar Singh Hawara did not warrant award of death sentence and consequently substituted his death sentence by imprisonment for life. It would thus be a travesty of justice if Bhai Balwant Singh Rajoana (for want of any sort of hearing or legal representation) is allowed to be executed by hanging even though he has not been attributed a role greater than Jagtar Singh Hawara and infact his role can be seen as that of person who was a tool in the hands of Jagtar Singh Hawara.

13. In the case of Bhai Balwant Singh Rajoana, Your Excellency has to take a decision through the present petition, as to whether he is entitled to be treated at par with others who are facing similar or worse criminal charges or else his voice of dissent should be stifled forever since Bhai Balwant Singh Rajoana is not conforming to or succumbing before the injustices meted out by the State.
14. As stated earlier, one of the main reasoning and justification for awarding the death sentence upon Bhai Balwant Singh Rajoana hinges upon his own confessions of having committed the crime. The judgments awarding/confirming his death sentence, specifically notice his emotional proclamations of having no faith in the Constitution and legal framework of India and secondly his lack of remorse for having committed the offence.

Howsoever emotional the stand of Bhai Balwant Singh Rajoana may be considered by the State, he does not deserve to be treated in a discriminatory and arbitrary fashion, since in a true democracy, all voices have a right to be heard, even those voices which are critical and contemptuous of State actions. Any attempt to cut short his life at this juncture would amount to defeat of democracy and the principles of individual liberties and freedom.

15. There are numerous judgments of the Hon'ble Supreme Court which have drawn attention to the plight and agony of death row inmates and their families. Infact in the judgment (2009) 9 SCC 495, while relying and quoting with approval, judgments of the US Supreme Court and of other Courts, it has been held that the *"US Supreme Court and other courts have repeatedly held that "the cruelty of capital punishment lies not only in the execution itself and the pain incident thereto, but also in the dehumanising effects of the lengthy imprisonment prior to execution" and that "the prospect of pending execution exacts a frightful toll during the inevitable long wait between the imposition of sentence and the actual infliction of death"*.

The Hon'ble Supreme Court goes on to state that the underlying principles of the 8th amendment to the US Constitution find its echo in Article 21 of our Constitution. Thus the Hon'ble Supreme Court has held that it would be open for a condemned prisoner who has been under sentence of death over a long period of time, (for reasons not attributable to him), to contend that the death sentence should be commuted to one for life. The unfortunate circumstance in the case of Bhai Balwant Singh Rajoana is that not only is he refusing to seek recourse to the available legal remedies open to him but has also restrained his suffering relatives from acting on his behalf. It has thus come up on this body as a representative at large of the Sikh community to move the present petition under Article 72 of the Constitution of India before Your Excellency. The refusal of Bhai Balwant Singh Rajoana to submit an application to Your Excellency for clemency should not deter or influence your Excellency in any manner to exercise the powers of clemency under Article 72 in favour of Bhai Balwant Singh Rajoana.

The applicant craves leave to add the additional grounds after examining the other documents which were brought on record by the prosecution.

PRAYER

Under the facts and circumstances, stated hereinabove, it is most respectfully prayed that Your Excellency may graciously be pleased to grant clemency to Bhai Balwant Singh Rajoana.

SUBMITTED BY:-

(AVTAR SINGH MAKKAR)
PRESIDENT
(SHIROMANI GURDWARA PRABANDHAK
COMMITTEE)
SRI AMRITSAR

DATED: 25.03.2012

C.C.:-

1. The Hon'ble Governor of Punjab, Raj Bhawan, Chandigarh.
2. The Hon'ble Chief Minister, Punjab, Resident of House No. 45, Sector 2, Chandigarh.
3. The Hon'ble Home Minister, Punjab, resident of House No. 256, Sector 9-C, Chandigarh.