

HIGH COURT FOR THE STATE OF TELANGANA

**MAIN CASE: R.T.No.2 and 3 of 2018 and Crl.A.Nos. 2654, 2690, 2696,
2733, 2734, 2735, 2748, 3017, 3022 and 3024 of 2018**

PROCEEDING SHEET

Sl. No	DATE	ORDER	OFFICE NOTE
06.	19.12.2025	<p data-bbox="526 537 773 573"><u>KL,J & VRKR,J</u></p> <p data-bbox="753 617 1084 653" style="text-align: center;"><u>R.T.Nos.2 and 3 of 2018</u></p> <p data-bbox="526 667 1317 947">This appeal is filed by appellants/accused No. 1 and 2 have been languishing in jail, from 04.09.2018 onwards. <i>Vide</i> the impugned Judgment dated 04.09.2018, learned trial Court imposed the sentence of death upon the appellants herein.</p> <p data-bbox="526 982 1317 1745">In view of the facts referred to above, gainful reference can be made to the guidelines issued by the Hon'ble Supreme Court in <i>Manoj v. State of Madhya Pradesh</i>¹, wherein the supreme Court mandated the appointment of trained mitigation investigators to assess mitigating circumstances in relation to an accused facing the death penalty. The Hon'ble Supreme Court therein held that such mitigators may also be appointed at the appellate stage, either <i>suo motu</i> or on the application of the accused, so as to ensure a real, effective and meaningful opportunity on the issue of sentence. The Court emphasized that sentencing cannot be a mechanical exercise and that the requirement under</p>	

¹(2023) 2 SCC 353

	<p>Section 235(2) Cr.P.C. of a separate hearing must not be reduced to a mere formality.</p> <p>While issuing the guidelines on appointment of mitigators, the Hon'ble Supreme Court relied on the following directions issued in <i>Byluru Thippaiah @ Byaluru Thippaiah @ Nayakara Thippaiah v. The State of Karnataka</i>² :</p> <p>“i. The respondent-State shall place before this Court the report(s) of all the Probation Officers relating to the appellant within a period of eight (8) weeks.</p> <p>ii. The Superintendent of Prison, Central Prison, Belagavi, Karnataka, shall submit a report with regard to the nature of work which has been performed by the appellant while in jail and a report with regard to the conduct and behaviour of the appellant while in jail within a period of eight (8) weeks.</p> <p>iii. The Head of Dharwad Institute of Mental Health & Neurosciences shall constitute a suitable team for the purpose of carrying out a psychological evaluation of the appellant. The report of the evaluation shall be submitted to this Court through the Standing Counsel for the State of Karnataka within a period of eight (8) weeks.</p> <p>iv. Ms. Neha Kangralkar is permitted to have access to the Appellant who is presently lodged in</p>	
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²SLA (CrI.) Nos.9672-9673/2023, dated 21.08.2023

		<p>Central Jail, Belagavi (Hindalga Jail), Karnataka, to conduct multiple in-person interviews for the purpose of collecting information relevant to sentencing and to submit a Mitigation Investigation Report on behalf of the Appellant through the Appellant's Advocate-on-Record within twelve weeks.</p> <p>v. Direct the Central Jail Belagavi that, for the sake of confidentiality, these interviews shall be conducted in a separate interviewing space without any prison official or police staff being within earshot distance, and audio recorders be permitted to be used to record the interviews.</p> <p>vi. Direct that a person nominated by Ms. Neha Kangralkar is permitted to accompany her to translate during the interview.</p> <p>vii. Grant permission to Ms. Neha Kangralkar to obtain documents pertaining to the Appellant, including but not limited to medical records, jail conduct, certificates of any educational, vocational or employment opportunities undertaken, etc. that the Appellant may wish to submit for the purpose of sentencing information.”</p> <p>Further, reference may be made to the judgment of the Constitution Bench in Writ Petition (CrI.) No.1 of 2022, In Re: Framing Guidelines Regarding</p>	
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	<p>Potential Litigating Circumstances to be Considered While Imposing Death Sentences]³ wherein the Hon’ble Supreme Court observed that there exists a clear divergence of judicial opinion regarding what constitutes a meaningful opportunity for the accused at the sentencing stage. The Court noted that aggravating circumstances are always part of the prosecution evidence leading to conviction, whereas an accused is scarcely in a position to place mitigating material on record at that stage because such material is relevant only after the conviction is recorded. This places the convict at a hopeless disadvantage and tilts the scales heavily against him. The Court held that it is necessary to ensure uniformity in approach and to guarantee real and meaningful opportunity to the accused rather than a mere formal hearing.</p> <p>The relevant paragraph is extracted hereunder:</p> <p>“30. In light of the above, there exists a clear conflict of opinions by two sets of three judge bench decisions on the subject. As noticed before, this court in Bachan Singh had taken into consideration the fairness afforded to a convict by a separate hearing, as an important safeguard to uphold imposition of death sentence in the rarest of rare cases, by relying upon the recommendations of the 48th Law Commission Report. It is also a fact</p>	
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³2022 SCC OnLine SC 2153.

		<p>that in all cases where imposition of capital punishment is a choice of sentence, aggravating circumstances would always be on record, and would be part of the prosecution's evidence, leading to conviction, whereas the accused can scarcely be expected to place mitigating circumstances on the record, for the reason that the stage for doing so is after conviction. This places the convict at a hopeless disadvantage, tilting the scales heavily against him. This court is of the opinion that it is necessary to have clarity in the matter to ensure a uniform approach on the question of granting real and meaningful opportunity, as opposed to a formal hearing, to the accused/convict, on the issue of sentence.”</p> <p>Useful guidance is also available from the detailed order of the Division Bench of Kerala High Court in <i>State of Kerela v. Nino Mathew</i>⁴, wherein, after an extensive analysis of the entire line of Supreme Court precedent including <i>Manoj</i> (supra), <i>Accused X v. State of Maharashtra</i>⁵, <i>Santosh Kumar Bariya v. The State of Maharashtra</i>⁶, and others, it was held that there is no legal bar to commencing mitigation investigation at the appellate stage even before the appeal is heard on merits. The Kerala High Court held that mitigation investigation may be commenced</p>	
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⁴2023 SCC OnLine Ker 6978

⁵ (2019) 7 SCC 1

⁶ (2009) 6 SCC 498

immediately after admission of a death reference so that the matter is not protracted later and that the report may, if necessary, be kept in a sealed cover until the issue of conviction is determined, to avoid any prejudice. The Court also recognized that inadequate mitigation at the trial stage may be remedied or supplemented through mitigation investigation undertaken at the appellate stage.

“38. So, it can be seen that the 3 Judge Bench of the Apex Court in the aforementioned interim orders, in various pending cases, as well as the Bombay High Court had taken the view that if the assessment regarding mitigating circumstances is made in advance, before the learned Advocates for both sides advance their submissions on the merits of the main appeals, then such an approach is helpful in every respect. The said orders would also indicate that the expert associated with Project 39A of National Law University (NLU), New Delhi, has been appointed by the Apex Court to make independent assessment. The involvement of Project 39A of National Law University (NLU), New Delhi, has also been inter alia mentioned in para 3 of Sundar's case supra.”

In this context, reference is made to the interim order passed by a three-Judge Bench of the Hon'ble Supreme Court in *Ramanand @ Nandlal Bharti v. State of Uttar Pradesh*, arising out of SLP (Crl.) Nos.

	<p>6587–6588 of 2021, wherein the Apex Court, by its order dated 10-01-2022, issued the relevant directions., following its earlier directions in <i>Manoj</i> (supra), directed the State to place probation reports, jail conduct reports, psychological evaluations and permitted mitigation interviews in advance, even before hearing on conviction was concluded, thereby reaffirming that such proactive mitigation exercise at the appellate stage is both permissible and necessary.</p> <p>“We have passed certain directions in <i>Manoj v. State of M.P.</i> (Crl.A. No.248-250/2015) and some other death sentence matters, which directions were passed after conclusion of the arguments on the issue of conviction. However, the assessment, if made in advance, before the learned counsel makes the submissions, will be helpful in every respect.”</p> <p>The Kerala High Court thus affirmed that a proactive approach at the appellate stage and appointment of Mitigator before hearing the appeal is not only permissible but advisable in ensuring compliance with the constitutional and statutory mandate flowing from <i>Bachan Singh</i>, Section 354(3) Cr.P.C., and Section 235(2) Cr.P.C.,</p> <p>Mr. V. Raghunath, learned senior counsel for the appellant–accused, as well as Mr. Syed Yasar Mamoom the learned Additional Public Prosecutor, requested this Court to consider appointing either a Legal Aid</p>	
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	<p>Counsel or a retired District Judge, to act as a mitigator in the present case. However, upon a careful perusal of the authoritative pronouncements of the Hon'ble Supreme Court on the subject of mitigation in death penalty cases, and upon an independent application of mind to the nature and scope of mitigation proceedings, this Court is of the considered view that such a request cannot be acceded to.</p> <p>Mitigation, as contemplated by the Apex Court, is not a mere legal or adjudicatory exercise, but involves a structured and scientific inquiry into the psychological, psychiatric, social, and personal background of a convict who has been awarded the sentence of death. The core function of a mitigator is to conduct a professional evaluation of the mental health, cognitive functioning, life history, and psychosocial circumstances of the accused, with a view to placing before the Court a comprehensive mitigation profile. The mitigator is an expert associated with project 39-A of NLU, Delhi, now integrated in NALSAR, Hyderabad. The said mitigator is trained psychologist in analyzing sensitive individuals but Legal Aid Counsel or a retired District Judge, notwithstanding their legal acumen and judicial experience, does not possess the requisite clinical tools, training, or methodological expertise to undertake such a psychological and psycho-social assessment.</p>	
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Further, Mr. R. Mahadevan, learned counsel appearing for the appellant–accused, made a request that one of us (KLJ) may recuse from hearing the matter, citing security-related concerns. The said request was duly considered by this Court. However, having regard to the absence of any material justifying recusal and finding no legal or factual basis warranting such a course, the request was declined.

In the present case too, as the appellant/accused No.2 is facing death penalty, we deem it appropriate and expedient to appoint **Mr. Neeraj Kumar**, Senior Mitigation Associate, the Square Circle Clinic, NALSAR University of Law, Hyderabad, as a Mitigating Investigator. We direct the said Mitigator, to assess the conduct and behavior of the appellant/accused No.2 and submit a Mitigation Investigation Report. For the said purpose, we issue the following directions:

- i. Said Mitigator shall have access to the appellant/accused No.2 for the purpose of conducting in person interviews and collecting information to assess the mitigating circumstances. The Superintendent of Central Prison, Cherlapally, shall ensure that such access is granted;
- ii. Said Mitigator, shall also have access to the records pertaining to the mental health, conduct,

	<p>education, employment, etc. of the accused No.2/appellant or any other document which would indicate mitigating factors;</p> <p>iii. Said Mitigator is permitted to use audio devices to record the interviews;</p> <p>iv. Said Mitigator, is at liberty to take assistance of any person capable of translating the statements made by the appellant/accused during the interview. Needless to say, the Superintendent of Central Prison, Cherlapally, shall permit such translator to accompany Said Mitigator,;</p> <p>v. To ensure privacy and confidentiality, the Superintendent of Central Prison, Cherlapally, is directed to provide a separate interviewing space to Said Mitigator;</p> <p>vi. For the purposes of safety and protection of Said Mitigator, a prison or jail official shall be deployed within a earshot distance of the interviewing space;</p> <p>vii. The Superintendent of Central Prison, Cherlapally, shall ensure that the interviews are videographed;</p> <p>viii. Said Mitigator, is directed to submit the Mitigating Investigation Report within a period of four (04) weeks from the date of receipt of the copy of this Order. The said Report shall be filed through the</p>	
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	<p>Registrar (Judicial-I) of this Court;</p> <p>ix. The State shall pay an amount of Rs.25,000/- (Rupees Twenty Five Thousand Only) to the said Mitigator, towards expenses.</p> <p>In addition to the above directions, we also direct the concerned authorities as follows:</p> <p>i. The Respondent/State shall file the Probation Officer's Report relating to the appellant/accused No.2 within a period of Four (04) weeks from the date of receipt of copy of this order;</p> <p>ii. The Superintendent of Central Prison, Cherlapally, shall submit a report regarding the work, if any, done by the appellant/accused No.2 while in jail and also submit a report regarding his conduct and behaviour while in jail within a period of Four (04) weeks from the date of receipt of copy of this order;</p> <p>iii. The Superintendent/Professor of Psychiatry, Institute of Mental Health, Erragadda, Hyderabad, shall constitute a suitable team for the purpose of carrying out a psychological evaluation of appellant-accused. The report of the evaluation shall be submitted to this Court through the Public Prosecutor, High Court for the State of Telangana, in a sealed cover, within a period of Four (04) weeks.</p>	
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