

**Petition to Commute
the death sentence of
Santhan, Murugan and Perarivalan**

**PEOPLE'S UNION FOR CIVIL LIBERTIES (PUCL)-
TAMIL NADU AND PUDUCHERRY**

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PUCL – TN & Puduvai

Commutation of death sentences
Perarivalan, Murugan and Santhan

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19th August, 2011

To

Ms. J. Jayalalithaa,
Hon'ble Chief Minister, Government of Tamil Nadu,
Fort St. George, Chennai 600009.

Sub.: 1) **Commutation Petition** u/s 54 r/w 55 A of Indian Penal Code, s. 433(a) r/w 432(7) of the Code of Criminal Procedure and Art.161 of the Constitution of India to commute the death sentence of 3 prisoners, Santhan, Murugan and Perarivalan currently lodged in Vellore Central Prison and scheduled to be executed shortly.

2) Executive Stay of execution of death sentence pending final decision of this commutation petition.

Respected Madam,

1. We are a national level human rights organization founded by Lok Nayak Jayaprakash Narayan, Acharya Kripalani and other eminent freedom fighters and citizens. As an organization we, in the PUCL, are against death penalty. As a form of punishment it is arbitrary, capricious, unfair and by its very nature, cruel, inhuman and degrading. We are also of the view the constitutional value system and the concept of democracy do not endorse a life stifling approach to the problems arising in society for in the end it is very often the poor and the ill defended who get punished. Right from our inception in 1975, we have been campaigning for India to abolish death penalty and join the comity of 137 nations of the world which have abolished death penalty in their countries.

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2. We are writing to you in connection with the impending execution of death sentence against 3 prisoners, Santhan, Murugan and Perarivalan, whose mercy/ clemency¹ petitions were recently rejected by the Hon'ble President of India on advice by the Union Council of Ministers, a fact we have come to know from the newspapers. With the rejection of the clemency petitions, it is just a matter of days before the execution is carried out. It is therefore we hasten with this commutation petition.

3. We are addressing this commutation petition urging the State of Tamil Nadu to exercise clemency / commutation powers provided under section 54 r/w s. 55 A of the Indian Penal Code (IPC), sec. 432(a) r/w 433(7) of the Code of Criminal procedure (Cr.P.C.) and Article 161 of the Constitution of India to commute the death sentence against the three death row convicts to a sentence of life imprisonment. We are seeking exercise of the plenary powers of the state government under the various provisions mentioned above, not as a measure seeking condonation of the crimes for which the prisoners have been held guilty by the highest court of the land, but by way of ***exercise of power to grant life.***

4. This petition is organized on the following lines:

Part I ***Brief Facts of the Case***

Part II: ***Grounds for Fresh Consideration of Commutation Petition***

1. Repeated commutation petitions are permissible.
2. Power of Governor to grant pardon or commutation is absolute, unfettered and not affected by rejection of earlier commutation petition by President

¹ The terms clemency, commutation and pardon are used interchangeably to mean the same, throughout this representation, to refer to the decision to commute the death sentence with life imprisonment. By the same token, petitions seeking `mercy', `pardon', `clemency' and `commutation' all refer to the same relief, viz., seeking commutation of the death sentence.

3. Scope of Commutation Power u/s 54 IPC, 433 Cr.P.C. and Art. 161 of the Constitution
4. The effect of acquittal under TADA Act offences
5. Distinction between the Power to Commute *v/s* Legality of the Judgment
6. Examples of State Government's exercise of commutation powers
7. The Government of Tamil Nadu is fully competent and empowered to commute

Part III: ***Grounds for Commutation***

- A. Criteria for considering commutation petitions: Guidelines formulated by Dr. Abdul Kalam, Former President of India.
- B. Exemplary Conduct of Santhan, Murugan and Perarivalan in prison, pre-and-post conviction
- C. Other grounds for commutation: Prolonged delay in executing sentence

Part IV: **Interim 'Executive Stay' of execution of death sentences**

Part V: **"When mercy seasons justice" - Plea to Commute the Death Sentences**

Part I***Brief Facts about the case***

5. The three persons for whom we are filing this clemency petition are Santhan, Murugan and Perarivalan. They, along with 23 other accused, were prosecuted in the case known as the ‘*Rajiv Gandhi Assassination*’ case relating to the assassination of former Prime Minister, Rajiv Gandhi, during an election rally on 21st May 1991 at Sriperumbudur, 40 km from Chennai. Apart from Rajiv Gandhi, 18 others were also killed. The investigating agency, the CBI laid the final charge-sheet implicating 26 accused for offences under the Terrorist and Disruptive Activities (Prevention) Act 1987 or TADA (for short), Indian Penal Code, Explosives Substances Act, Arms Act and other laws. The trial was conducted before the Designated TADA court in Poonamallee. At the end of the trial the Designated TADA Court convicted all the 26 accused for offences under the TADA (P) Act, IPC and other laws. The court also imposed death sentence on all the 26 persons.

6. Confirmation of the death sentences and also the appeals filed by the accused were jointly heard by the Supreme Court. The Supreme Court, in its judgment, set aside the conviction and sentence passed by the trial court for offences u/s 3(3), 3(4) and sec.5 of the TADA (P) Act against all the accused.

7. The Supreme Court confirmed only the conviction and sentence under the other laws only such as the IPC, Arms Act, Explosive Substances Act and other laws as it related to the different accused.

8. The Supreme Court confirmed the conviction for offences u/s 120B read with 302 IPC only as against 7 accused, viz., (i) Nalini (A1), (ii) Santhan @ Raguraj (A2), (iii) Murugan@ Thas (A3), (iv) Robert Pyas (A9), (v) Jayakumar (A10) , (vi) Ravichandran @ Ravi (A16) and (vii) Perarivalan @ Arivu (A18).

9. The conviction and sentence for the remaining 19 accused as regards offence u/s 120B and 302 IPC was set aside. Some of them were convicted for lesser offences and set free if they had served the maximum sentence; a few were fully acquitted and set free.

10. Of the seven accused referred to above, the death sentence against only four accused, viz namely Nalini, Santhan@ Raguraj, Murugan@ Thas and Perarivalan @ Arivu were confirmed. The remaining 3 were sentenced to life imprisonment.

11. All the four persons filed petitions seeking commutation of the death sentences. In April, 2000, the Governor of Tamil Nadu commuted the death sentence of Nalini to life imprisonment (ref.: Letter Ms. No. 406 dated 24.4.2000, Home Department, Government of Tamil Nadu) and she currently is lodged in Women's Prison, Vellore.

12. The commutation petition of Santhan @ Raguraj, Murugan @ Thas and Perarivalan which was pending before the President of India awaiting the advice of the Central Council of Ministers for about 12 years, was finally rejected in late July, 2011, as reported in all leading newspapers.

Part II

Grounds for Fresh Consideration of Commutation Petition

1. Repeated commutation petitions are permissible.

13. The mercy petitions of the three prisoners have been rejected by the President of India. However this rejection does not bar the State Government or the Governor of the State of Tamil Nadu from considering fresh or new petition for commutation of death sentence.

14. It will be pertinent to note that Art. 161 is in the nature of a residuary sovereign power which does not get extinguished on the rejection of a petition for clemency or commutation. The Supreme Court in '*G. Krishta Goud and J Bhoomaiah v State of Andhra Pradesh*' (1976(1) SCC 157) held that, "***the rejection of one clemency petition does not exhaust the power of the president or the Governor***" and that there is nothing to debar the President or the Governor from reconsidering a mercy petition in view of changing circumstances, especially changes in world opinion against capital punishment. Thus additional mercy/ commutation petitions can be submitted for consideration.

15. The consideration of a second or even a third commutation petition is not without precedents. In the case of one Govindasamy of Erode district of Tamil Nadu successive mercy petitions were dismissed and writ petitions also came to be dismissed. However, in March 2000, based on a fresh clemency petition submitted by the PUCL to the then Union Government, an executive stay (ES) was granted pending final decision on the mercy petition. Eventually, the Union Government recommended to the President of India to commute the death sentence to one of life sentence. The said prisoner Govindasamy is lodged in Coimbatore Central Prison.

2. Power of Governor to grant pardon or commutation is absolute, unfettered and not affected by rejection of earlier commutation petition by President

16. The power of granting clemency is one of the prerogatives which have been recognised since time immemorial as being vested in the sovereign wherever the sovereignty may lie. “This sovereign power to grant pardon has been recognised in our Constitution in Articles 72 & 161” (Supreme Court in *State (Govt. of NCT Delhi) v Premraj* (2003(7) SCC 121)).

17. This power is absolute and unfettered and cannot be curtailed by statute. (*State of Punjab v Joginder Singh*, 1990 (2) SCC 661.

18. Ours is a constitution where there is a combination of federal structure with unitary features. Certain powers are vested in the Central Government leaving certain powers to the State Governments to exercise autonomy in the spheres assigned to them. Thus the states are not mere delegates or agents of the central government. Both the central and the state Governments draw their authority from the same source, the Constitution of India.

19. Part X, Chapter II of the Constitution is titled “Administrative Relations”. Art. 257 in this chapter provides that “the executive power of every state shall be so exercised as not to impede or prejudice the exercise of the executive power of the Union, and the executive power of the Union shall extend to the giving of such directions to a State as may appear to the Government of India to be necessary for that purpose”. It is reliably learnt that certain executive instructions may have been issued by the Government of India under this Article in respect of entertainment of fresh commutations petitions by the Governor after rejection of the same by the President. The nature of the directions given is not available in the public domain. However, the PUCL would like to point out that whatever may be the nature of such directions, the same cannot in any manner limit, circumscribe or curtail the powers of the Governor to consider fresh or new petitions for commutation. This is because the Supreme Court has repeatedly held that the power of the Governor under Art. 161 is absolute and unfettered and cannot be limited even by a statute. This being the position, any

direction issued under Art. 257 of the Constitution cannot curtail the powers of the Governor under Art. 161 of the Constitution; the same proposition will also apply in the exercise of powers by the State Government u/s 54 IPC and 433 Cr.P.C.

20. Viewed in this context, the powers of the State Government under the Indian Penal Code and the Criminal Procedure Code and that of the Governor under Art. 161 of the Constitution to grant commutation cannot be circumscribed or curtailed by the earlier rejection of commutation petitions by the President. As pointed out in Joginder Singh case (*State of Punjab v Joginder Singh*, 1990 (2) SCC 661) this power is absolute and unfettered and cannot be curtailed even by statute much less by any executive directions of the Central Government issued under Art. 257 of the Constitution.

3. Scope of Commutation Power u/s 54 IPC, 433 Cr.P.C. and Art. 161 of the Constitution

21. The source of the power of the State Government to commute a death sentence to one of life imprisonment is to be found in both the Indian Penal Code (IPC) as also in the Criminal Procedure Code (Cr. P.C.), apart from the constitutional power of the Governor under Art. 161 of the Constitution which is to be exercised by the Council of Ministers.

Commutation powers of the State Government under the IPC and the Cr.P.C

Section 54 of the IPC provides as follows:

“Commutation of sentence of death: In every case in which sentence of death shall have been passed, the appropriate Government may, without the consent of the offender, commute the punishment for any other punishment provided by this Code”.

Sec. 55A of the IPC defines ‘appropriate government’ as follows:

“55A. Definition of appropriate government.

In sections 54 and 55, ‘appropriate government’ means:

- (a) In cases where the sentence is a sentence of death or is for an offence against any law relating to a matter to which the executive power of the Union extends, the Central Government, and

(b) In case where the sentence (whether of death or not) is for an offence against any law relating to a matter to which the executive power of the State extends, the Government of the State within which the offender is sentenced”.

A similar power has been provided under Sec. 433 of the Criminal Procedure Code:

Sec. 433: Power to commute sentence:

The appropriate Government may, without the consent of the person sentenced commute,

(a) A sentence of death, for any other punishment provided by the Indian Penal Code (45 of 1860);

The definition of appropriate government is provided in sec. 432 (7) Cr.P.C. as follows:

Sec. 432 (7): In this section and in section 433, the expression "appropriate Government" means,

(a) In cases where the sentence is for an offence against, or the order referred to in sub-section (6) is passed under, any law relating to a matter to which the executive power of the Union extends, the Central Government.

(b) In other cases the Government of the State within which the offender is sentenced or the said order is passed.

22. It is clear from the provisions in both the IPC and the Cr.P.C. that the State Government is fully empowered and authorized to commute death sentence to life imprisonment.

23. In the present case all the three prisoners have been convicted and sentenced to death by the Supreme Court only for offences u/s 302 r/w 120B IPC. They have been acquitted of all charges under the Terrorist and Disruptive Activities (Prevention) Act, 1987 (TADA Act). Thus the sentence is for an offence over which the executive power of the state extends and Tamil Nadu is the state within which the offender is sentenced. The fact that the investigation of the case and the subsequent prosecution was by the CBI, a central agency, is not relevant for the determination of which is the 'appropriate government'. The

offence for which the person is convicted and given the death sentence and the place of sentence alone is relevant.

24. Further, as already mentioned previously, the death sentence imposed on Nalini, (the fourth person sentenced to death along with the present three death row prisoners), was commuted to life sentence by the Government of Tamil Nadu. This substantiates the fact that that the Government of Tamil Nadu is the ‘appropriate government’ and fully empowered to consider mercy petitions in respect of Santhan, Murugan and Perarivalan.

25. With this consideration of the statutory provisions for clemency in IPC and Cr.P.C. we now consider the constitutional provisions regarding grant of pardon / commutation.

Power to commute death sentence under Art. 161 of the Constitution of India

Art. 161. Power of Governor to grant pardons, etc., and to suspend, remit or commute sentences in certain cases:

The Governor of a State shall have the power to grant pardons, reprieves, respites or remission of punishment or to suspend, remit or commute the sentence of any person convicted of any offence against any law relating to a matter to which the executive power of the State extends.

26. The Governor decides on the commutation petitions based on the advice of the Council of Ministers of the State Government. In the case of Nalini, the letter intimating commutation of the death sentence clearly indicates that the Governor of Tamil Nadu ordered commutation of the death sentence on the advice tendered by the state’s Council of Ministers.

4. *The effect of acquittal under TADA Act offences.*

27. In its judgment the Supreme Court very clearly held that there was absolutely no evidence to establish any of the offences under the TADA Act, viz., both terrorist acts or disruptive activities. The SC said:

“59. From the aforesaid circumstances it is difficult for us to conclude that the conspirators intended, at any time, to overawe Government of India as by law established. Nor can we hold that the conspirators ever entertained an intention to strike terror in the people or any section thereof. The mere fact that their action resulted in the killing 18 persons which would have struck great terror in the people of India has been projected as evidence that they intended to strike terror in the people..... But there is absolutely no evidence that any one of the conspirators ever desired the death of any Indian other than Rajiv Gandhi.... Not even one of them has stated that anybody had the desire or intention to murder one more person along with Rajiv Gandhi except perhaps the murderer herself”.

61. “In view of the paucity of materials to prove that the conspirators intended to overawe the Government of India to strike terror in the people of India we are unable to sustain the conviction of offences under sec.3 of TADA”.

67. “If there is any evidence, in this case, to show that any such preceding act was perpetrated by any of the appellants towards killing of any police officer who was killed at the place of occurrence, it would, no doubt, amount to disruptive activity. But there is no such evidence that any such activity was done for the purpose of killing any police personnel”.

State v Nalini and others, 1999 (5) SCC 253.

28. We have quoted from the Supreme Court judgment only to stress the point that while the crime committed by the accused was indeed heinous, the Supreme Court itself found from the evidence that what motivated the accused was to avenge atrocities committed by the IPKF in Sri Lanka. It may not be out of place to point out, as the Supreme Court highlighted in its judgment, that not even one of the accused had the desire to murder any other Indian other than Rajiv Gandhi. (pa.59/pg.300)

29. We submit that the background circumstances to the crime, as brought out by the Supreme Court itself, are important factors to be kept in mind when considering the plea of those sentenced to death for commuting their death sentence to life imprisonment.

30. The three death row convicts, Santhan, Murugan and Perarivalan have been in prison for the last 20 years. The act of commutation will not in any manner erase the fact of the conviction or set them free. To the contrary, executing them will serve no purpose. Instead their continuing to serve life sentence will act as a reminder and a deterrent to others.

5. *Distinction between the Power to Commute vs. Legality of the Judgment*

31. There is a fundamental difference in the powers exercised by judicial bodies and those exercised by executive/ constitutional authorities. Appeals to the higher judicial forum are based on a challenge to the legal evidence presented during the trial as regards the guilt of the accused and the nature of sentence imposed. The focus of the higher courts is circumscribed both by the nature of evidence, rules relating to appreciation of evidence and thus is within the strict confines of evidence presented to the court.

32. In contrast the commutation powers of the government and the Governor / President are not limited by the evidence presented before the courts. In the exercise of executive powers to grant pardons and commutations, the Government, as also the Governor and / or the President have the authority and the moral justification to go beyond the legal position. Very importantly exercise of powers of clemency and pardon permits the executive to consider relevant materials relating to the social background of the crime which could not be placed for consideration or brought before the different criminal courts. The issues which can be considered at the time of commutation include personal, psychological, emotional and social factors that explain the conduct of the convicted person, the family - cultural - psychological and other special features which influenced the convicted person in the commission of the offences, the conduct and the behavior of the person before, during and after the trial and during incarceration and other similar relevant factors.

33. It will be useful to note that in '*Kebar Singh v Union of India*', 1989 (1) SCC 204 the Constitutional Bench of the Supreme Court held that the President could make a decision based on the facts of the case and ***even arrive at a different conclusion from that recorded by the court with respect to guilt or sentence.***

6. Examples of State Government's exercise of commutation powers

34. The Government of Tamil Nadu, has in several instances exercised its powers to grant commutation of death sentences. Apart from the case of Nalini, the following five persons have also been granted commutation previously.

1. Thiagarajan @ Thiagu.
2. Lenin.
3. Rangasamy.
4. Gurumurthy.
5. Kaliyaperumal.

7. The Government of Tamil Nadu is fully competent and empowered to commute

35. The above discussion makes it clear that it is clearly within the powers of the Government of Tamil Nadu to independently examine the various factors underlying the case going beyond the facts and circumstances highlighted in the judicial process and arrive at a conclusion independent of the judicial finding. It is also clear that more than one clemency petition can be entertained. The fact that an earlier clemency petition was rejected by the President of India on the advice of the Central Council of Ministers, is not and cannot be an obstacle to the Government of Tamil Nadu to consider afresh the issue of commutation of the death sentences of Santhan, Murugan and Perarivalan. Stated differently, the State Government on its own volition u/s 54 r/w 55 A IPC, s.433 (a) & 432(7) Cr.P.C and also Art. 161 of the Constitution of India can independently commute their death sentence to life imprisonment.

36. The preservation of the statutory powers of the State Government and the constitutional power under Art. 161 is also in accordance with the federal structure of the Constitution.

Part III

*Grounds for Commutation***1. Criteria for considering commutation petitions: Guidelines formulated by Dr. Abdul Kalam, Former President of India.**

37. We have already discussed the fact that the power of the State to grant pardon and clemency are in the nature of plenary, sovereign power, executive in nature and untrammelled by the decisions of the judicial process. While exercising commutation powers, the Government can consider a wide variety of factors including the background of the convict, his conduct while in prison and so on. Surprisingly however, no clear guidelines have been formulated to guide exercise of clemency powers.

38. The former President of India, Dr. Abdul Kalam, during his Presidency between 2002-07, had formulated a set of criteria to guide the Home Ministry when it considered commutation petitions. These include:

- (i) The Home Ministry, before recommending any action on a petition, should consider the sociological aspect of the cases;
- (ii) Besides the legal aspects, the Ministry should examine the humanist and compassionate grounds in each case; these grounds include the age of the convict and his physical and mental condition;
- (iii) The Ministry should examine the scope for recidivism in case a death sentence is commuted to life imprisonment through the President's action; and
- (iv) The Ministry should examine the financial liabilities of the convict's family.

39. The Supreme Court in *Santa Singh Vs. State of Punjab*² (AIR 1976 SC 2386) highlighted some issues to be considered before deciding on nature of sentence. Even though what the SC said was in the context of guiding determination of sentence, the issues are equally relevant during consideration of commutation petitions. The following are the main issues highlighted:

² AIR 1976 SC 2386

“ ... the prior criminal record, if any, the age of the offender, the record of the offender as to employment, the background of the offender with reference to education, home life, sobriety, and social adjustment, the emotional and mental condition of the offender, the prospects for the rehabilitation of the offender, the possibility of return of the offender to normal life in the community, the possibility of treatment or training of the offender, the possibility that the sentence may serve as a deterrent to crime by the offender or others and the current community need if any, for such a deterrent in respect to the particular type of offence”.

We shall now consider the social circumstances and the conduct of the 3 persons: Santhan, Murugan and Perarivalan.

2. Exemplary Conduct of Santhan, Murugan and Perarivalan in prison, pre-and-post conviction

40. All the three persons for whom PUCL is filing this clemency petition have exhibited exemplary conduct in the last twenty years in prison. None of them have any previous criminal record. During the twenty years they have been in prison, all the three of them have not only been socially useful but also very helpful to all other inmates in the central prison, Vellore. They have helped to educate other prisoners, have assisted in the formation of cultural troupes and have also been of assistance to the prison officials. We represent below some special features of the help rendered by each of the three persons.

Perarivalan @ Arivu

41. At the time of arrest Perarivalan (an Indian) was aged 19 and had a diploma in Electronics and Communication from Krishnagiri Govt. Polytechnic scoring 86%. During his long incarceration Perarivalan has secured a B.C.A. (Bachelor of Computer Applications) form IGNOU (Indira Gandhi National Open University). He is currently pursuing his post graduation in M.C.A.

While in prison, Perarivalan has helped educate numerous illiterate and semi illiterate prisoners. In recent times he helped other prisoners pass tenth and twelfth standard and also pass graduation level exams. He also formed a music troupe teaching interested prisoners various instruments as also singing. This music troupe regularly entertains other prisoners as also visiting officials.

42. It is reported recently that Perarivalan and his music troupe entertained the TN State Minister in charge of Prisons, who expressed appreciation of the programme. It may be important to note that some of the prisoners who Perarivalan helped tutor and teach, on release from prison have formed a '*Perarivalan Kalvi Paasara?*' which is assisting children from poor and impoverished background to get education. Perarivalan has also scripted a drama titled '*Illakiyam Maaruma?*'

43. In all the twenty years Perarivalan has not been accused of committing any prison offence or come for any adverse notice by the prison officials

44. Perarivalan's parents are both aged and have no other sons to take care of them in their old age. His father Guildasan retired as a teacher and is ailing; his mother Arputhammal is a home maker. Perarivalan is the only son for the couple, who are of modest means. For the last 20 years, Perarivalan's mother Arputhammal, has been tirelessly taking care of her family, while ceaselessly tending to the cases of Perarivalan; importantly, while taking care of her son, she has never stopped exhibiting equal care and extending support to both Santhan and Murugan, who have few relatives to take care of them in India.

Murugan @ Thas

45. A Sri Lankan Tamil by birth, Murugan has passed his 'A' level (equivalent to + 2 in India). During his stay in prison Murugan passed both his B.C.A and M.C.A from IGNOU. He has also passed a certificate course in Radio and TV mechanics and also a certificate course in Two Wheeler engine mechanism while in jail. He is a talented painter. An exhibition of his paintings was formally inaugurated by the Former Director General of

Prison Mr. Nataraj, IPS, in 2009. Murugan also has been very helpful to the prison inmates as also the officials.

46. In all the twenty years Murugan has not been accused of committing any prison offence or come for any adverse notice by the prison officials

Santhan (a) Raguraj

47. He is also a Sri Lankan Tamil by origin, has passed his 'O' level school final exams. A very creative writer he has written numerous poems, short stories and novels. His novel titled '13-5-2009' has been widely acclaimed and has come in for wide spread appreciation from literary associations. His poems have also been published in some Tamil magazines. Apart from his creative talent, Santhan is a pious and religious person. During the last few years in the prison, he is tending to the temple inside the Central Prison, Vellore and has been performing daily poojas and he is widely respected by the fellow prisoners and prison officials.

48. In general all the three, Perarivalan, Murugan and Santhan have been leading very helpful, disciplined and orderly lives in prison assisting fellow prisoners and officials alike. Through their conduct all the three of them have exhibited concern for the welfare of others less fortunate than them by teaching them life skills, entertaining prisoners there by relieving prisoners from the ennui of prison life and tending to their social, emotional and spiritual needs. It would be in the fitness of things therefore that their lives be spared from the gallows, as they have demonstrated that they are capable of leading normal lives as responsible citizens.

Conduct of Prisoners in compliance with Presidential Guidelines for Commutation

49. From the above mentioned facts it is clear that all the three prisoners, Santhan, Murugan and Perarivalan meet the criteria set out by the office of the president of India for the purpose of determining commutation. Even as per the judgment of the Supreme Court the facts disclose that the intention of the prisoners was not to commit terrorist acts or

disruptive activities. All the three convicts were young at the time of the incident. They have also demonstrated by the pursuit of education in prison, that they have utilized the time in prison fruitfully to turn into socially responsible and economically useful persons.

50. An important aspect of their behaviour in prison in the last 20 years, which shows that there is no scope for recidivism, is their helpful, amiable and supportive conduct towards co-prisoners, particularly helping people from disadvantaged families to acquire literacy and education.

3. Other grounds for Commutation

Prolonged delay in executing sentence

51. All the three accused in this case were arrested in 1991. The legal process ended in the year 1999 with the confirmation of death sentence against Nalini, Santhan, Murugan and Perarivalan. Nalini's death sentence was subsequently commuted.

52. The clemency petitions of Santhan, Murugan and Perarivalan was submitted in 1999 and kept pending for the last 12 years until they were rejected by the Hon'ble President of India in July – August 2011. During the 20 year long incarceration none of them have even once seen the outside world through release on parole, family reasons or other grounds. In particular from the time of the conformation of their death sentence by the Supreme Court, they have spent 12 long years in great insecurity not knowing the fate of the clemency petitions.

53. A Constitution Bench of the Supreme Court in *'Smt. Triveniben v. State of Gujarat'*, 1989 (1) SCC 678 held that undue delay in the execution of death sentences amounts to violation of fundamental rights. Based on this ruling a later Bench of the Supreme Court held in *'Daya Singh v Union of India'* 1991 (3) SCC 61, that

“.. as stated that delay in execution of death sentence should be “sufficient to entitle the person under sentence of death to invoke Article 21 and demand the quashing of the sentence of death”.

54. In *'Sher Singh v. State of Punjab'* (1983) 2 SCC (Cri) 248, the Supreme Court highlighted in great detail the psychological impact of prolonged delay of death row convict. The apex court in the *'Jagdish v State of M.P.'* 2009 (2009) 9 SCC 495 also expressed its anguish at the plight of death row convicts. Speaking about the effect of delay in deciding on commutation petitions the Supreme Court said:

55. “The condemned prisoner and his suffering relatives have, therefore, a very pertinent right in insisting that a decision in the matter be taken within a reasonable time, failing which the power should be exercised in favor of the prisoner. The plight of a prisoner who has been under a sentence of death for 15 years or more living on hope but engulfed in fear as his life hangs in balance and in the hands of those who have no personal interest in his case and for whom he is only a name.

56. Equally, consider the plight of the family of such a prisoner, his parents, wife and children, brothers and sisters, who too remain static and in a state of limbo and are unable to get on with life on account of the uncertain fate of a loved one. What makes it worse for the prisoner is the indifference and ennui which ultimately develops in the family, brought about by a combination of resignation, exhaustion and despair. What may be asked is the fault of these hapless individuals and should they be treated in such a shabby manner.”

[paras 48,50,51]

57. In the present case, it is clear that there has been a prolonged delay in deciding the clemency petitions. The Supreme Court has pointed out such delay has extremely harmful effect on the prisoners and their families. Such unconscionable delay by itself constitutes cruel, degrading, inhuman treatment violative of Art. 21 of the Indian Constitution. Such delay constitutes a valid ground for the commutation of death sentences against Perarivalan, Murugan and Santhan.

Part IV

Interim 'Executive Stay' of execution of death sentences

58. Pending decision of this commutation petition, we request the Government of Tamil Nadu to grant an executive stay of the execution of the death sentence against Perarivalan, Murugan and Santhan, until the final decision is taken by the state government on this commutation petition

59. As highlighted earlier, there are several precedents to the grant of executive stay of carrying out death sentences during the pendency of commutation petitions

60. We may refer here to the executive stay granted in 2000, in the case of Govindasamy, lodged in Coimbatore central prison whose mercy petitions was dismissed by the President and two rounds of litigations had ended in failures. The executive stay granted by the then Central government continued in existence for several years until the President finally ordered the commutation of death sentence to life sentence, in 2008.

61. The Supreme Court has also clearly said that when a commutation petition raises grounds which need consideration, it is appropriate to stay the execution pending consideration of the petition. (*Daya Singh v Union of India*, 1991 (3) SCC 61).

Part V**“When mercy seasons justice” - Plea to Commute the Death Sentences**

62. In conclusion, PUCL – Tamil Nadu & Puducherry seeks the intervention of Hon’ble Chief Minister and the Government of Tamil Nadu to avert the catastrophic end to the lives of Perarivalan, Murugan and Santhan in the event that the death sentence against them is executed.

63. PUCL – Tamil Nadu & Puducherry also urges the Hon’ble Chief Minister and the Government of Tamil Nadu to exercise the power of pardon and clemency u/s 54 r/w 55 A IPC, 433 (a) r/w 432(7) Cr.P.C, to commute the sentence of death to life imprisonment. The PUCL – Tamil Nadu & Puducherry also requests that Hon’ble Chief Minister and the Government of Tamil Nadu may also consider invoking its power under Art.161 of the Constitution of India to advice the Governor to commute the death sentence.

64. We request that we be given an opportunity to explain in person the grounds seeking commutation in respect of death sentences against Perarivalan, Murugan and Santhan. We also seek permission to place for your consideration any fresh fact or circumstances which may be brought to our notice which may facilitate a just decision in this commutation petition.

65. PUCL-Tamil Nadu and Puducherry firmly believes that it is only when law is tempered with mercy that real justice is done. Shakespeare in the Merchant of Venice most powerfully articulates the call for justice thus:

*“The quality of mercy is not strained.
It droppeth as the gentle rain from heaven
Upon the place beneath. It twice blest:
It blesseth him that gives, and him that takes.*

‘Tis mightiest in the mightiest. It becomes
The throned monarch better than his crown.
His sceptre shows the force of temporal power,
The attribute to awe and majesty,
Wherein doth sit the dread and fear of kings;
But mercy is above this sceptre sway.
It is enthroned in the hearts of kings;
It is an attribute of God himself,
And earthly power doth then show likest God’s
When mercy seasons justice”.

66. As the architect of the historic Tamil Nadu Legislative Assembly resolution demanding justice to the victims of genocide, war crimes and crimes against humanity in Sri Lanka, we urge you to ensure that Tamil Nadu becomes the first state in India to abolish death sentence as one of the permissible punishments under the existing criminal laws, as far as the State of Tamil Nadu is concerned. It may be of interest to mention parallels in the United States of America. Just like India having 33 states apart from union territories, the USA consists of 50 states. While at the federal (i.e. central) level, imposition of death sentence has been upheld as a constitutionally valid punishment, 13 states - Alaska, Hawaii, Iowa, Maine, Massachusetts, Michigan, Minnesota, New Jersey, North Dakota, Rhode Island, Vermont, West Virginia, and Wisconsin - as also the District of Columbia, have prohibited and banned death sentence.

67. As a first step towards such an eventual decision, your act of kindness by utilizing your sovereign powers to grant commutation of the death sentences against Santhan, Murugan and Perarivalan will be widely welcomed by many in Tamil Nadu as also amongst the national and global human rights community. Very importantly, it will be in tune with the United Nations General Assembly resolution of December, 2010 which

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PUCL – TN & Puduvai

Commutation of death sentences
Perarivalan, Murugan and Santhan

urged countries and states around the world to abolish death penalty. Through such an act you will also be signaling your government's commitment to join 137 nations around the world which have, as on date, abolished death sentence in their countries as an anathema of modern civilized societies.

Sincerely yours



G. Shanmugasundaram @ Kurinji
Vice President, PUCL – TN/Puduvai

Dr. V. Suresh
National Secretary, PUCL

Chennai / 19th August, 2011

Encl:

1. Letter dated 24.04.2000 from Secretary, Home Department Govt. of Tamil Nadu to Nalini intimating commutation of death sentence.
2. List of 137 countries which have abolished death penalty.

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