

Human Rights Defenders Alert - India

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28th Dec' 2013

Dear Sir,

Sub: HRD Alert - India - Urgent Appeal for Action – Tamil Nadu - Mr.Gouthaman, Film Director and Six others - Illegally detained in a Private Lodge and tortured by Police - Regarding

Greetings from Human Rights Defenders Alert - India!

HRD Alert - India is a Forum of Human Rights Defenders for Human Rights Defenders. It endeavours to initiate actions on behalf of Human Rights Defenders under threat or with security concerns.

We are now writing to express our grave concern regarding illegal arrest of seven persons including the HRD and film Director, Mr. V. Gouthaman to avoid an anticipated demonstration by university students of Chennai to protest during the visit of the President of India, Mr. Pranab Mukherjee to Loyola College for inaugurating the Loyola College School of Commerce and Economics.

Source of Information on the Incident:

A Complaint dated 23 December 2013 from Mr. V. Gouthaman.

About the Human Rights Defenders under attack:

Mr.V.Gouthaman is a reputed film Director in Tamil Nadu and a well-known human rights defender. He took efforts and directed a Documentary Film titled "Santhana

Kaadu” highlighting the true story behind the ‘sandalwood smuggler’ Veerappan’s real Story and the accompanying testimonies from the victims of the human rights violations that took place there. This was telecasted in ‘Makkal TV Channel. This film not only exposed the voice of victims against the Special Task Force of Tamil Nadu & Karnataka but also ensured that many sections of civil society were also galvanised to take action against the STF who were responsible for the violence.

The Perpetrators:

Mr.Gnanasekaran, Assistant Commissioner of Police, Periyar E.V.R Salai, Vepery, Chennai, Mr. Srikanth, Inspector of Police, F 5 Choolai Medu Police station, Chennai and other policemen on duty who arrested the accused the victims of the human rights violations.

Date of Incident:

20th December, 2013 from at around 2 AM

Place of Incident:

Chennai, Tamil Nadu, India

Incident:

According to the information received by HRDA from Mr. Gouthaman, Mr.Srikanth, the Inspector of Police F- 5 Choolaimedu PS and his sub-ordinates illegally entered the premises of Mr.V.Gouthaman on 20th December, 2013 at around 2AM without following the due process of law and arrested him stating that he was being requestd to come to the police station only for an enquiry. The Police officials present along with the Inspector, restrained his family members from communicating with him and participated in the illegal arrest since he was not told without due process of law. Mr. Gouthaman’s family members immediately tried to restrain the police from taking him away in the middle of the night and demanded to produce the summons contemplated under Sec 41 A and then disclose where Mr. Gouthaman was to be taken for the proposed enquiry. . The Inspector of Police again denied to his family members that he was being arrested and restated that he was only being taken for an enquiry to the Nungambakkam Police Station.

Mr. Gouthaman was then taken away in a Sumo Car while the reason for either the enquiry or arrest was not mentioned. When Mr. Gouthaman insisted that he be told

what was the cause of the enquiry, the Inspector of Police then revealed during his travel that it was as a precautionary measure to avoid the proposed protest by the college students during the proposed visit of the President of India to Loyola College, Chennai for inaugurating the Loyola College School of Commerce and Economics.

However, Mr. Gouthaman was not taken to the Nungambakkam Police Station as initially told by the Inspector of Police. Instead he was taken to a dark street where five other college students who were already illegally arrested and detained were also made to get into the Sumo car. The five students who were illegally detained were Paravai Dasan, Raymond, Gautham, Vasanthan [all 4 from Loyola college] and Jothilingam [Chennai law college] .

The Sumo Car was parked at Balaji Guest House located near the Congress party headquarters in Royapettai and all of them were moved to the third floor . The Inspector of Police insisted that three of them should be in one room and therefore the six of them were kept separately in two rooms surrounded by police men. None of them were allowed to attend their nature's call.

Further within half an hour of their arrival in this guest house, one Mr. Tamil Inniyan was brought by the police to their room. Mr. Inniyan immediately shared with Mr. Gouthaman how he had been arrested while he was sleeping without any reasons being provided to him and the police Inspector even refusing to state the reason when asked by his father Mr. Murugesan and his house owner Mr. Sivakumar.

All of them were illegally restrained in the said guest house for about 45 minutes and then again at about 3.30 AM they were all shifted from the guest house into a van. All of them were not told about the whereabouts of where they were being taken and all of a sudden Mr. Gnanasekaran, the Assistant Commissioner of Police reached the van and directed it to stop. He then asked who had sent sms messages to the media about the arrest and when one of the police present in the car identified Tamil Inniyan, he was forcibly dragged out of the van by his shirt and made to stand under the street lamp. The Assistant Commissioner of Police Mr. Gnanasegaran personally started abusing him in filthy and unparliamentary language for having informing the press with his sms messages about the illegal arrest and detention by the police officials. This was actually the duty of the police to inform as per Sec 41B of the amended Cr.P.C. Mr. Tamil Inniyan was brutally beaten up by the Assistant

Commissioner, the Inspector of Police Chollaimedu PS, Srikanth and the other police officials present. Mr. Gouthaman and the others were utterly shocked by the cold blooded and brutal torture by the police. They were also equally apprehensive that the same physical harassment would be carried out against them as well. The Assistant Commissioner of Police personally and forcibly brutally hit Tamil Inniyan on his private parts with his shoes on three occasions and he cried from the terrible pain he suffered. Mr. Gouthaman immediately intervened and asked why they were doing this to Mr. Tamil Inniyan. One of the constables whose name is not known but who can be identified replied back to him in vulgar language asking him to keep quiet. The Inspector of Police Chollaimedu PS, Mr. Sri Kanth also abused Mr. Tamil Inniyan in vulgar language in Tamil. All the students were arrested when they were sleeping at their residence. As Mr. Gautham was in his aunt's residence at Palavakkam, Mr. Gouthaman's father was forced to take the police officials to Palavakkam to identify the house and he was therefore arrested and illegally detained from his aunt's residence. Mr. V. Gouthaman and the students later realised that they were being illegally detained as a preventive measure to prevent any protest during the visit of the President of India, Mr. Pranab Mukerjee to Loyola College. This brutal torture personally led by the Assistant Commissioner of Police and Inspector of Police Chollaimedu PS continued till 5 AM and at around 5.30 AM all of them were taken to Vepery Police Station. All of them were left to starve throughout their period of illegal detention with no food or water and they were all released at 4.30 PM without any records having been provided to them. Mr. Tamil Inniyan then got himself admitted in the Rajiv Gandhi Government Hospital for medical treatment and he was admitted there as an inpatient for two days.

Background on legal standards to be adhered :

It is pertinent to point out that in 'D.K. Basu Versus State of West Bengal' — the Supreme Court of India issued the following Guidelines to be followed in all cases of arrest or detention till legal provisions are made in the behalf as preventive measures": -

- (1) The police personnel carrying out the arrest and handling the interrogation of the arrestee should bear accurate, visible and clear identification and name tags with their designation. The particulars of all

such police personnel who handle interrogation of the arrestee must be recorded in a register.

- (2) That the police officer carrying out the arrest of the arrestee shall prepare a memo of arrest at the time of arrest and such memo shall be attested by at least one witness, who may either be a member of the family of the arrestee or a respectable person of the locality from where the arrest is made. It shall also be countersigned by the arrestee and shall contain the time and date of arrest.
- (3) A person who has been arrested or detained and is being held in custody in a police station or interrogation centre or other lock-up, shall be entitled to have one friend or relative or other person known to him or having interest in his welfare being informed, as soon as practicable, that he has been arrested and is being detained at the particular place, unless the attesting witness of the memo of arrest is himself such a friend or a relative of the arrestee.
- (4) The time, place of arrest and venue of custody of an arrestee must be notified by the police where the next friend or relative of the arrestee lives outside the district or town through the Legal Aid Organisation in the District and the police station of the area concerned telegraphically within a period of 8 to 12 hours after the arrest.
- (5) The person arrested must be made aware of this right to have someone informed of his arrest or detention as soon as he is put under arrest or is detained.
- (6) An entry must be made in the diary at the place of detention regarding the arrest of the person which shall also disclose the name of the next friend of the person who has been informed of the arrest and the names and particulars of the police officials in whose custody the arrestee is.
- (7) The arrestee should, where he so requests, be also examined at the time of his arrest and major and minor injuries, if any present on his/her body, must be recorded at that time. The "Inspection Memo" must be signed both by the arrestee and the police officer affecting the arrest and its copy provided to the arrestee.
- (8) The arrestee should be subjected to medical examination by a trained doctor every 48 hours during his detention in custody by a doctor on

the panel of approved doctors appointed by Director, Health Services of the State or Union Territory concerned; Director, Health Services should prepare such a panel for all tehsils and Districts as well.

- (9) Copies of all the documents including the memo of arrest, referred to above, should be sent to the Illaqa Magistrate for his record.
- (10) The arrestee may be permitted to meet his lawyer during interrogation, though not throughout the interrogation.
- (11) A police control room should be provided at all district and State headquarters, where information regarding the arrest and the place of custody of the arrestee shall be communicated by the officer causing the arrest, within 12 hours of effecting the arrest and at the police control room it should be displayed on a conspicuous notice board.
 - a. Failure to comply with the requirements hereinabove mentioned shall apart from rendering the official concerned liable for departmental action, also render him liable to be punished for contempt of court and the proceedings for contempt of court may be instituted in any High Court of the country, having territorial jurisdiction over the matter.
 - b. The requirements, referred to above flow from Articles 21 and 22(1) of the Constitution and need to be strictly followed. These would apply with equal force to the other governmental agencies also to which a reference has been made earlier.
 - c. These requirements are in addition to the constitutional and statutory safeguards and do not detract from various other directions given by the courts from time to time in connection with the safeguarding of the rights and dignity of the arrestee.

It is pertinent to point out that the Criminal Procedure Code has also been amended by the Amendment Act of 2008 through which new sections 41A, 41B, 41C and 41D have been inserted to the Cr. P.C. The new sections read as follows :

41 A. Notice of appearance before police officer. — “(1) The police officer may, in all cases where the arrest of a person is not required under the provisions of sub-section (1) of section 41, issue a notice directing the person against whom a reasonable complaint has been made, or credible information has been received, or

a reasonable suspicion exists that he has committed a cognizable offence, to appear before him or at such other place as may be specified in the notice.

(2) Where such a notice is issued to any person, it shall be the duty of that person to comply with the terms of the notice.

(3) Where such person complies and continues to comply with the notice, he shall not be arrested in respect of the offence referred to in the notice unless, for reasons to be recorded, the police officer is of the opinion that he ought to be arrested.

(4) Where such person, at any time, fails to comply with the terms of the notice, it shall be lawful for the police officer to arrest him for the offence mentioned in the notice, subject to such orders as may have been passed in this behalf by a competent Court.

41B. Procedure of arrest and duties of officer making arrest. — Every police officer while making an arrest shall—

(a) bear an accurate, visible and clear identification of his name which will facilitate easy identification;

(b) prepare a memorandum of arrest which shall be—

(i) attested by at least one witness, who is a member of the family of the person arrested or a respectable member of the locality where the arrest is made;

(ii) countersigned by the person arrested; and

(c) inform the person arrested, unless the memorandum is attested by a member of his family, that he has a right to have a relative or a friend named by him to be informed of his arrest.

41C. Control room at districts. — (1) The State Government shall establish a police control room—

(a) in every district; and

(b) at State level.

(2) The State Government shall cause to be displayed on the notice board kept outside the control rooms at every district, the names and addresses of the persons arrested and the name and designation of the police officers who made the arrests.

(3) The control room at the Police Headquarters at the State level shall collect from time to time, details about the persons arrested, nature of the offence with which they are charged and maintain a database for the information of the general public.

41D. Right of arrested person to meet an advocate of his choice during interrogation. — When any person is arrested and interrogated by the police, he shall be entitled to meet an advocate of his choice during interrogation, though not throughout interrogation.”.

The Hon'ble Supreme Court had hoped that these requirements [in the DK Basu judgment] would help to curb, if not totally eliminate, the use of questionable methods during interrogation and investigation leading to custodial commission of crimes.”

Mr. Gouthaman is a respected film director and is not known to be a student leader or associated with the student movement in Tamilnadu. Mr. Tamil Iniyar is also not a student or in any manner associated with the student movement in the state.

It is pertinent however to assert and observe that every Indian citizen has a right to peacefully assemble and protest to register one's dissent when required which is a part of one's freedom of expression. This freedom of expression is more relevant to members of the media and journalists.

In October 2010, the United Nations Human Rights Council adopted a [resolution 15/21](#) in which it :

- “*Reaffirm[ed]* that everyone has the rights to freedom of peaceful assembly and of association and that no one may be compelled to belong to an association;
- *Recogniz[ed]* the importance of the rights to freedom of peaceful assembly and of association to the full enjoyment of civil and political rights, and economic, social and cultural rights;
- *Recogniz[ed]* also that the rights to freedom of peaceful assembly and of association are essential components of democracy, providing individuals with invaluable opportunities to, inter alia, express their political opinions, engage in literary and artistic pursuits; and

- *Recogniz[ed]* further that exercising the rights to freedom of peaceful assembly and of association free of restrictions, subject only to the limitations permitted by international law, in particular international human rights law, is indispensable to the full enjoyment of these rights, particularly where individuals may espouse minority or dissenting religious or political beliefs”.
- The right of peaceful assembly, as stated by the UN SR on the right to peaceful assembly and association covers not only the right to hold and to participate in a peaceful assembly but also the right to be protected from undue interference. Hence this complaint since it is alleged by the police that they were all being taken into preventive arrest to prevent them from undertaking any protest during the visit of the President of India to Loyola college on 20th December 2013. The right to peaceful assembly also includes the right to an effective remedy and accountability for human rights violations and abuses.
- It is further pertinent to point out that the Un SR on right to peaceful assembly in para 85 of his annual report 2012 has stated, ‘ National human rights institutions complying with the Paris Principles should play a role in fostering and monitoring the implementation of the rights to freedom of peaceful assembly and of association and in receiving and investigating allegations of related human rights violations and abuses. ‘

Appeal:

We, therefore, urge you to immediately take necessary steps to


- Recommend that the Home Secretary of the Government of Tamilnadu pass orders for initiating necessary disciplinary and criminal actions against the concerned police officials for misuse of official powers by violating the Human Rights of the students and media personnel – both categories of whom also fall squarely under the definition of human rights defenders; .
- Recommend that the Home Secretary of the Government of Tamilnadu to urgently pass orders to provide speedy and quality medical treatment to Mr.Tamil Inniyan in a private hospital the cost of which shall be borne by the government and recovered later from each of the erring policemen and officers;

- Recommend that the Home Secretary of the Government of Tamilnadu provide enough protection to all the victims from the erring policemen and officers to ensure that they do not directly or indirectly force, threaten or coerce them into not following up efforts to prosecute them for their illegalities and human rights violations committed – not even by exerting pressure on the college students through their respective college faculty and management;
- Recommend that the Government of Tamilnadu and for that matter all state Governments and the Government of India respect the right of its citizens to the right to freedom of assembly and expression as outlined by the United Nations and as upheld by our own Constitution under Art 19 and 21.
- Recommend that the victims in this case who are all human rights defenders are provided the competent services of a senior criminal lawyer of their choice through the Chennai District Legal Services Authority under the personal supervision of the State Legal Services Authority as well as the periodic supervision of the NHRC to ensure prosecution for the illegal arrest, cruel and inhuman treatment and torture meted out to the HRDs in this case;
- Recommend that the State Government is directed to pay an interim compensation to each of the victims, specially to Mr. Tamil Iniyar pending the completion of the enquiry in this case;
- Ensure that the proceedings in this case are not delayed and the services of the NHRC's Special Rapporteur for south zone 1 be utilised since he is in Chennai for immediately personal enquiry into the matter since it deals with HRDs of state level repute in Tamilnadu.
- Recommend to the State Government including the DGP of Tamilnadu that they have to recognise HRDs and ensure that all staff of the Government are made aware of the provisions of the UN "Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms" – which is frequently abbreviated to "The Declaration on human rights defenders".
- That the NHRC requests its own Secretary General, Dr. Parvinder Sohi Behuria, IRS to modify his letter dated 11th Dec 2013 addressed to all Chief Secretaries to include complete details of the UN "Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote

and Protect Universally Recognized Human Rights and Fundamental Freedoms 1998” – which is frequently abbreviated to “The Declaration on human rights defenders” and to remind them further of the recommendations made by the UN SR on HRDs in her report to the UN HRC after her visit to India in March 2012.

HRDA looks forward to your immediate action in this regard,

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Henri Tiphagne', with a horizontal line underneath it.

Henri Tiphagne

Honorary National Working Secretary - HRDA