



## Human Rights Defenders Alert- India

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13<sup>th</sup> July 2015

Shri A. K. Parashar

National Focal Point - Human Rights Defenders & Joint Registrar

National Human Rights Commission

Manav Adhikar Bhawan,

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New Delhi – 110 023

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Dear Sir,

**Sub: HRD Alert - India - Appeal for Action – Karnataka - Mangaluru: David D’Souza - Karnataka Social Activist President of Peoples Union of Civil Liberties - Dakshina Kannada Unit abused, tortured and killed in Police Custody by Mangaluru Rural 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 the abuse, threat and torture resulting in the death of social activist, president of PUCL-Mangaluru and human rights defender Mr. David D’Souza for defending a retired railway employee Mr. Stany Fernandez who had attempt on his life by the wife and son who were after his money.

**Source of Information on the Incident:**

- A communication to the Commissioner of Police by Stany Fernandez
- Reports from Media
- The Regional Coordinator of HRDA for South of India

- People's Union for Civil Liberties - Dakshina Kannada Unit

### **Status of the Human Rights Defenders:**

David Norbert D'Souza was the President of People's Union for Civil Liberties [PUCL] in Dakshina Kannada. Five years back he was a terror to the corrupt in the police department and many corrupt government officials, whom he exposed while helping the last and the least and the poorest of poor.

PUCL was born exactly forty years back, after emergency was declared in India by Indira Gandhi on 26<sup>th</sup> June 1975, by a few opposition leaders who were jailed. PUCL was born in Jail. Today it is one of the most powerful and reputed national human rights organisations, not only in India, but the entire world.

### **The Perpetrators:**

1. Inspector of Police Mr.Pramod Kumar of Mangaluru Rural Police Station;
2. Assistant Sub-Inspector Chandra Shekar of Mangaluru Rural Police Station;
3. Four other constables of Mangaluru Rural Police Station;
4. Cynthia Fernandez wife of Stany Fernandez.

### **Date of Incident:**

Thursday, 2<sup>nd</sup> of July 2015

### **Incident detail:**

According to sources in the Peoples Union for Civil Liberties(PUCL), Mr.Stany Fernandez, a recently retired railway employee and an active PUCL member, had a dispute with his wife and son and had been living separately after allegedly receiving threats from them.

While Mr.Stany was still employed, on 28<sup>th</sup> March 2015 at around 10.30 PM there was an attempt on his life by his wife Cynthia Fernandez and his son Stephen Fernandez along with others and he had to be treated at the Wenlock hospital at Mangalore and a complaint was filed with the police and action initiated.

Since there was attempt on his life by his wife and son and they were after his retirement benefits, he shared the incident with David D'Souza who comforted him and was living with him.

Later his wife had filed a complaint with the police seeking maintenance based on which the Police had asked Fernandez to come to the police station and he sought David D'Souza's help.

On 2<sup>nd</sup> July 2015 (Thursday), David D'Souza had gone with Stany Fernandez to defend him at the police station at 4 PM since he was asked to come and Stany's wife was also asked to come but she came only at 8 PM until that time Stany and David were waiting at the station.

After she arrived, The Assistant Sub-Inspector of Police Chandrasekhar enquired and then intimidated Stany to pay his wife but he told the police to seek details about the attempt on his life and he wanted the police to find out from his wife the reasons for the attempt on him and who were the others involved and the reasons for it.

At this time, Mr.Pramod Kumar the Inspector of Police had arrived and called all to his chamber and was gathering information regarding the dispute. David D'Souza explained regarding the attempt on Stany Fernandez by his wife Cynthia Fernandez who abused him verbally resulting in a heated argument.

Inspector Mr.Pramod Kumar then along with his constables dragged David D'Souza to another room while Stany Fernandez was kept back in the Inspector's room from where Stany could hear David D'Souza's screams for nearly 10 minutes and seeking help. Eye witnesses, say that David was pushed and pulled inside a cell. Stany the victim was not allowed to go in. David was tortured. Stany could hear his cries of anguish and in ten minutes David's lifeless body was being hurriedly taken in a car to the hospital by the police at 10 PM. But Stany was not allowed to accompany the body.

It is learnt that Stany was hungry and sought food from the police which they brought and later asked his help to locate David D'Souza's house since he was hospitalised. The police informed David's wife that since his health was not good and they had admitted David in the hospital. Later they took Stany Fernandez to Mangaluru's Indian Hospital from where he learnt that David had died.

It should also be noted that few days before Stany's retirement, an attempt was made on his life and the case was booked as an accident. But at the intervention of David the entire scenario had changed and a case for attempt to kill was booked, few corrupt police were supporting the wife, hence the clash.

The witness in this case Stany Fernandez who had accompanied David D'Souza to the police station, now fears for his life and has sought protection.

HRDA is apprehending that the local police could lodge false cases against him to harass and intimidate since he is a prime witness in this case of custodial torture and death of David D'Souza.

**Appeal:**

We, therefore urge you to immediately take necessary steps to ensure that the Commissioner of Police and the District Collector and District Magistrate of Mangaluru District -

- • Order an immediate, independent, thorough, transparent, effective and impartial judicial enquiry under provisions of Sec 176(1) (A) of the Criminal Procedure Code into the above-mentioned incident of Custodial Death of Mr. David D'Souza ;
- Take immediate action on the perpetrators, in this case Mr.Pramod Inspector of Police, The Assistant Sub-Inspector of Police Chandrasekhar and four other personnel of Mangaluru Police Station for issuing threats, intimidation, and torture resulting in the death in custody.
- Guarantee in all circumstances the physical and psychological integrity of Mr. Stany Fernandez, a witness in this case as well as member of the PUCL who is still under risk of further reprisals from the perpetrators, using all provisions of law, to ensure that the witness and defender is not harassed in future;
- Ensure provision of reparation, compensation, apology to the family of the defender for the psychological sufferings they are undergoing because of the death of David D'Souza;
- Put an end to all acts of attack and harassment and killing against all human rights defenders like Mr. David D'Souza in the district of Mangaluru, State of Karnataka and to ensure that in all circumstances they carry out their activities as defenders of human rights without any hindrances;
- Takes steps to conform to the provisions of the UN Declaration on Human Rights Defenders, adopted by the General Assembly of the United Nations on December 9, 1998, especially:

- Article 1, which states that “everyone has the right, individually and in association with others, to promote and to strive for the protection and realisation of human rights and fundamental freedoms at the national and international levels;
- Article 12.2, which provides that “the State shall take all necessary measures to ensure the protection by the competent authorities of everyone, individually and in association with others, against any violence, threats, retaliation, de facto or de jure adverse discrimination, pressure or any other arbitrary action as a consequence of his or her legitimate exercise of the rights referred to in the present Declaration”;
- Recommend urgently and speedily during the pendency of this complaint, that the SHRC in Karnataka also takes necessary steps to establish a state focal point for HRDs in order to ensure that HRDs have a new protection mechanism in their own state;
- Recommend urgently and speedily during the pendency of this complaint, that the SHRC in Karnataka convenes a meeting of all state human rights institutions in the state [women, minorities, right to information, disability, children etc.] to ensure that a coordinated strategy is developed within the State of Karnataka for the protection of the rights of human rights defenders;
- Recommend urgently and speedily during the pendency of this complaint, the State Government of Karnataka in collaboration with the NHRC Focal Point on HRDs and the SHRC Karnataka to provide sensitization training to law enforcement and security forces on the role and activities of human rights defenders as a matter of priority, with technical advice and assistance from relevant United Nations entities, NGOs and other partners;
- Recommend urgently and speedily during the pendency of this complaint, the State Government of Karnataka in collaboration with the SHRC, Karnataka to publicly acknowledge the importance and legitimacy of the work of human rights defenders, i.e. anyone who, “individually and in association with others, ... promote[s] and ... strive[s] for the protection and realization of human rights and fundamental freedoms at the national and international levels” (Art.1 of the Declaration on Human Rights Defenders);

- More generally, ensures in all circumstances the respect for human rights and fundamental freedoms in accordance with the Universal Declaration of Human Rights and with international human rights instruments ratified by India is strictly adhered to in the State of Karnataka.

That the NHRC further takes necessary steps :

i) to also inquire further if the procedures and guidelines laid down by the NHRC in its letter No.66/SG/NHRC/93 dated 14 December 1993 on reporting custodial deaths and also with reference to the letter vide No 40/3/95/LD dated 21 June 1995 has been adhered and followed to?

ii) to also inquire, if the guidelines laid by the NHRC, as per the letter addressed by the Chairperson to the Chief ministers vide letter dated 10<sup>th</sup> August, 1995 on the video filming of post-mortem examinations in cases of custodial deaths has been followed?

iii) to inquire, if the guidelines laid down by the NHRC, as per the letter addressed by the Chairperson to the Chief ministers vide letter No.NHRC/ID/PM/96/57 dated 27<sup>th</sup> March 1997.

Looking forward to your immediate action in this regard,

Yours sincerely,

Sd/-

(Henri Tiphagne)

Honorary National Working Secretary