



HUMAN RIGHTS DEFENDERS' ALERT - INDIA

NATIONAL SECRETARIAT

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August 23, 2019

To

Mr. Khaleel Ahmad

National Focal Point-Human Rights Defenders & Deputy Registrar

National Human Rights Commission

Manav Adhikar Bhawan,

Block-C, GPO Complex, INA,

New Delhi – 110 023

Email: hrd-nhrc@nic.in

Dear Sir,

Sub: HRD Alert - India - Urgent Appeal for Action – New Delhi – Travel ban and detention under Public Safety Act of Mr. Shah Faesal by Jammu & Kashmir 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 writing to express our grave concern regarding detention of Mr. Shah Faesal under Public Safety Act and not-allowing him to travel abroad.

About the Human Rights Defender:

Mr. Shah Faesal is a civil and political rights activist from state of Jammu and Kashmir. He is a doctor by profession from a remote village in Kupwara in Jammu and Kashmir. He became the first Kashmiri to top the Indian Civil Services Examination in 2009 which is a nationwide competitive examination conducted by the Indian Union Public Service Commission for recruitment to various Civil Services of the Government of India. He resigned from the Indian Administrative Service on January 9, 2019. He had attributed his decision to protest what he described as the “unabated killings in Kashmir”. In a Facebook post, he wrote against “the “marginalisation and invisibilization of around 200 million Indian Muslims at the hands of right wing Hindutva forces reducing them to second-class citizens”. In March 2019 he launched his political outfit - Jammu and Kashmir Peoples' Movement (JKPM) in the state capital Srinagar, promising a youth-oriented politics and an end to corrupt system. He also promised to

become a voice to help bridge the gap between the state and the Centre and work towards a peaceful resolution to the Kashmir issue. Since resigning from the service, Mr. Shah Faesal had been interacting with young achievers to solicit their support for his initiative of corruption-free, clean and transparent politics in the state.

Source of Information on the Incident:

- The Coordinator of HRDA for the North of India
- Media Reports

The Perpetrators:

Immigration authorities at Indira Gandhi International Airport New Delhi
Jammu and Kashmir Police

Date and Place of incident:

14 August, 2019

Indira Gandhi International Airport, New Delhi

Details of the Incident:

According to sources, on August 14, 2019, Mr Shah Faesal was scheduled to fly to Istanbul on a Turkish Airlines flight. When he reached Indira Gandhi International Airport, New Delhi early in the morning, he was detained at the airport at around 5:30 am. His detention was based on a lookout notice issued by the Jammu and Kashmir Police. It was reported that Mr Faesal was taking a connecting flight to London from Istanbul. Mr. Shah Faesal was flown back to Srinagar and taken into custody on his arrival at the Srinagar airport by Jammu and Kashmir Police at 11.30 am. According to media reports, the police detained Shah Faesal under the Public Safety Act. He was taken to a makeshift detention center at Srinagar's Centaur Hotel. According to state officials, the sections of the Act have not been invoked and the legal status of Shah Faesal is preventive custody. The Public Safety Act allows maximum detention of two years without judicial scrutiny and is only applicable in Jammu and Kashmir.

According to state officials, Mr. Shah Faesal's detention and prevention from going out of the country was initiated by his recent comments against the government's move in Kashmir. Mr. Shah Faesal, has been posting tweets and Facebook content highly critical of the government's move abrogating Article 370 that gave special status to Jammu and Kashmir, and split the state into two Union Territories J&K and Ladakh. In his Facebook post on August 7, 2019 he wrote that "Kashmir is experiencing an

unprecedented lockdown. It's entire eight million population has been incarcerated like never before".

Mr. Shah Faesal is among the last political leaders who have been placed under house arrest. Former Jammu and Kashmir chief ministers Farooq Abdullah, Omar Abdullah and Mehbooba Mufti were detained after the Centre revoked the special status and announced that the state be bifurcated into the territories of Jammu and Kashmir, and Ladakh. HRDA strongly believes that Mr. Shah Faesal's arrest and detention marks a gross violation of his basic rights and freedoms, and signifies an even bigger threat to the general state of freedom of speech and expression in India. Right "to freedom of speech and expression" guaranteed by Article 19 of Indian constitution is considered the most fundamental and most precious among all other human rights, on realization of which alone the other rights become meaningful. Recently, in the famous case relating to the Right to Privacy, a Constitution Bench of the Supreme Court of India said that the right to question, to scrutinize and to dissent which enables citizens to scrutinize the actions of the Government, is a part of the constitutional rights; that power to scrutinize and reason enables the citizens of a democratic polity to make informed decisions on the basic issues which govern their rights.

The interception of Shah Faesal at New Delhi Airport and placing him under house arrest by misusing the Public Safety Act amounts to curtailment of Right to Liberty along with Freedom of Movement as guaranteed by the International Human Rights Law and International legal standards. It is reiterated once again before this Commission that as per general comment No.35 on Article 9 of International Covenant on Civil and Political Rights (ICCPR), house arrest means to include a kind of deprivation of liberty involving more severe restriction of motion than mere interference with Liberty of Movement.

Appeal

- Immediately takes note of the urgency of the situation in Jammu and Kashmir and orders an immediate, thorough, transparent, effective and impartial investigation into the above mentioned incident of violation of the right to liberty of movement and freedom of expression of political activist and human rights defender Mr. Shah Faesal by the immigration officials at the IGI Airport, New Delhi and Jammu and Kashmir police as he is targeted solely for his human rights activities;

- Take immediate and appropriate action against those who are responsible for the illegal arrest and detention of political activist and human rights defender Mr. Shah Faesal and using all provisions of law to ensure that the defender is not subjected to any kind of torture or ill-treatment and has regular access to his family, lawyers of his choice, and adequate medical care;
- Ensures immediate and unconditional release of political activist and human rights defender Mr. Shah Faesal without any further harm or abuse for he appears to be a 'Prisoner of Conscience' who has been put under police custody for peacefully exercising his right to freedom of speech and expression and right to liberty of movement;
- Immediately drop all charges against political activist and human rights defender Mr Shah Faesal which are believed to be solely as a result of his legitimate and peaceful work in defence of human rights;
- Take all necessary measures to re-establish and guarantee the physical and psychological integrity and security of political activist and human rights defender Mr. Shah Faesal in coordination with him;
- Put an end to all acts of attack and harassment of all human rights defenders like Mr. Shah Faesal in the country to ensure that in all circumstances they carry out their legitimate human rights activities without fear of reprisals and free of all restrictions;
- Takes steps to ensure that the Government of India stops hounding and targeting rights activists with coercion and intimidation and instead creates a conducive, non-adversarial, intimidation-free environment enabling people to share, discuss and debate in a democratic spirit crucial issues of their social and political concerns;
- 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.

Looking forward to your immediate action in this regard,

Yours sincerely,



(Henri Tiphagne)

Honorary National Working Secretary