



HUMAN RIGHTS DEFENDERS' ALERT - INDIA

NATIONAL SECRETARIAT

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February 26, 2022

To

Mr. Srinivas Kamath,
National Focal Point - Human Rights Defenders & Joint 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 – West Bengal: Assault, illegal detention, arrest and custodial torture of HRDs Mr. Malay Tiwari, Mr. Rudra Prabhakar Das, Ms. Soumi Jana and other activists by West Bengal Police.

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 in to express our concern over the assault, illegal detention, arrest and custodial torture of HRDs Mr. Malay Tiwari and other activists by West Bengal Police in reprisal for their protests against recent incident of police repression.

About the Human Rights Defenders:

Mr. Malay Tiwari, Ms. Chandrasmita Chaudhury, Mr. Rudra Prabhakar Das, Mr. Soumendu Mitra, Ms. Soumi Jana, Ms. Barsha Boral and others are activists associated All India Students' Association (AISA) and other wings of CPIML (Liberation). They have participated in several protests and movements against enforced land acquisition, environmental degradation, police repression and human rights abuse.

Source of Information:

- Communication with the HRDs
- Communication with other HRDs in the region
- Media reports

The Perpetrators:

- Mr. Prabir Sasmal, Officer in Charge, Narendrapur Police Station under Baruipur Police District
- Personnel attached to Narendrapur Police Station

Date of Incident:

February 7, 2022

Place of Incident:

Police officials of Narendrapur Police Station under Baruipur police district, West Bengal

Background of the incident:

On February 01-02, 2022, social activist Mr. Saradindu Biswas put up two posts on Facebook calling for banning of all kinds of religious rituals in government-funded educational institutions, including during Saraswati Puja. The posts quoted passages from Hindu mythological texts. On February 04, 2022, Mr. Biswas received a call from the cyber cell police to remove the posts and he deleted one.

However on February 04, the police registered an FIR (no. 141/ 2022) against him under Sections 504, 505 of the Indian Penal Code. He was illegally detained and questioned at the Narendrapur Police Station for several hours the same day.

A number of civil society groups and parties such as AISA, CPIML (Liberation), and Association for Protection of Democratic Rights called for a rally condemning the police repression on Mr. Saradindu Biswas. The rally was scheduled to begin at around 5.30 PM from Kamalgazi junction located on the outskirts of Kolkata and end at Narendrapur Police Station. Activists had intimated police in advance over email that they wanted to submit a deputation to the police at the end of the rally.

Details of the Incident:

On February 7, at around 5.00 PM, when activists from AISA and other groups began assembling at the starting point of the rally, policemen in plain clothes told them the rally was not allowed. But activists said they had intimated the police about the same and continued gathering at the spot.

At around 5.30 PM, 20-22 activists including women HRDs who had assembled there began the rally. Police personnel in plain clothes present at the spot launched an assault immediately. They threatened to lodge cases of rioting against activists, baton-charged them and forcibly pushed, shoved and dragged six protesters from the spot to the Narendrapur police station located around 200 metres away. Mr. Rudra Prabhakar Das, Mr. Akash Gupta, Ms. Chandrasmita Chaudhury and three other HRDs were detained at the police station for over five hours before being released on personal bond.

Meanwhile, a large number of activists including Mr. Malay Tiwari as well as past and present students of Jadavpur University gathered in front of Narendrapur Police Station to protest against the police excess on the rally and the detention of six activists.

At around 10.30 PM, they greeted the six HRDs released from police custody on personal bond with slogans and cheers. At this, police officials started another assault of them, punching, slapping and baton-charged activists, and physically assaulting WHRDs.

When police personnel spotted Mr. Malay Tiwari recording the assault on his mobile phone, they snatched his phone and pushed him to the ground face down in the middle of road. When Ms. Chandrasmita Chaudhury tried to defend Mr. Tiwari, police assaulted and abused her.

In all, police detained 11 HRDs from the spot this time, including Mr. Malay Tiwari, Ms. Chandrasmita Chaudhury, Mr. Rudra Prabhakar Das, Ms. Soumi Jana, Ms. Barsha Boral and Mr. Soumendu Mitra. Police confiscated their mobile phones and other belongings and detained them in two separate rooms inside the police station for about half an hour.

During this time, male and female police personnel present at the police station including Officer in Charge Mr. Prabir Sasmal abused the HRDs and threatened to shoot them or register false cases under serious charges. They repeatedly kicked and slapped HRDs; pinned them to the ground; hit them with batons on their backs, chest, abdomen and legs; shoved batons in their mouths to gag them when they tried to speak; and rubbed the underside of their shoes on HRDs' cheeks.

Police, including female personnel, were particularly brutal with women HRDs. They resorted to misogynist abuses, kicked and hit the WHRDs on their chest and abdomen with lathis, asking why they had been hugging their male colleagues and if they were drug addicts. One policeman dragged WHRD Ms. Soumi Jana's legs and ordered the other to hit her between her legs.

At around 11 PM, the injured HRDs were shifted to lock-ups inside the police station premises. They complained of severe pain, swelling and blood clots on their backs, legs and faces and repeatedly requested police to take them for medical examination, but their pleas were turned down. Police also turned down pleas for medical treatment from Ms. Soumi Jana who was suffering from urinary tract infection and was in considerable pain.

At around 2 AM, police told Mr. Malay Tiwari and Mr. Chandrasmita Chaudhury that they were being released, and took them for medical examination to Baruipur Hospital. But the HRDs were not medically examined – they remained seated in the police vehicle with 4-5 policemen, while their colleagues asked staff on duty to provide them two fitness certificates, which had been filled out in advance. Mr. Tiwari and Ms. Chaudhury were brought back to Narendrapur Police Station and released at around 2.30 AM on February 8 on personal bond. The other nine HRDs were held in the lockup till the morning of February 8, 2022. Barring Ms. Soumi Jana, none were taken for medical examination.

The Police registered a case (FIR no 147/22) against the 9 HRDs, at the Narendrapur police station, claiming they were involved in assaulting police personnel and damaging a police vehicle outside the Narendrapur Police Station premises. They were charged under Sections 186, 353, 332, 333, 506, 509, 34 of the Indian Penal Code.

At around noon on February 8, they were produced in the Baruipur ACJM Court bound by a rope. Seven male HRDs were remanded in Baruipur Jail and two WHRDs were remanded in Presidency Jail. They were subsequently released following acceptance

of their bail applications but are severely traumatised, carrying injuries, and fearful for their safety.

We firmly believe that police acted with malafide intentions to target HRDs protesting peacefully against recent incidents of police repression. Policemen in plain clothes first assaulted and arrested without due procedure six HRDs from the rally condemning these incidents and registered a case against them under the Disaster Management Act. Police personnel, including the Officer In Charge of Narendrapur Police Station Mr. Prabir Sasmal then brutally assaulted, detained and arrested without due procedure and under fabricated charges those HRDs who assembled outside the police station in solidarity with the six HRDs arrested earlier.

These instances amount to a gross abuse of the HRDs' fundamental right to life and personal liberty granted by Article 21 of the Indian Constitution as well as a complete violation of their human rights as guaranteed by national and international laws.

The right to exercise freedom of speech and expression is enshrined under Article 19(a) and the right to assemble peacefully under Article 19(b) of the Indian Constitution. The Human Rights Council resolution 15/21 adopted in October 2010 reaffirms that everyone has the right to freedom of peaceful assembly free of restrictions that is subject only to the limitations permitted by international law, in particular international human rights law.

Torture is a serious violation of human rights law in national and international law. The Hon'ble Commission itself asked the State to criminalise torture. D.K.Basu vs. State of West Bengal, the Supreme Court of India called torture "one of the worst crimes in a civilised society governed by the Rule of Law."

Article 5 of the Universal Declaration of Human Rights and Article 7 of the International Covenant on Civil and Political Rights both provide that no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. Whereas Article 2 of the United Nations Convention against Torture prohibits torture, and requires state parties to take effective measures to prevent it in any territory under their jurisdiction.

Further, the Declaration on human rights defenders adopted in 1998 by the UN general Assembly was Clauses 2 and 3 of Article 12 of the declaration state: *"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. In this connection, everyone is entitled, individually and in association with others, to be protected effectively under national law in reacting against or opposing, through peaceful means, activities, and acts, including those by omission, attributable to States that result in violations of human rights and fundamental freedoms, as well as acts of violence perpetrated by groups or individuals that affect the enjoyment of human rights and fundamental freedoms."*

When HRDs like Mr. Malay Tiwari, Ms. Chandrasmita Chaudhury, Ms. Soumi Jana of others are illegally detained and arrested under fabricated charges and brutally

tortured and abused in custody in reprisal for protesting peacefully against police repression, these rights are grossly violated.

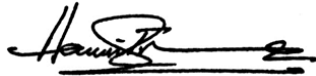
Appeal:

We thus request the Hon'ble Commission to urgently:

- Order the Director General of Police, West Bengal to initiate an urgent, independent, impartial inquiry into the assault, illegal arrest and torture of HRDs protesting against police repression using peaceful, democratic means and submit the report to the NHRC in two weeks.
- Depending on the result of the inquiry, take stern action against errant police officials and quash false charges against the HRDs.
- Provide adequate compensation to HRDs for their physical injuries and mental trauma.

Looking 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
National Working Secretary