



HUMAN RIGHTS DEFENDERS' ALERT - INDIA

NATIONAL SECRETARIAT

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To

Mr. C.S Mawri,
National Focal Point - Human Rights Defenders & Assistant 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 – Jharkhand: Illegal arrest, detention and brutal custodial torture of HRD Mr. Gulab Chonde by Jharkhand 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 to express our shock and grave concern over the illegal detention and arrest, and brutal custodial torture of HRD Mr. Gulab Chonde under fabricated charges by Jharkhand Police.

About the Human Rights Defender:

Mr. Gulab Chonde, a resident of Tuti Jharna village in Gomia block of Bokaro district in Jharkhand, is a member of the Adivasi Moolvasi Adhikar Manch, which works for upholding the land, forest and water rights of indigenous communities in Bokaro and neighbouring district of Jharkhand. Mr Chonde has participated in several meetings and programmes for protection of basic rights, and is also part of a peaceful movement against proposed coal mines and railway lines in the area.

Source of Information:

- Communication with the HRD and his family
- Communication with other HRDs in the region
- Police and court records

The Perpetrators:

- Assistant Sub Inspector Mr. Vishnu Kumar Saha, Officer In-Charge of Jageshwar Vihar Police Station
- Personnel from the Jageshwar Vihar and Jaridi Police Stations
- Personnel from CRPF, Battalion Number 26 (Rahwan Camp, Gomia).

Date of Incident:

August 5, 2020

Place of Incident:

Tuti Jharna Village, Gomia block, Bokaro district, Jharkhand

Background of the Incident:

Tuti Jharna village in Bokaro district's Maoist-insurgency affected Gomia block is located deep inside the forest. Several people in the village including Mr. Gulab Chonde, members of the Adivasi Moolvasi Adhikar Manch, are involved in organising peaceful protests against an upcoming open-cast coal mining project, illegal detentions and land, forest and water rights

Details of the incident:

On August 5, 2020, at around 2 PM, Officer In-Charge of Jageshwar Vihar Police Station and Assistant Sub Inspector Mr. Vishnu Kumar Saha, arrived at Mr. Chonde's house with 30-35 police personnel, including policemen from the Jageshwar Vihar Police Station and CRPF personnel from Battalion Number 26 (Rahwan Camp, Gomia).

They told Mr. Chonde's wife Ms. Fulmani Devi that they needed to take him to the police station for questioning and would release him after 15-20 minutes. When Ms. Fulmani asked if there was a case against her husband, they replied in the negative. Mr. Chonde was taken away in a police vehicle.

Ms. Fulmani and a few other villagers walked to the nearest Jageshwar Vihar police station located 3 km way, where policemen told them that Mr. Chonde had been taken to the Gomia police station.

The next day, on August 6, 2020, Mr. Hiralal Tudu, an activist with Adivasi Moolvasi Adhikar Manch and a resident of Tuti Jharna, went to Gomia police station at around 2 PM with a few other villagers. They asked for Mr. Chonde, but the policemen present there claimed they did not know anything regarding his whereabouts.

According to Mr. Chonde (who told us later after being out on bail in February 2021) that he was taken to the Jaridi Police Station at around 7 PM on August 5, 2020, after he was picked up from his home, and was illegally detained in the lockup till the evening of August 9, 2020.

From August 5 to August 9, 2020, he was tortured every day for around an hour in the evening at the Jaridi Police Station. He was brutally beaten with batons and lashed with metal wire several times by one policeman while others asked him to confess to his involvement in Maoist activities. However, throughout the torture Mr. Chonde denied any involvement in Maoist activities and said that he farmed in his village. The beatings and lashes from custodial torture caused blood clots and bruises, and Mr. Chonde was in pain for several days.

On August 9, 2020, after spending more than 4 days in illegal detention while being tortured at the Jaridi Police Station, Mr. Chonde was produced before the Additional Chief Judicial Magistrate, Bermo at Tenughat at his residence at around 7 pm.

Mr. Chonde was charged in an old case from August 2019. Although the FIR (7/19, Jageshwar Vihar PS) did not name Mr. Chonde, he was arrested on the basis of a confession obtained in police custody from a co-accused at Jageshwar Vihar Police Station on August 8, 2020, at 6.30 PM.

Mr. Chonde was charged under Sections 147 (rioting), 148 (rioting, armed with deadly weapon), 149 (unlawful assembly), 341 (wrongful restraint), 323 (voluntarily causing hurt), 386 (extortion), 387 (putting person in fear of death), 435 (mischief by fire/explosives), Section 17 of the Criminal Law Amendment Act, and Sections 10 (unlawful assembly) and 13 (unlawful activity) of the Unlawful Activities (Prevention) Act, and was remanded in Tenughat jail. He was refused bail in the ACJM court on August 24, 2020, and granted bail by the High Court on February 10, 2021.

It is our belief that Mr. Gulab Chonde is being targeted by the Jharkhand police as a reprisal for participating in peaceful struggles for upholding land, water and forest rights of the people. In illegally detaining Mr. Chonde from his residence without any arrest memo or warrant, without any information to his family or lawyer, the police violated multiple sections (Guidelines 2, 3, 5, 7, and 10) of the DK Basu Guidelines of arrest procedures.

Although Mr. Chonde was not named in the FIR in 2019, police arrested him on the basis a confessional statement of a co-accused recorded in Jageshwar Vihar Police Station on August 8, three days after Mr. Chonde's illegal detention.

Furthermore Mr. Chonde was made to undergo brutal torture repeatedly in police custody over four days. The policemen also did not take Mr. Chonde for a medical examination after his torture.

It is well known that torture is a serious violation of human rights law in national and international law. The Hon'ble Commission itself has repeatedly asked the Government of India to criminalise the act of torture in the country. In *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".

In 1981, the Supreme Court of India, in *Kishore Singh V. State of Rajasthan* (AIR 1981 SC 625). Said "nothing is more cowardly and unconscionable than a person in police custody being beaten up and nothing inflicts deeper wound on our constitutional culture than a state official running berserk regardless of human rights".

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.

The UN Committee against Torture (UNCAT), in the revision of the Standard Minimum Rules for the Treatment of Prisoners in 2014, states that prohibition of torture has become accepted as a matter of customary international law. The observations clearly state that restraints and immobilisation should be used as a last resort action and the duration should be for the shortest possible time (usually minutes rather than hours).

“Restraint for periods of days at a time cannot be justified and could amount to either torture or ill-treatment.”

Sections 46 and 49 of the Code of Criminal Procedure, 1973 protect those under custody from torture who are not accused of an offence punishable with death or imprisonment for life and also during escape. Whereas Section 330 and 331 of the Indian Penal Code criminalise custodial torture, and grievous hurt caused to the accused for extorting evidence.

It has further recommended the suspension of any official, whenever there are reasonable grounds to believe that the official has committed acts of torture or ill-treatment, and remain so throughout the investigation, particularly if there is any risk that the official might otherwise be in a position to repeat the alleged act or interfere with the investigation. It also recommends that persons suspected of having committed torture or ill-treatment should be prosecuted by judicial or prosecutorial authorities and, if found guilty, should be punished with appropriate sentences that are commensurate with the gravity of their acts and victims should be afforded appropriate redress.

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.

The UN Declaration on Human Rights Defenders, adopted by the General Assembly of the United Nations on December 9, 1998, 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 1). 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”. (Article 12.2)

Appeal:

HRDA urges the Hon’ble Commission to acknowledge this case of custodial torture of an HRD which only came out to our knowledge after the HRD was released on bail and immediately take urgent action against the police men who arrested and tortured Mr. Chonde. We thus urge the hon’ble Commission members to:

- Direct the Director General of Police of Jharkhand to produce all relevant documents pertaining to the arrest of Mr. Gulab Chonde for an independent examination by the NHRC –
 - arrest memo as required under Section 41B of the CrPC, including name and designation of the police officer who prepared the arrest memo

- medico-legal certificate prepared under Section 53 of the CrPC, as well as report of the medical examination conducted under Section 54 of CrPC
 - Inspection Memo prepared at the time of arrest as required under the guidelines laid down by the Supreme Court in DK Basu vs State of West Bengal [1997 (1) SCC 416], as well as the name and designation of police officer who prepared the said Inspection Memo
 - names, duty records and registers of all arresting/detaining officers and Station In-Charge on duty in the Jageshwar Vihar and Jaridi Police Stations on August 5-9, 2020
 - vehicle records and registers of the Jageshwar Vihar and Jaridi Police Stations on August 5-9, 2020
 - call data records of all arresting/detaining officers and Station In-Charge, and wireless records of the Jageshwar Vihar and Jaridi Police Stations on August 5-9, 2020
 - General Diaries, FIR and arrest registers of the Jageshwar Vihar and Jaridi Police Stations on August 5-9, 2020
 - CCTV footage from the Jageshwar Vihar and Jaridi Police Stations on August 5-9, 2020
- Based on the above documents, direct Hon'ble Commission's investigation wing to examine –
 - compliance with all the mandatory procedures on arrest and detention laid down in Sections 41 of the CrPC, and Sections 50, 50A, 51, 54, 55A, 56, 57, and 60A of the Code
 - compliance with the NHRC Guidelines on Arrest
 - whether the District Legal Services Authority was informed by the Jageshwar Vihar and Jaridi Police Stations of the arrest and detention of Mr. Gulab Chonde
 - independently record the statements of Mr. Gulab Chonde, his wife Ms. Fulmani Devi and Mr. Hiralal Tudu to establish the violation of arrest procedures and custodial torture
 - Depending upon the result of the investigation, direct the Director General of Police of Jharkhand, to take necessary disciplinary actions and institute legal proceedings under relevant IPC sections against all police officials involved in the ill-treatment, harassment, misuse of powers and violation of arrest guidelines in this case.
 - Direct the Chief Secretary of Jharkhand to provide adequate compensation to Mr. Gulab Chonde for the physical and mental trauma inflicted upon him and violation of his fundamental rights.

Looking forward to your immediate action in this regard.

Yours sincerely,



Henri Tiphagne

National Working Secretary