



HUMAN RIGHTS DEFENDERS' ALERT - INDIA

NATIONAL SECRETARIAT

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August 4, 2021

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 – Odisha: Intimidation, illegal detention and arrest of Mr. Rajendra Naik, Mr. Daulat Dhura and other HRDs over fabricated charges by Odisha Police and administrative officials

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 concern over the intimidation, illegal detention and arrest of Mr. Rajendra Naik, Mr. Daulat Dhura and other HRDs in Sundargarh district over fabricated charges by Odisha Police and administrative officials.

About the Human Rights Defenders:

Mr. Rajendra Naik, Mr. Daulat Dhura and many other residents of Hemgir block in Sundargarh district of Odisha are members of the Jan Shakti Vikas Parishad (JSVP). JSVP is a civil society group, formed in November 2020, to coordinate and spearhead peaceful protests against long-standing coal dust pollution in the area. JSVP has organised several public meetings, rallies and blockades in Hemgir block to draw attention of authorities to their plight, and has submitted complaints and representations to the Sundargarh Collector and other authorities.

Source of Information:

- Communication with the HRDs
- Communication with other HRDs in the region
- Communication with HRDA East Region Consultant
- Media reports
- Police records

The Perpetrators:

- Mr. Nikhil Pavan Kalyan, Collector, Sundargarh
- Mr. Abhimanyu Behera, Sundargarh Sadar Sub Collector

- Ms. Madhusmita Mishra, Sub Divisional Police Officer, Sundargarh Sadar
- Mr. Kulamani Patel, Additional Tehsildar, Hemgir
- Mr. Ramakant Sai, Inspector In-charge, Hemgir Police Station
- Sub Inspectors Mr. PP Jena and Mr. Sumanta Naik, Hemgir Police Station
- Inspector In Charge of Sundargarh Town Police Station

Date of Incident:

January 15 – March 16, 2021

Place of Incident:

Sundargarh district, Odisha

Background of the Incident:

Environmental clearance for the Mahanadi Coalfields Limited (MCL)-run Kulda Open Cast Mine stipulated in 2002 and 2018 that coal would have to be transported via a dedicated corridor with effective control measures.

However, coal from the mine was transported to Jindal Steel and Power Ltd and other plants in Chhattisgarh's Raigarh district in open dumper trucks through area Bankibahal-Taparia road running through several villages in Odisha's Hemgir block since the mine began functioning in 2007.

Residents of Taparia, Ratanpur and other nearby villages along the Bankibahal-Taparia road including Mr. Rajendra Naik and Mr. Natkishor Mishra alleged that the coal dust severely polluted agricultural lands and water bodies in the area. In November 2020, they formed the JSVP to raise awareness and build a campaign about coal dust pollution in the area.

The HRDs complained about the lapse in environmental clearance norms to Bhubaneswar branch of the Ministry of Environment, Forests and Climate Change (MOEFCC) in December 2019. However, in January 2021, an Expert Appraisal Committee of MOEFCC recommended the expansion of Kulda mine's capacity from 14 metric tonnes per annum to 19.6 metric tonnes per annum, and extension of mining activities for the next 30 years.

Thereafter, the JSVP launched a peaceful "do or die" agitation that included peaceful citizens rallies, sit-in protests, and road blockades to stop coal transport. They submitted memorandums to the Sundargarh Collector and other authorities pleading for their intervention.

Details of the Incident:

On January 15, 2021, JSVP submitted a memorandum to Mr. Nikhil Pavan Kalyan, Collector of Sundargarh, asking him to take steps to stop the transport of coal through villages and pay adequate compensation to victims of coal dust pollution. The memorandum stated that they would enforce a peaceful blockade from January 19, 2021, if the Collector failed to take adequate action. The Collector brushed aside their demands to halt coal transportation and urged them to call off their agitation, saying a separate road would be constructed for coal transport.

On January 19, 2021, the citizen-activists began a peaceful sit-in vigil and road blockade in Taparia village, along the Bankibahal-Taparia road used to transport coal. They set up a tent, placed barricades to halt passage of trucks and installed CCTV cameras to monitor movement in the area. Hundreds of affected villagers participated in the protest in ensuing days.

On January 20, 2021, Mr. Ghanshyam Dalmia, an influential truck owner associated with the local truck owners' association who was jailed earlier in an illegal mining case visited the protest site with 15-20 goons. He alleged that the protestors were working at the behest of his rival transporter, and threatened them to lift the blockade or face consequences.

On January 27, 2021, Mr. Dibya Singh Behera, a transporting supervisor, filed a complaint in Hemgir Police Station accusing Mr. Naik and others of halting coal transport. Police registered an FIR (Case no. 153/21) against Mr. Naik and others based on his complaint under Sections 341 (wrongful restraint), 294 (utterance of obscene words in public place), 307 (attempt to murder), 323 (voluntarily causing hurt), 506 (criminal intimidation), 34 (act with common intention) of the Indian Penal Code.

Various administrative officials, including Sundargarh Collector Mr. Nikhil Pavan Kalyan and Sadar Sub Collector Mr. Abhimanyu Behera, visited the protest site between January 26 and February 13, 2021. They urged protestors to lift the blockade instead of probing their complaints regarding rampant violation of environmental norms.

One of these meetings where the Sadar Sub Collector Mr. Abhimanyu Behera was present was also attended by senior management personnel from the MCL and Jindal Power, whose plant is fed by coal from the Kulda mine. The company officials claimed in the presence of the Sub Collector that a special coal corridor was in place to transport coal, however, they failed to provide any answers when the HRDs asked them to show the same.

On February 14, 2021, at around 7 AM, Sub Inspector Mr. PP Jena of Hemgir Police Station and the Inspector In-charge of Sundargarh Town Police Station visited Mr. Naik's house with 15 police personnel in two police vehicles. They asked Mr. Naik to accompany them to Hemgir Police Station to discuss a few things about the protest, but did not show him any memo or notice for the same. He was not allowed to leave the police station premises and illegally detained for over 10 hours thereafter.

Meanwhile, on February 14, 2021, itself at 8 AM, the Sub Collector Mr. Behera, along with the Hemgir Inspector In-charge Mr. Ramakant Sai, and the Sundargarh Sadar Sub Divisional Police Officer Ms. Madhusmita Mishra visited the protest spot in Tapariya with the Inspector In-charges of 2-3 Police Stations. They were accompanied by 4 platoons of ITBP and several police personnel, including female police personnel, who arrived in four buses.

The Sub Collector showed the HRDs an order declaring Section 144 in the area, and said they had 15 minutes to remove the tent and leave. He then kicked a pot of food being cooked for protestors at the site and snatched the mobile phones from HRDs who tried to film the proceedings. Police and security personnel disconnected CCTV

cameras set up by JSVP, broke the computer connected with CCTVs, manhandled HRDs including women and seized their tent. They detained around 150 protestors from the site and took them to Hemgir Police Station in buses.

All the 150 HRDs were illegally detained at Hemgir police station, along with Mr. Naik, for over 10 hours. At around 6 PM, police informed the HRDs that 16 of them including Mr. Naik were being arrested, but did not show them any arrest warrant or seizure memo in violation of DK Basu guidelines. Mr. Naik and others were presented before the Sundargarh Magistrate at around 9 PM that day and remanded in Sundargarh jail. They were released on bail six days later, on February 19, 2021.

On March 11, 2021, a public holiday on account of Shivratri, the Collector issued a notification stating coal transport could resume. Mr. Naik, Mr. Dhura and other JSVP members re-started the blockade at Tapariya, Ratanpur and a few other spots by lying down on the road. While goons accompanying loaded coal trucks threatened to drive over HRDs, police personnel at the spot threatened to take action against them for contempt of court. When the HRDs said they were protesting against the Collector not involving them in any dialogue contrary to court orders, Hemgir police station officials who were present at the spot threatened to arrest them, and said if they were sent to jail another time, they would find it difficult to get out.

On March 13, 2021, Mr. Ajay Kumar Dash, a member of the local truck owners' association filed a complaint regarding the March 11, 2021, blockade. Police registered an FIR (Case no 421/21) against Mr. Naik and others on the basis of his complaint under Sections 141 (use of criminal force), 341 (wrongful restraint), 294 (utterance of obscene words in public place), 395 (dacoity), 307 (attempt to murder), 511 (offences punishable with imprisonment for life or other imprisonment), 188 (disobedience to public servant's order), 506 (criminal intimidation), 149 (unlawful assembly) of the Indian Penal Code.

On March 15, 2021, police registered another FIR (Case no 425/21) against the HRDs on basis of a complaint by Sub Inspector Mr. Bangi under Sections 147 (rioting), 148 (rioting with deadly weapon), 341 (wrongful restraint), 338 (causing grievous hurt), 353 (assault or criminal force to deter public servant), 188 (disobedience to public servant's order), 506 (criminal intimidation), 149 (unlawful assembly) of the Indian Penal Code.

On March 15, 2021, at around 9 AM, a large contingent of security personnel including the Additional Tehsildar of Hemgir Mr. Kulamani Patel and the SDPO of Sundargarh Sadar Ms. Mishra and several women police personnel reached the Kandadhuda protest site. They detained around 60 HRDs, including 17 minor children and several women, from the spot and took them to Hemgir Police Station. Among them, 24 HRDs including 12 women were arrested at around 6 PM and forwarded to Sundargarh court, whereas the rest were detained in the police station overnight.

On March 16, 2021, several HRDs gheraoed the Hemgir Police Station demanding release of HRDs, mostly women and minor children, detained overnight at the police station. While police let off 26 HRDs after 30 hours of illegal detention with notices, they arrested one HRD who was protesting outside the police station. All the accused HRDs were presented before the Sundargarh Magistrate, remanded in Sundargarh jail, and released on bail two weeks later.

It is our firm belief that Mr. Naik and other HRDs were framed by the police and the administration in fabricated cases, intimidated, illegally detained and imprisoned in reprisal for their opposition to illegal transport of coal through villages.

Threats and complaints lodged against protestors by the transporters and police personnel; the Collector's dismissal of the HRDs' memorandum; the involvement of the Collector, Sub Collector and the SDPO and senior police officers in intimidating and threatening the HRDs with arrest and vandalising the protest site; the illegal detention of HRDs including women and children indicate the extensive abuse of its powers by the police and local administration.

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).

If HRDs like Mr. Naik, Mr Dhura and others are repeatedly harassed, intimidated and subjected to arrests and reprisals for raising the issue of pollution from coal transport, these rights are grossly violated. Since health hazards from exposure to coal dust include life-threatening ailments like tuberculosis and respiratory illnesses, the protest by the HRDs was directed at protecting the health and well-being of the local community.

Appeal:

HRDA urges the Hon'ble Commission to immediately take urgent action through the powers enshrined by the Protection of Human Rights Act, 1993, and –

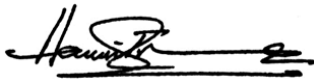
- Initiate an immediate, independent, thorough, transparent, effective and impartial investigation through its investigative wing into reprisals and violation of DK Basu guidelines against Mr. Naik and other HRDs of Jan Shakti Vikas Parishad by Odisha police officials.
- Direct the investigation division of the Hon'ble Commission to independently assess the incident of police excesses on peacefully protesting citizens and

also assess if due processes were followed for transportation of coal as per the law.

- Depending on the result of the inquiry, direct the Director General of Police of Odisha to take stern action against those police officials guilty of misuse of law, possibility of collusion, issuing threats, illegal detention and arrest under fabricated charge.
- Direct the Director General of Police of Odisha to immediately take measures to ensure legal actions are not proceeded against the HRDs and peaceful protestors for exercising their right to peaceful protest.
- Direct the Government of India and the Government of Odisha to take immediate cognizance of the issues raised by the villagers and not proceed in any manner without due and proper consultation with the villagers as also required under provisions of law.
- Direct the Director General of Police of Odisha to ensure the safety of Mr. Naik and other HRDs who are being harassed by the police and administration for raising issues affecting the health of their community.

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