



HUMAN RIGHTS DEFENDERS' ALERT - INDIA

NATIONAL SECRETARIAT

No.32, Besant Road, Chokkikulam, Madurai - 625 002, Tamil Nadu, India.
P: +91-452-2531874 & 2539520 Fax: +91-452- 2531874 Mobile: 99943-68540
E.mail: hrda.india@gmail.com Web: www.hrdaindia.org

Ref No: HRDA/North/DL/08/06/2019

June 18, 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-Delhi: In the matter of – Illegal arrest and detention of journalist Prakash Kanojia for sharing a video on social media- 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 over the illegal arrest and detention of a Delhi based journalist and human rights defender Prakash Kanojia for sharing a video on social media with a caption "*Ishq Chupaye nahin Chupta Yogi ji*" wherein a woman is seen speaking to reporters of various media organisations claiming that she had sent a marriage proposal to the chief minister of Uttar Pradesh.

About the Human Rights Defender

Prakash Kanojia is based in Delhi and is 26 years old. He is a freelance Hindi journalist and writer who has earlier worked with reputed media agencies. He has reported on serious issues concerning human rights and crucial social and political issues such as farmer's struggle, Dalit rights and caste and communalism in Uttar Pradesh.

Source of Information on the Incident:

- Communication with friends of Prakash Kanojia
- Media Reports

The Perpetrators:

Station House Officer, Hazratganj Police, Lucknow, Uttar Pradesh

Date and Place of incident:

June 8, 2019, Vinod Nagar, New Delhi

Details of the Incident:

On June 5, 2019, around 5 pm, a woman addressed a group of journalists in Lucknow claiming to be in love with the UP Chief Minister Mr. Yogi Adityanath and also claimed that she had been in regular contact with him over video conferencing in the past year. She said that she had brought a letter and wanted to meet him face to face. A video clip of this was uploaded on YouTube and some other portals by the next day and these posts are still accessible. On June 6 and 7, 2019, reputed newspapers including Nabharat Times and Jagran carried reports regarding this video and quoted the lady almost verbatim.

On June 6, 2019, Prashant Kanojia shared on his twitter account the above said video which had already flashed in news a day earlier and had captioned it saying “*Ishq Chupaye nahin Chupta Yogi ji*”. It is pointed out that this was merely tweeting a news item which was already in the public eye with a humorous remark.

On June 7, 2019, FIR no. 290/2019, was lodged against Prakash Kanojia by Hazratganj Police Station, Lucknow, alleging offences under Section 500 of the Indian Penal Code (IPC) and 66 of Information Technology Act (IT Act). It is pertinent to mention here that both the sections of the IPC and IT Act are bailable. Section 500 of the IPC cannot even be entertained by a court unless the person defamed complains or in certain cases a designated person on his behalf makes the complaint (Section 199 of Criminal Procedure Code).

On June 8, 2019, some inquiries were made against Prakash Kanojia by unidentified men from his friend Amit Visen, a journalist with online portal Newslick. Soon

thereafter, in the noon, some unidentified men in civil dress, who were in a car (Toyota Innova) picked up Prashant Kanojia when he had gone out of his house in Vinod Nagar, New Delhi. The unidentified men had briefly allowed Prakash to go up to his house but had prepared no arrest memo nor they informed Prakash or his wife as to who they were, why and where they were taking him. At this point Prakash had no access to legal assistance, which is in complete violation of Article 22 of the Constitution of India, Chapter V CrPC and DK Basu Guidelines.

An hour later, a friend of Prashant - Puneet managed to call him on his cell phone through which it was known that the unidentified men who had taken him were from the Uttar Pradesh police and at that point they were passing through Greater Noida.

In the evening around 6 pm on June 8, 2019, Hazratganj police station issued a press note stating that Prashant Kanojia had been arrested for an inappropriate comment on social media that was objectionable and defamed the Chief Minister of Uttar Pradesh and that upon "stern questioning" Prashant had confessed to the crime and was hence being prosecuted under section 67 IT Act and sections 500 and 505 of IPC.

On June 10, 2019, a Habeus Corpus Petition was filed by the wife of Prashant Kanojia in the Supreme Court of India which led to an order of immediate release on bail on June 11, 2018.

It is pointed out to the Hon'ble Commission that the present case once again reinforces that how the State through its agencies are carrying out repressive actions against dissenting voices - in the present case Prashant Kanojia who is being hounded for his past work and presently for uploading the above said social media post which was already in public domain and was just shared by him with a pun.

This is yet again a glaring example of high handedness, excess, arbitrary and authoritarian misuse of laws by the Hazratganj police. The FIR against Kanojia had been filed under Sections 500 of the Indian Penal Code and 66 of the Information Technology Act, both of which are bailable offences. Further there are procedural lapses on part of the police as there was no arrest memo being prepared in the case nor was Prashant presented before the Magistrate in time. Also two sections

were later added in the original FIR as an afterthought. The sections were 505 of the Indian Penal Code and 67 of the IT Act which were not even prima – facie made out to warrant arrest without due process which just sows reprisal and malice on behalf of the State. Also, misuse of law in this specific case, goes way beyond criminal defamation as many IT Act and IPC provisions have been invoked in what looks like a motivated and vindictive action.

It is further stated that Prashant's alleged post on its face value constitutes no criminal offence and it is an unwarranted assault on the free speech and the right to life as guaranteed by the Constitution of India. This is a substantive violation of a citizen's Fundamental Right." Further posting a video clip which is already in the public domain and has been carried as a news item in major media outlets is no offence. Furthermore, to add a comment by way of a hackneyed one liner "love cannot be hidden" is hardly defamatory or a crime warranting police action.

Further globally, journalists who are human rights defenders as well face major risks as a result of their work. Governments and other powerful actors, seeking to escape scrutiny and stifle dissent, often respond to critical reporting or activism with attempts to silence them. Threats, surveillance, attacks, arbitrary arrest and detention, and, in the most grave cases, enforced disappearance or killings, are too often the cost of reporting the truth. The protection of journalists and human rights defenders, and ending impunity for attacks against them, is a global priority for safeguarding freedom of expression. States are under an obligation to prevent, protect against, and prosecute attacks against journalists and human rights defenders. Creating a safe and enabling environment for their work necessitates legal reform, the creation of special protection mechanisms, and protocols to guide effective investigations and prosecutions where attacks occur. A free press and active civil society are essential to ensure the public's right to know, so that governments and institutions can be held accountable.

Appeal:

- Order an immediate, thorough, transparent, effective, timebound and impartial investigation into the above-mentioned events of illegal arrest and detention of Prashant Kanojia;

- Based on an independent investigation, ensure actions against the officials of the Uttar Pradesh for misusing provisions of laws in this case;
- Guarantee in all circumstances the physical and psychological integrity of Prashant Kanojia, who is still under risk of further reprisals from the perpetrators and provide a re-assurance of not engaging in such acts;
- Ensure provision of reparation, compensation, apology to Prashant Kanojia for the psychological sufferings he and his family is undergoing because of the threats and intimidations and give this assurance to the NHRC of India in writing immediately and urgently;
- More generally, ensures in all circumstances the respect for human rights and fundamental freedoms in accordance with the Universal Declaration of Human Rights and International Human Rights Instruments ratified by India.

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

Mr. Justice S. Rafat Alam,
U.P State Human Rights Commission,
TC-34 V-1, Vibhuti Khand,
Gomti Nagar,
Lucknow.
E-mail: uphrclko@yahoo.co.in

Mr. David Kaye

Special Rapporteur on the promotion and protection of the right to freedom of
opinion and expression
Palais des Nations
CH-1211 Geneva 10
Switzerland
Fax: +41 22 917 9006
Email: freedex@ohchr.org

Mr. Michel Forst

Special Rapporteur on the situation of human rights defenders,
c/o Office of the High Commissioner for Human Rights Defenders – Palais Wilson
United Nations Office at Geneva
CH 1211 Geneva 10
Switzerland
Email: urgent-action@ohchr.org defenders@ohchr.org hrd-ra@ohchr.org