



HUMAN RIGHTS DEFENDERS' ALERT - INDIA

NATIONAL SECRETARIAT

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HRDA/UA/EAST/CGH/02/06/2024

June 17, 2024

To,

Mr. Indrajeet Kumar,
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 – Urgent Appeal for Action – Uttar Pradesh- Misuse of law and non-compliance with mandatory procedures to falsely implicate and harass pregnant WHRD by Uttar Pradesh ATS, resulting in her miscarriage.

Greetings from Human Rights Defenders Alert!

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 the illegal arrest of WHRD Ms. Anita Kushwaha who was 5 months pregnant at the time of arrest. All mandatory procedures of arrest as set out in the Criminal Procedure Code (Cr.P.C), National Human Rights Commission's (NHRC) arrest guidelines and relevant judgements of the Supreme Court were violated by the UP ATS. And the mental and physical trauma suffered by her resulted in the miscarriage of her unborn baby. Fabricated cases were put on her and she is still imprisoned in Lucknow jail

About the Human Rights Defender:

HRD Anita Kushwaha 36, used to live in Raipur. After marriage, Anita settled in Brijesh's village, Salempur, in Deoria Uttar Pradesh. Besides farming, she also had a small shop for sewing bags for livelihood. In addition to this, she worked to educate and organize women, especially Dalit women, in villages around Deoria through the

Savitribai Phule platform. After the farmers' movement, Anita, along with her husband Brijesh, started organizing farmers with the United Farmers Front. Last year, after becoming pregnant, she went to her parents' home in Raipur.

Source of Information:

- Communication with HRDA Regional Co-ordinator
- Communication with other HRDs in the region

The Perpetrators:

- ATS Uttar Pradesh
- Uttar Pradesh Police

Date of Incident:

October 18, 2023

Place of Incident:

House of HRD, Raipur Chhattisgarh.

Details of the Incident:

When Ms. Anita was five months pregnant. She went to live with her parents at Raipur Chhattisgarh.

On October 18, 2023, she was picked up by Anti-Terrorism Squad Uttar Pradesh from HRD's residence. Her family was not informed about HRD Anita Kushwaha's arrest. She was deliberately forced to travel so long distance by train and jeeps while she was advised bed rest by her doctor. As a result, her health deteriorated in Lucknow jail, and despite submitting numerous petitions, the jail administration did not make proper arrangements for her treatment. On December 09, 2023 she suffered a miscarriage.

She was implicated in false cases under sections - 120 B, 121 A, 419,420,467,468,471 IPC and 13,18,38 Unlawful Activities (Prevention) Act. She suffered mental trauma and still in Lucknow jail.

We believe that Ms. Anita was illegally arrested and harassed both due to her work as a WHRD and being the wife of HRD Brijesh Kushwaha who was also arrested and accused falsely and is imprisoned in Lucknow jail. Her arrest was in complete violation of the honourable Supreme Court's DK Basu Guidelines of arrest and detention.

According to the DK Basu guidelines, every police officer making an arrest has to prepare an Arrest Memo that records details of the arrest.

The arrest memo must contain:

1. The signature of at least one witness, who can be a relative of the arrestee or a respectable person of the locality where the arrest is made.
2. Time, date, and place of the arrest. The arrested person should sign the arrest memo after it is properly prepared. The police must also contact and inform the relative/friend of the time and place of arrest, and the exact location where the arrested person is detained, at the earliest.
 - If the relative/friend is in a different district/city, the concerned police station should be informed by telegraph within 8-12 hours of the arrest and then convey the information to the relative/friend.
 - The information of the arrest should also be sent through the district legal aid committee.

The police must enter the details of every arrest made in the police station daily diary. The diary entry must include the name of the relative/friend who was informed about the arrest. The diary entry must state the name of the police officer in whose custody the arrested person is detained.

Section 41B, CrPC, requires every police officer to prepare, an arrest memo at the time of arrest which is to be attested by at least one witness and countersigned by the arrested person, and inform one family member of the arrest. It appears these procedures have not been followed. Section 54, CrPC, further mandates medical examination of every arrested person soon after an arrest. It prima facie appears that none of the above were followed in the case.

Section 50A, CrPC states that a relative or friend should be informed about the arrest and the place of detention. It is the duty of the police to inform the arrested person of this right, and also to inform the relative or friend about the arrest. This information should be entered in a designated register at the police station.

Violations of the DK Basu guidelines of arrest and of the CrPC must amount to an illegal abduction of the HRD by the police.

It is a gross abuse of Article 19(b) and Article 21 of the Indian Constitution, Indian laws, Constitution of India and the fundamental right to life and personal liberty. Every person has a the right to life and liberty enshrined under Article 21 of Indian Constitution 1950, Article 3 of Universal Declaration of Human Rights 1948, Article 6 of International covenant on civil and political rights, 1966. The Right to life includes right against arbitrary arrest or detention.

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.*"

Furthermore, in the apex court judgement of **R.D. Updahyay v. State of Andhra Pradesh [(1996) 3 SCC 422]** concerning the arrest of a pregnant woman, the court has laid down a number of guidelines. The court has stated as follows:

- Before sending a woman who is pregnant to a jail, the concerned authorities must ensure that jail in question has the basic minimum facilities for child delivery as well as for providing pre- natal and post-natal care for both, the mother and the child.
- When a woman prisoner is found or suspected to be pregnant at the time of her admission or at any time thereafter, the lady Medical Officer shall report the fact to the superintendent. As soon as possible, arrangement shall be made to get such prisoner medically examined at the female wing of the District Government Hospital for ascertaining the state of her health, pregnancy, duration of pregnancy, probable date of delivery and so on. After ascertaining the necessary particulars, a report shall be sent to the Inspector General of Prisons,

stating the date of admission, term of sentence, date of release, duration of pregnancy, possible date of delivery and so on.

- Gynaecological examination of female prisoners shall be performed in the District Government Hospital. Proper pre-natal and post-natal care shall be provided to the prisoner as per medical advice.

It is extremely regretful that due to the negligence of police officials in transferring the WHRD and the absence of medical facilities in jail, the WHRD lost her unborn baby.

Appeal:

We urge the Hon'ble Commission to take cognisance of the above case and urgently:

- Issue notice to the Director General of ATS Uttar Pradesh to produce within 48 hours all relevant documents pertaining to the arrest of Ms. Anita Kushwaha 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 police station on the relevant dates
 - General Diaries, FIR and arrest registers of police station Ms. Kushwaha was taken to.
- Examine compliance with all the mandatory procedures on arrest and detention laid down in Sections 41 of the CrPC, particularly with Sections 41A (prior to the invoking of the provisions of the UAPA), 41B and 41D, and Sections 50, 50A, 51, 54, 55A, 56, 57, and 60A of the Code were followed by the police.
 - Examine compliance with the NHRC Guidelines on Arrest.

- Examine whether the District Legal Services Authority was informed by the ATS of the arrests and detention.
- Examine whether women police were at the place of arrest and in police stations.
- Examine the orders given by the Judicial Magistrates on remand/detention.
- Direct the Director General of Investigation of the NHRC to initiate a transparent, independent inquiry in the illegal arrest of Ms. Anita Kushwaha and the negligence in her transport and facilities resulting in her miscarriage and submit the report to NHRC within four weeks.
- Direct the Director General of ATS Uttar Pradesh to initiate an independent and urgent inquiry into the implicating her in fabricated cases and submit a report to the NHRC within two weeks.
- On the basis of the investigation, direct the Director General of Police of Uttar Pradesh and ATS chief Uttar Pradesh to take urgent action against the officials who were responsible for the illegal arrest of Anita Kushwaha.
- Direct the Director General of the Police of Uttar Pradesh to ensure the complete physical and psychological safety of the HRD and her family and assure the NHRC of the same actions within one week.

We hope to hear from you soon,

Yours Sincerely,



(Henri Tiphagne)

National Working Secretary