



HUMAN RIGHTS DEFENDERS' ALERT - INDIA

NATIONAL SECRETARIAT

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March 30, 2022

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 -India – Urgent Appeal for Action – Bihar: Illegal detention, arrest and fabricated charges against HRDs Mr. Santosh Thakur, Ms. Deepa Devi and others by Bihar 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 concern over the illegal detention, arrest and fabricated charges against HRDs Mr. Santosh Thakur, Ms. Deepa Devi and others by Bihar Police.

About the Human Rights Defenders:

Mr. Santosh Thakur, Mr. Shivshankar Sanhi, Ms. Madina Khatun and Ms. Deepa Devi are activists of Gram Vichar Manch, an organisation focussed on protecting the rights and interests of MGNREGA (Mahatma Gandhi National Rural Employment Guarantee Act) workers in Muzaffarpur district of Bihar. They have organised and participated in numerous peaceful rallies, demonstrations and meetings regarding corruption and delays in payment in MGNREGA. They have also met and sought the intervention of various government officials regarding these issues.

Source of Information:

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

The Perpetrators:

- Mr. Sashi Bhusan Kumar, Station House Officer, Mushahari Police Station
- Other personnel attached to Mushahari Police Station

- Mr. Sushil Kumar Paswan, MGNREGA Rojgar Sevak, Dumri panchayat (complainant in FIR 80/ 2022)

Date of Incident:

March 17-20, 2022

Place of Incident:

Muzaffarpur district, Bihar

Background of the Incident:

On March 15, 2022, Gram Vichar Manch (GVM) organised a peaceful demonstration demanding work under the MGNREGA and payment of pending wages and unemployment allowances in front of the NREGA Bhavan in Mushahari block. The demonstration began at around 11.30 AM, and was attended by over 500 workers and activists, including Mr. Santosh Thakur, Mr. Shivshankar Sanhi and Ms. Madina Khatun. Whereas, Ms. Deepa Devi who works as a village resource person in the Jeevika (Bihar Rural Livelihoods Project) was attending a training at the NREGA Bhavan and was not part of the demonstration.

Participants allege that Mr. Sushil Kumar Paswan, NREGA Rojgar Sevak of Dumri panchayat who had denied workers' pleas for payment of pending wages in the preceding months, abused and threatened Ms. Majina Khatun and some other women present in the gathering. However, the situation was diffused by the timely intervention of Mr. Sanjay Kumar, NREGA Programme Officer of Mushahari block, who gave a patient hearing to workers' complaints and demands.

In all, 530 MGNREGA workers from Dumri and Manika Vishanpurchand panchayats submitted written applications enlisting their demands, which were received and stamped by the Mr. Kumar. No untoward incident occurred during this process, and participants left for their respective homes thereafter.

Details of the Incident:

On March 17, 2022, Mr. Sushil Kumar Paswan, submitted a written complaint at the Mushahari Police Station. In the complaint, he claimed that when he visited the NREGA Bhavan in Mushahari on March 15, 2022, for a weekly meeting, Mr. Santosh Thakur, Mr. Shiv Shankar Sahni, Ms. Madina Khatun, Ms. Deepa Devi and 400 other unidentified men and women captured and assaulted him. He claimed the assailants destroyed the MGNREGA muster roll and snatched his gold chain, wrist watch, laptop, mobile phone, whereas Mr. Santosh Thakur abused him using casteist slurs and threatened to kill him.

On March 18, 2022, police registered an FIR (80/2022) against Mr. Santosh Thakur and others at the Mushahari Police Station on the orders of Station House Officer Mr. Sashi Bhusan Kumar. The accused were booked under Sections 147 (rioting), 149 (unlawful assembly with common object), 341 (wrongful restraint), 323 (voluntarily causing hurt), 379 (theft), 427 (mischief causing loss of Rs 50 or above), 504 (intentional insult with intent to provoke breach of the peace), 506 (criminal intimidation) of the Indian Penal Code and Section 3(1) of the SC/ST Prevention of Atrocities Act. Sub Inspector Mr. Ram Charitra Das was designated Investigating Officer in the case.

On March 20, 2022, at around 11.45 PM, around 20 uniformed police personnel (all men) led by the Mushahari police station Station House Officer Mr. Sashi Bhusan Kumar arrived at Mr. Santosh Thakur's residence in two vehicles. They barged into Mr. Thakur's house and asked him to accompany them to the police station without providing any reason. When Mr. Thakur and his wife Ms. Pinki Devi asked if there was a case against him and if he was being arrested, they did not provide any answer. Instead, four policemen caught hold of Mr. Thakur and carried him into one of the vehicles, and both vehicles left from the spot with the police personnel.

The police team, which did not have any female personnel, then visited the residence of Ms. Deepa Devi shortly after midnight. They similarly captured and carried Ms. Devi into the police vehicle, following which they were taken to Mushahari police station and detained overnight.

On March 21, 2022, at around noon, Mr. Thakur and Ms. Devi were produced before Mr. Puneet Kumar Garg, Additional District & Sessions Judge, Muzaffarpur cum Exclusive Special Court of SC/ST (P.O.A) Act, following which they were remanded in judicial custody.

Mr. Thakur and Ms. Devi were granted bail on March 24, 2022, and released on March 27. They and other named accused fear they might be implicated in other fabricated cases and arrested.

We firmly believe that the arrest of HRDs was an abuse of power by the Bihar police to target those protesting the non-payment of wages and demanding work under the MGNREGA.

The arrests of the HRDs were illegal and violated multiple DK Basu guidelines of arrest. While the police claimed the HRDs were arrested from their residence on the evening of March 20, 2022, as per due procedure, the HRDs were not informed formally of their arrest, not shown any arrest memo, not allowed to inform their family and not provided access to lawyers.

Ms Deepa Devi was picked up from her house at night without any female policewoman present, in violation of guidelines of the honourable NHRC, which says that women policemen should arrest women and Section 46 (4) of Code of Criminal Procedure, which enumerates that a woman shall not be arrested after sunset and before sunrise "save in exceptional circumstances", and such arrest shall be made by women police officers and after obtaining written permission from the local judicial magistrate first class.

Furthermore, while Mr. Sushil Paswan abused WHRDs during the demonstration on March 15, 2022, he submitted a false complaint two days later claiming that activists and workers assaulted him. He failed to provide any medical report confirming the assault.

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

The right to assemble peacefully is enshrined 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.

A peaceful assembly is also protected under the Article 21 of the International Covenant on Civil and Political Rights (ICCPR). According to the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Mr. Clément Nyaletsossi Voule, *"states and their law enforcement agencies and officials are obligated under international law to respect and protect, without discrimination, the rights of all those who participate in assemblies, as well as monitors and bystanders."*

Further, Article 12 of the Declaration on human rights defenders adopted by consensus by the General Assembly in 1998 state: *"(2) 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. (3) 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."*

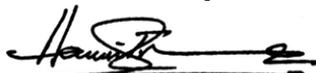
Appeal:

We thus request the Hon'ble Commission to urgently:

- Direct the Director General of Police, Bihar, to initiate an independent inquiry into the fabricated charges against HRDs and their illegal and arbitrary detention and arrest by the Bihar Police, and submit a report to the NHRC.
- Depending on the result of the inquiry, take stern action against errant police and government officials who misused provisions of law and framed the HRDs and illegally detained and arrested them.
- Ensure that MGNREGA activists in the state of Bihar and elsewhere are allowed to assemble peacefully and carry out their human rights work as per the fundamental rights enshrined in the Indian Constitution.

Looking forward to your immediate action in this regard.

Yours sincerely,



Henri Tiphagne
National Working Secretary