



HUMAN RIGHTS DEFENDERS' ALERT - INDIA

NATIONAL SECRETARIAT

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September 10, 2021

To,
Mr. C S Mawri,
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 – Tamil Nadu: Human rights defenders arrested for a Facebook post calling for a peaceful protest.

Greetings from Human Rights Defenders Alert - India!

HRD Alert - India is a forum of Human Rights Defenders for Human Rights Defenders. It endeavors 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 arrest of human rights defenders Mr. Gandhi and Mr. Marimuthu for posting a call on Facebook to raise black flags as a peaceful protest during the visit of the President of India to Tamil Nadu.

Source of Information:

- Communication with the HRDs in the region
- Media Reports

Date of Incident:

August 01, 2021

Place of Incident:

Madurai City, Tamil Nadu

The Perpetrators:

Koodal Pudur Police

About the Human Rights Defenders:

Mr. Gandhi (son of Mr. Kottai Samy) and Mr. Marimuthu (son of Mr. Kamatchi) are human rights defenders belonging to Elu Tamilar Vitutalai Katchi, a movement relating to anti-torture, linguistic rights, and minority rights in Tamil Nadu.

Background of the Case:

In September 2018, the Tamil Nadu State Cabinet recommended the release of seven persons who were convicted for their role in the assassination of former Prime Minister Rajiv Gandhi in May 1991.

The Tamil Nadu State Cabinet passed a unanimous resolution for the release of the seven convicts which was sent to Governor Banwarilal Purohit for his assent. In February 2021, Governor Purohit, who had refrained from taking a call, finally said that the President was the competent authority to decide on the resolution.

In the present circumstances of the Covid-19 pandemic, the Tamil Nadu Chief Minister Mr. MK Stalin asked President Mr. Ram Nath Kovind to remit the life sentence of seven convicts and to direct their immediate release.

Details of the Incident:

On August 01, 2021, in a Facebook post, Mr. Gandhi, a co-ordinator of Elu Tamilar Vitutalai Katchi, called for raising black flags and holding a silent protest on August 02, 2021, during the visit of the President of India as a special guest to celebrate the centenary year of the legislative assembly in the state of Tamil Nadu.

On August 01, 2021, at about 9:15 am, three policemen from Koodal Pudur police station went to the homes of Mr. Gandhi and Mr. Marimuthu, another functionary of the movement and arrested them without any arrest warrant or arrest memo and brought them to the Koodal Pudur police station. At about 10 am, an FIR (FIR No. 412) was filed by Mr. Senthil Kumar, under Section 151 (Arrest to prevent the commission of cognizable offences), Criminal Law Amendment Act 193 under section 7(1) (a) (with intent to cause any person to abstain from doing or to do any act which such person has a right to do). The HRDs were produced before a judicial magistrate in the evening and were sent to the Madurai jail. They were granted bail on the August 08, 2021.

We believe that this FIR against Mr. Gandhi and Mr. Marimuthu is completely arbitrary, illegal, and a serious violation of the constitutionally guaranteed right to free assembly and expression by the Tamil Nadu police. There was also violations of the DK Basu guidelines wherein no arrest warrant or memo was shown before arresting the accused.

The Indian Constitution gives its citizens the right to peaceful protest. It's a breach of Article 19 (1) (a) and (b) of the Indian Constitution which guarantees to all its citizens the right to freedom of speech, assembly and expression.

The Supreme Court in *Shreya Singhal v. State* (2015) had observed that there are three concepts which are fundamental in understanding the reach of this most basic of human rights which are discussion, advocacy and incitement. Mere discussion or even advocacy of a particular cause howsoever unpopular is at the heart of Article 19(1)(a). It is only when such discussion or advocacy reaches the level of incitement that Article 19(2) kicks in. Article 21 of the Constitution ensures to all its citizen right to life – a life to live without

fear, intimidation, harassment or mental torture. Article 19 (1) (b) of the Constitution guarantees the right to peacefully assemble and it is evident that the acts of police by criminalising a peaceful protest by the HRDs is violative of this fundamental right.

Article 19 of the Universal Declaration of Human Rights (UDHR) also proclaims the right to freedom of expression, which includes freedom “to seek, receive and impart information and idea through any medium regardless of frontiers”. Article 19 of the International Covenant on Civil and Political Rights (ICCPR) sets forth the right to freedom of opinion, expression and information.

The Declaration on Human Rights Defenders, adopted in 1998 by the UN General Assembly states that governments are duty bound to *“take all necessary measures to ensure the protection of human rights defenders by the competent authorities against any violence, threats, retaliation, de facto or de jure adverse discrimination, pressure or any other arbitrary actions as a consequence of their efforts to promote human rights.”*

Therefore, the Indian government is bound by its international legal obligations to ensure that all activists and human rights defenders are provided with security against harassment or intimidation so that they may enjoy their constitutional right to due process, life and liberty under Article 21, and the right to freedom of speech and expression and peacefully assemble under Articles 19(1)(a) and (b) of the Constitution of India.

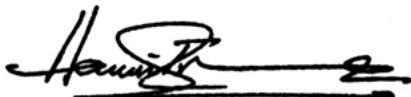
Appeal:

We therefore urge you to immediately take necessary steps to:

- Direct the Director General of Police of Tamil Nadu to initiate an immediate, thorough, transparent, effective and impartial investigation into the above-mentioned incident involving the false case filed against Mr. Gandhi and Mr. Marimuthu for a peaceful protest and submit a report to the NHRC.
- Direct the Director General of Police of Tamil Nadu to take appropriate steps from acting against the two HRDs for exercising their constitutional right to peaceful protest and initiate disciplinary and penal proceedings against the police personnel for misuse of powers.
- Direct the Chief Secretary of Tamil Nadu to provide a compensation of Rs. 1,00,000 each to both HRDs for the mental and psychological sufferings they continue to undergo because of arbitrary police actions.

Looking forward to your immediate action in this regard.

Yours sincerely,



Henri Tiphagne
National Working Secretary