



# HUMAN RIGHTS DEFENDERS' ALERT - INDIA

NATIONAL SECRETARIAT

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June 01, 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](mailto:hrd-nhrc@nic.in)

Dear Sir,

***Sub: HRD Alert -India – Urgent Appeal for Action – Bihar: Illegal detention and arrest of HRD Mr. Kamlesh Yadav under fabricated charges 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 fabricated cases, illegal detention and illegal arrest of Bihar activist Mr. Kamlesh Yadav by the Bihar police.

### **About the Human Rights Defender:**

Mr. Kamlesh Yadav is an activist based in Jagdishpur in Bhojpur district of Bihar. He is a state committee member of the All India Students Association. Mr. Yadav has organised and participated in numerous peaceful agitations, rallies and programmes on students' issues, corruption, rights and entitlements of poor, marginalised sections of society and relief work during the COVID-19 pandemic.

### **Source of Information:**

- Communication with HRDA-East co-ordinator
- Communication with the HRD
- Communication with other HRDs in the region
- Media reports

### **The Perpetrators:**

- Mr. Shyam Kishore Ranjan, Sub Divisional Police Officer, Jagdishpur
- Officer in Charge, Jagdishpur Police Station
- Mr. Rajkishor Singh, Sub Inspector, Jagdishpur Police Station
- Mr. Ravi Kumar, Assistant Sub Inspector, Jagdishpur Police Station
- Other personnel attached to Jagdishpur Police Station

**Date of Incident:**

April 28-29, 2022

**Place of Incident:**

Jagdishpur, Bhojpur district, Bihar

**Background of the Incident**

On April 3, 2021, a young boy was killed in a hit and run case in the Pichadi Bazar area of Jagdishpur. Mr. Kamlesh Yadav and residents of nearby villages participated in a peaceful road blockade after the accident, demanding compensation for the victim.

The same day, an FIR (132/21) was registered against protestors at the Jagdishpur Police Station under Sections 147 (rioting), 148 (rioting with deadly weapon), 353 (Assault or criminal force to deter public servant from discharge of his duty) and 504 (Intentional insult with intent to provoke breach of the peace) of the Indian Penal Code. Although Mr. Yadav was named as an accused in the case, he was not questioned by the police during the next one year.

**Details of the Incident:**

On April 28, 2022, close to midnight, a team of 15-20 uniformed armed police personnel from the Jagdishpur police station arrived at Mr. Kamlesh Yadav's house in three official vehicles. They were led by SDPO, Jagdishpur Mr. Shyam Kishore Ranjan and included Sub Inspector Mr. Rajkishor Singh and Assistant Sub Inspector Mr. Ravi Kumar.

The police surrounded the HRD's house from all sides including the terraces of neighbouring buildings and demanded entry into the house. They told Mr. Yadav that he was required to accompany them to the police station, but did not provide any details about whether he was being arrested. They asked him to sit in one of the vehicles and took him to Jagdishpur police station, where he was detained overnight in the lockup without a detention memo.

On the morning of April 29, 2022, the police informed Mr. Yadav that he had been arrested in FIR no. 132/ 2021, but they did not provide him access to a lawyer or allow him to inform his family. Furthermore, Mr. Yadav was handcuffed while taking him from the police station to Ara court, and while being taken to Ara jail, where he was remanded for seven days.

On May 05, 2022, Mr. Yadav was released from prison on bail. Several civil society groups and activists condemned his arrest in a one-year-old case over a peaceful agitation against a hit-and-run case.

We firmly believe that the police acted in violation of multiple guidelines of the DK Basu guidelines of arrest by the honourable Supreme Court by not informing the HRD or his family about his arrest; arresting him without an arrest warrant and denying him access to a lawyer. We also believe that the police acted with malafide intentions in picking up Mr. Yadav and treating him like a criminal and intimidating him.

Additionally, the HRD was handcuffed while being produced in the Ara court and while being taken to the prison. The Supreme Court has repeatedly upheld the right against being handcuffed barring exceptional circumstances and under the court's authority, which were not followed in case of Mr. Kamlesh Yadav. In **Sunil Batra v. Delhi Administration -AIR 1978 SC 1675**, the Supreme Court held that Article 21 forbids deprivation of personal liberty except in accordance with the procedure established by law and curtailment of personal; liberty to such an extent as to be a negation of it would constitute deprivation. The court held that the minimum freedom of movement which even an under trial prisoner is entitled to under Article 19 of the Constitution, cannot be cut down cruelly by application of handcuffs or other hoops. In **Prem Shankar Shukla v. Delhi Administration -AIR 1980 SC 1535**, the court examined the rationale behind fetters and held that prima facie handcuffing is inhuman and hence unreasonable as well as arbitrary in absence of fair procedure and objective monitoring. More recently, a Delhi court rejected an application filed by the Delhi Police seeking the court's permission to handcuff two accused including well-known HRD Mr. Umar Khalid in the Delhi 2020 riots case. The court observed that they are not gangsters and concluded that the request was devoid of merits.

Mr. Kamlesh Yadav is not a gangster and was arrested pertaining to a peaceful protest over a hit and run case. Handcuffing him is a violation of the Supreme Court's order.

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.”*

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

**Appeal:**

We thus request the Hon'ble Commission to urgently:

- Direct the Director General of Police, Bihar, to initiate an independent inquiry into the illegal detention and arrest of Mr. Kamlesh Yadav, and submit a report to the NHRC in two weeks.
- Depending on the result of the inquiry, take stern action against errant police officials who misused provisions of law and arrested the HRD in violation of due procedure and his human rights.
- Ensure that HRDs in the Bihar are allowed to assemble peacefully and carry out their genuine 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