



# HUMAN RIGHTS DEFENDERS' ALERT - INDIA

## NATIONAL SECRETARIAT

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**Ref No: HRDA/North/DEL/08/04/2020**

April 28, 2020

To,

Mr. Debindra Kundra,  
National 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](mailto:hrd-nhrc@nic.in)

**Dear Sir,**

**Sub: HRD Alert - India - Urgent Appeal for Action – Delhi: Misuse of law and non-compliance with mandatory procedures to falsely implicate and harass Member of the Jamia Coordination Committee, Ms. Safoora Zargar, her health conditions grossly undermined in Tihar Jail – 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 regarding the arrest of Jamia Coordination Committee (JCC) member of the media wing Ms. Safoora Zargar, during this period of lockdown due to COVID-19, for her alleged involvement in organizing protests at the Seelampur – Jaffrabad metro station against the Citizenship Amendment Act (CAA). She is in her second trimester of pregnancy and was lodged in 'isolation/separation' in Delhi's Tihar Jail. All mandatory procedures of arrest as set out in the Criminal Procedure Code (CrPC), National Human Rights Commission's (NHRC) arrest guidelines and relevant judgements of the Supreme Court were violated by the Delhi Police.

**Source of Information:**

- Communication with the HRDs in Delhi
- Media Reports

**Date of Incident:**

April 10, 2020 onwards

**Place of Incident:**

Gaffar Manzil, Near Jamia Milia Islamia

**The Perpetrators:**

Police Personnel of Delhi Police, Special Cell Lodhi Colony Police Station

Officials of Tihar Jail, Delhi

**About the Human Rights Defender:**

Ms. Safoora Zargar is a student of Jamia Milia Islamia University, Delhi pursuing Masters in Philosophy. She was member of the media wing of the JCC. Ms. Zargar has also been participating in the anti- CAA protests at the Jamia Milia Islamia.

**Details of the incident:**

As per media reports and other sources, on April 10, 2020, Ms. Zargar was taken from her residence (Ghaffar Manzil, Behind Jamia Milia Islamia) on the pretext of questioning regarding FIR No. 59/2020. Around 10 to 12 police officers, with only one female police officer, visited her residence asking her to accompany to the Special Cell, Lodhi Colony for questioning without any prior notice or information. In the case of Nandini Satpathy v. Dani [PL] and Others [10978 SCR (3) 608] Section 160 of the CrPC was reiterated to expressly mean that a woman cannot be forced to visit the police station for the purpose of investigation. It suggests punitive action against the erring police official who forces a woman to appear in the police station for investigation.

**Details for FIR No. 59/2020:**

The said FIR was registered on March 06, 2020, on the complaint by Sub-Inspector Arvind Kumar, N Cell, Crime Branch, New Delhi. The FIR originally made out charges under Section 147, 148, 149 read with 120B of the Indian Penal Code (IPC). The two accused named in the FIR are Umar Khalid and Danish, both residents of New Delhi. The complaint sets out that SI Arvind Kumar has been informed through secret sources that the riot situation in Delhi that prevailed from February 23 to 25, 2020, was a well-thought conspiracy. It further alleges that one student of JNU, Umar Khalid gave inflammatory speeches at many places and executed the riots to show the plight of minorities in the country during the visit of the President of the United States of America, Mr. Donald Trump. Ms. Zargar was neither named in the FIR nor any role or her involvement in any manner is described in the FIR.

**Detention under FIR No. 59/2020 and Arrest under FIR No. 48/2020 on April 10, 2020:**

As soon as the police personnel arrived at her place, Ms. Zargar reached out for legal help to her lawyers. However, given the restriction on mobility due to the ongoing lockdown, no lawyer could be physically present at that time. The lawyer of Ms. Zargar communicated to the police personnel present at her house enquiring as to why Ms. Zargar was taken away. He was informed that Ms. Zargar's presence at the police station was required only for the purpose of questioning under FIR No. 59/2020 and she was neither being arrested nor detained. She was taken to the Special Cell, Police Station at Lodhi Colony in New Delhi along with her husband. She arrived at the police station at around 03:00 to 03:30 PM and was kept at the police station for over 7 hours. Further, at 10:30 PM, Ms. Zargar was arrested in FIR No. 48/2020, P.S. Jaffrabad at the Special Cell Police Station in the presence of her husband. Her husband was made to sign the arrest memo which mentioned wrong particulars regarding her time of arrest and the arresting officer. While she was arrested at 10:30 PM, her time of arrest as shown in the arrest memo was 05:30 PM. Moreover, she was arrested by a police officer of the Special Cell but the arrest memo mentioned the arresting officer as that of PS Jaffrabad.

This comes in violation of Section 46(4) of the CrPC which lays down that except for in exceptional circumstances, no women shall be arrested after sunset and before sunrise, and where such exceptional circumstances exist, the woman police officer shall, by making a written report, obtain the prior permission of the Judicial Magistrate of the first class within whose local jurisdiction the offense is committed or the arrest is to be made. Even the National Human Rights Commission's (NHRC) guideline on arrest suggests that as far as practicable, women police officers should be associated where women are arrested, that too, arrest of women between sunset or sunrise should be avoided.

Furthermore, at the time of arrest, two of her mobile phones (models were Galaxy S9+ and Iphone 8 plus, further details will be furnished when asked for) were seized without providing any seizure memo, as mandated under law, and are still in custody of investigating agency. Furthermore, she was made to sign few documents, the contents of which were not disclosed to her as well as few blank sheets. We suspect that these papers, which she was made to sign under pressure, will be later used as evidence against her incrimination. After taking her into custody, she was subjected to degrading sexist comments at the police station. She was intimidated and threatened during interrogation, despite her medical condition she was interrogated over night by 7-8 male police officers.

### **Details of FIR No. 48/2020:**

FIR No. 48/2020 has been registered on March 23, 2020, on the complaint of one Devendra Singh mentioning of fourteen accused of which, Ms. Zargar is not one of them and neither any role has been ascribed to her. The offences set out in the said FIR are under Section 188, 353, 284, 341, 109, 147 read with Section 34 of the IPC. The allegations pertain to the calling of an alleged protest resulting in alleged roadblock on February 22, 2020, beneath the Seelampur-Jaffrabad Metro Station against the Citizenship Amendment Act (CAA).

On April 11, 2020, the first production of Ms. Zargar was supposed to take place before the Magistrate. However, her lawyers were not informed as to where she is being produced despite multiple attempts by him to enquire about the same. However, as a matter of sheer luck, her lawyer happened to be at Mandoli Jail, where she was produced around 01:00 – 01:30 PM. She was granted a two-day police custody to Jaffrabad Police Station by the Magistrate, despite clear statement of her condition of pregnancy. The Magistrate also ordered for medical check-up of Ms. Zargar, the details of which including the report of medical examination have not yet been shared with her lawyer and family members. Ms. Zargar's lawyer requested permission to meet her client in police custody and the same was granted.

On April 12, 2020, Ms. Zargar met her lawyer at Jaffrabad PS. However, despite the privileged nature of a lawyer-client communication, they were forced to talk in the presence of two police officers.

On April 11, 2020, a bail application was filed for Ms. Zargar which was listed on April 13, 2020, before the Metropolitan Magistrate, Karkadooma District Court. She was granted bail by the Court with the observation that given the pregnancy condition of Ms. Zargar, she needs proper medical care and that most of the offences levied against her are bailable in nature. The Court also relied on the judgement of the apex court [**W.P (C) No. 01/2020**] and HC in Shobha Gupta & Anr. v Union of India & Ors regarding the de-congestion of jail amid the widespread of the COVID-19 pandemic.

### **Arrest under FIR No. 59/2020 on April 13, 2020:**

However, as soon as she was granted bail under FIR 48/2020, she was again arrested by the Special Cell Police under FIR 59/2020, for which she was originally taken into custody. It is to be noted here that earlier the said FIR levied charges only under four sections (Sections 147, 148, 149 and 120B of the IPC), all of which were bailable. However, only in order to effectuate the arrest of Ms. Zargar and to keep her in custody for longer, they added 18 more offences under Sections 302, 307, 124A, 153A, 186, 53, 395, 427, 435, 436, 452, 454, 109, 114 of the IPC along with Sections 3 & 4 of the Prevention of Damage to Public Property Act (PDPP) and 25 & 27 Arms Act, of which

some offences are non-bailable. At no stage, the police justified this sudden addition of offences or refers to additional evidence for invoking the said sections. Moreover, in complete violation of the **DK Basu Guidelines [1997 1 SCC (416)]** as laid down by the apex court and the arrest guidelines of the NHRC, the police did not provide a copy of the FIR to the accused, her lawyer and family members.

On April 13, 2020, at the remand hearing for her second arrest around 01:30 PM, the police pushed for a nine-day remand, which was later reduced to two days only, on the request of the lawyer. The lawyer once again took the permission of the court, to meet Ms. Zargar during her two-day remand. After her arrest, her laptop was confiscated, for which a seizure memo was given only at the request of the lawyer.

From April 13, 2020, to April 15, 2020, she was kept at the Special Cell Police Station, Lodhi Colony. During this duration, her husband and lawyer were allowed to meet her. At the end of her remand period, she was supposed to be produced back in Mandoli Jail. However, instead of producing her to the Mandoli Jail, Ms. Zargar was instead taken to Tihar Jail. Neither her lawyer nor her husband was informed about this despite multiple phone calls to the police personnel. On April 15, 2020, police also visited the house of Ms. Zargar to collect her University ID Card but did not inform her husband about her whereabouts. Thereafter, she was produced before the Magistrate in Tihar Court Complex and sent to Judicial Custody till April 28, 2020.

Another bail application was filed for the hearing of Ms. Zargar on April 15, 2020, in respect of FIR no. 59/2020, listed on April 18, 2020 before the Metropolitan Magistrate, Patiala House Court. The bail proceedings were attended by the Investigation Officer and the Additional Commissioner of Police who refused to disclose the nature of charges and material against Ms. Zargar. However, an adverse order was passed by the MM directing the IO and the ACP to file a detailed reply regarding the role of Ms. Zargar and the evidence collected against her by April 20, 2020. The relevant extract of the order is produced as under:

*“I have gone through the reply filed by Inspector Sanjay Gupta, special cell. It is clear that the reply has been filed in a cryptic and superficial manner. The exact role on the basis of which the accused has been arrested has not been delineated in the reply. It would be expedient to direct the investigating agency to file the detailed reply before adjudicating upon the bail application”*

On April 21, 2020, the police filed a reply invoking Section 13, 16, 17 and 18 of the Unlawful Activities Prevention Act, 1967 (UAPA). The only specific allegation against Ms. Zargar was that she visited one of the protest-sites and delivered an inflammatory speech. The police also disclosed that there were certain technical and electronic evidence proving her involvement along with some testimonies of witnesses. The

Magistrate dismissed the bail application solely based on the reply furnished by the police, without even a hearing. However, the lawyer of Ms. Zargar pushed for a hearing and got a chance to present before the judge for five minutes. However, even after the hearing, bail to Ms. Zargar was refused on the grounds that the charges levied against her are very of grave nature and that the charges are triable only by a Sessions Court. At this stage, the court completely ignored the power vested to it under Section 437 CrPC, proviso that even if the person is charged with offences punishable with life imprisonment or even death, the Magistrate Court has jurisdiction and power to release person on bail if accused is women, sick ,or infirm.

Since April 15, 2020, Ms. Zargar has been kept in judicial custody where she has not been allowed to communicate either with her family or her lawyer. It was only when the lawyer moved an application through the District Legal State Authorities (DLSA) for communicating with Ms. Zargar, and after taking permission of the Court, that he could talk to her on April 25, 2020, for five minutes. However, her family members have not been allowed to phone call even till now despite supply of all the necessary documents on April 19, 2020.

Point 630, Delhi Prison Rules, 2018 lays down the following guidelines to ensure the communication rights of prisoners, ensuring access to family members and legal representation:

*The Inmate Phone call system shall be introduced in all the jails so that a prisoner may communicate with his family members through telephone as per order issued by Inspector General of Prisons from time to time. The telephone facilities will be available to all the inmates and shall be contingent upon the good conduct of a prisoner. This facility can be withdrawn temporarily or permanently if any jail offence is committed by a prisoner during incarceration period or otherwise the telephone facility is found to be misused.*

Point 40, The Delhi Prisons Act, 2000 states that –

*Due provisions shall be made for the admission at proper time and days and under proper restrictions, into every prison of person with whom prisoners may desire to communicate, care being taken that so far as may be consistent with the interest of justice, prisoners may see their duly authorized and qualified legal practitioners without the presence of any other person.*

Rules 1516, 1517, and 1519 which allow for phone call/video conference with family members/legal advisors are also being not followed.

### **Medical Condition of Ms. Zargar:**

Ms. Zargar is fourteen weeks pregnant and has just entered her second trimester. Owing to her pregnancy, she has a list of prescribed drugs, logistical needs and dietary requirements to be taken care of at this time. Moreover, she suffers from Low Blood Pressure, Urinary Tract Infection [UTI] and Polycystic Ovarian Disorder [PCOD] which increases her chances of miscarriage. During her duration of police custody, from April 11, 2020 to April 14, 2020, due to unhygienic conditions of stay, Ms. Zargar had also contracted vaginal infection. Furthermore, Ms. Zargar has a history of anxiety and also has been taking some hormonal pills to avoid the chances of miscarriage, which has abruptly stopped owing to her arrest. She was due for a mandatory ultrasonography in the past week, which has not been conducted and thus, we remain unaware about the health of the unborn child and of the mother.

Now, we would like to urge the attention of the Hon'ble Commission towards the deplorable conditions of stay of Ms. Zargar:

- a. No special diet and provision of prescribed drugs: Ms. Zargar's special dietary requirements, owing to her mid-pregnancy has not been taken care of. She is being subjected to eat the usual food like all other prisoners, without due regard to her pregnancy. (*Violation of Rules 1475, 1478, 1485 and 1486 of the Prison Manual*)

We would like to draw the attention of the NHRC to Chapter VI of the Model Prison Manual, 2016, and Chapter VI of the Delhi Prison Rules, 2018, which suggests that the calorie intake and variety of food is to be increased for women prisoners who are pregnant or lactating and require more protein and minerals than usual. It prescribes +350 net energy for pregnant woman, in comparison to woman doing moderate or sedentary work as suggested by the Indian Council for Medical Research (ICMR). As per the Model Prison Manual, it suggests the following practice to take care of the dietary requirement of pregnant woman in jail:

*During pregnancy and lactation, a woman needs more protein and minerals than otherwise. The extra protein can be obtained by substituting a part of the cereal portion of the diet with more milk, fish, meat and eggs, and in the case of vegetarians by concentrating more on milk and milk products. This would also ensure the necessary additional supply of minerals. Pregnant and nursing women need about 3100 calories every day.*

Delhi Prison Rules, 2018, further mentions that special consideration shall be given with regard to diet to pregnant and nursing prisoners. In the sample scale of diet for a prisoner per day, it mentions the following to be provided in addition to the usual diet to a pregnant woman –

1. 250 ml Milk
2. 60 g Sugar
3. 100 gm Vegetables

*Note 1: Fresh Fruit be also provided to the pregnant and lactating mothers as per the quantity prescribed by the Medical Officer.*

Further, Rule 1458 of Delhi Prison Rules, 2018, lays down that adequate and timely food including supplemental nutrients, a healthy environment and opportunities for regular exercise shall be provided to pregnant women, babies, children and breastfeeding mothers.

- b. Ms. Zargar has not been provided her prescribed drugs for her pregnancy and other health complications. She has contracted vaginal infection while in custody, which has not been treated yet.
- c. No comprehensive medical examination conducted for Ms. Zargar. The mandated preliminary medical examination, if any conducted, the reports have not been shared with the family and the lawyers. 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 guidelines are applicable and of immense importance in the case of Ms. Zargar. 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.



Further, it is brought to the notice of the NHRC that in the pretext of quarantine, Ms. Zargar is being kept in 'isolation/separation', which HRDA believes leads to solitary confinement. Delhi Prison Rules, 2018, suggests that even in case of prison offences and indiscipline punishment by close confinement or disciplinary segregation shall not be applied to pregnant women, women with infants and breastfeeding mothers in prison.

Rule 45 of the United Nations standard minimum rules for the treatment of prisoners (the Mandela Rules) lays down the following guidelines on solitary confinement:

- Solitary confinement shall be used only in exceptional cases as a last resort, for as short a time as possible and subject to independent review, and only pursuant to the authorization by a competent authority. It shall not be imposed by virtue of a prisoner's sentence.
- The imposition of solitary confinement should be prohibited in the case of prisoners with mental or physical disabilities when their conditions would be exacerbated by such measures. The prohibition of the use of solitary confinement and similar measures in cases involving women and children, as referred to in other United Nations standards and norms in crime prevention and criminal justice.

Further, Point 786 of the Delhi prison rules, 2018, states that no prisoner should be placed in solitary confinement until the medical officer certifies on the history-ticket that he is fit to undergo it.

### **Appeal:**

HRDA believes that Ms. Safoora Zargar is student and woman human rights defender and this is a completely fabricated case by the Delhi Police to target her and her organisation (JCC) for actively opposing the CAA. As stated in this petition, all mandatory provisions of law and procedures regarding arrests as laid out by the CrPC, NHRC and the Supreme Court are grossly violated at each stage. Following the grant of bail by the court in the Jaffrabad FIR 48/2020, re-arrest under the FIR at the Special Cell 59/2020 in which Ms. Zargar wasn't even named and adding stringent provisions of IPC, PDPP, Arms Act and UAPA to this FIR, only demonstrate malafide intentions of the Delhi Police. Ms. Zargar's medical condition given her pregnancy, other ailments and infections she contacted while in police custody has been completely overlooked by the prison authorities and she has been subjected to solitary confinement which is cruel and inhumane.

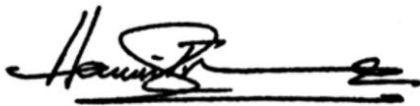
We appeal to the NHRC to treat this as a case of reprisal against a woman human rights defender for exercising her fundamental rights guaranteed through Article 19 of the Indian Constitution and malafide actions by the Delhi Police significantly impinging upon her to right to life with dignity. Thereby, we urge the NHRC to urgently –

- Issue notice to the Commissioner of Police of Delhi to produce **within 48 hours** all relevant documents pertaining to the arrest of Ms. Safoora Zargar 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 Special Cell police station and Jaffrabad police station on the relevant dates
  - General Diaries, FIR and arrest registers of Special Cell police station and Jaffrabad police station
  - CCTV footage from the Special Cell police station and Jaffrabad police station for April 10, 2020
- 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 Special Cell police station and Jaffrabad police station of the arrests and detentions.
- 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.

- Order urgently a thorough medical examination of Ms. Safoora Zargar by an independent team of doctors of the All India Institute of Medical Sciences (AIIMS) in light of her pregnancy, other critical ailments and infections contacted during the police custody.
- Direct supply of previous medical examination reports and future medical examination reports be supplied to lawyer/husband of Ms. Safoora Zargar in terms of Section 54 (3) of the CrPC.
- Direct the Prison Monitor of the NHRC, who may, along with a Member of the NHRC, undertake an immediate urgent visit to the Tihar Jail and determine the conditions of detention.
- Issue notice to the Director General of Prisons of Delhi to respond within 48 hours on non-adherence to the provisions of Model Prison Manual, 2016, and the Delhi Prison Rules, 2018, as mentioned in this submission.

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