



HUMAN RIGHTS DEFENDERS' ALERT - INDIA

NATIONAL SECRETARIAT

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Ref No: HRDA/North/DL/02/12/2020

December 13 2020

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: Illegal arrest and custodial torture of journalist Mr. Prashant Kanojia by UP Police in Lucknow.

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 Mr. Prashant Kanojia, a freelance journalist and Dalit HRD, who was arrested for retweeting a tweet and subjected to brutal custodial torture in both police and judicial custody.

Source of Information:

- Communication with the HRD
- Communication with the HRDA North Regional Consultant
- Media Reports

Date of Incident:

August 18, 2020 – October 21, 2020

Place of Incident:

- Hazratganj Police Station, Lucknow
- Ram Swaroop Temporary Jail, Lucknow
- Lucknow Jail, Lucknow

The Perpetrators:

- Mr. Anjani Kumar Pandey, SHO Hazratganj Police Station and other police personnel of Hazratganj Police Station, Lucknow
- Mr. Gaur, Deputy Jailor, Ramswaroop Temporary Jail, Lucknow and other personnel of Ramswaroop Temporary Jail, Lucknow
- Personnel of Lucknow jail

About the Human Rights Defender:

Mr. Prashant Kanojia is a freelance journalist and a Dalit human rights defender. He was working with the national online portal "The Wire" from 2016 to 2018 and is also associated with other news portals as well as several human rights and Dalit rights organizations.

Background of the Incident:

On August 17, 2020, at 05:48 pm, an FIR was lodged against Mr. Prashant Kanojia in Hazratganj Police Station, Lucknow by Sub-Inspector Mr. Dinesh Kumar Shukla.

The FIR was related to a Facebook post made by a Hindutva activist, Mr. Sushil Tiwari, head of the self-styled 'Hindu Army', in which he posted a photograph of himself with the words – '*UPSC se Islamic Study turant hatakar Vedic Study joda jai, sabhi log ek saath avaaz uthayein*' (Let everyone demand that the UPSC remove Islamic Study and add Vedic Study). Unknown persons began circulating this image with changed wording: '*Ram mandir mein Shudron, OBC, SC, ST ka pravesh nishedh rahega sabhi log ek saath avaaz uthayein*', i.e. 'Let everyone demand that Shudras, OBC, SC, ST not be allowed entry into the Ram mandir'. Police allege that Mr. Kanojia also tweeted this morphed image. No action was taken against Mr. Tiwari for his original post, or anyone else.

The FIR was registered under IPC sections-153-A (*Promoting enmity between different groups on grounds of religion, race, place of birth, residence, language, etc., and doing acts prejudicial to maintenance of harmony*), 153-B (*Imputations, assertions prejudicial to national-integration*), 420 (*Cheating and dishonestly inducing delivery of property*), IPC-465 (*Punishment for forgery*), 468 (*Forgery for purpose of cheating*), 469 (*Forgery for purpose of harming reputation*), 500 (*Punishment for defamation*),

505(1)(b) (b)(with intent to cause, or which is likely to cause, fear or alarm to the public. 505(2) (Statements creating or promoting enmity, hatred or ill-will between classes). IT ACT-66 Computer related offences.

Last year, Mr. Kanojia was arrested by the Uttar Pradesh Police for sedition for a social media post and he was released on bail on June 19, 2019, by the Supreme Court.

Details of the Incident:

On August 18, 2020, around 1.30 pm, five or six policemen in civil dress (and one in police uniform) came to Mr. Kanojia's home in South Delhi. They told him that he was being taken with them but did not give any reason for his arrest. They gave no copy of FIR or arrest memo or told Mr. Kanojia and his family where he was being taken. En route they refused to speak to him or tell him where he was being taken. He was taken to Lucknow about 6 hours drive, where he was offloaded at the Hazratganj police station. At the Hazratganj police station, the SHO Mr. Anjani Kumar Pandey abused Mr. Kanojia with filthy casteist abuses and put him in a lockup.

At 2:30 am in the night, Mr. Kanojia was taken out from the lock up and beaten brutally at the back of his neck with a lathi (baton) wrapped with a cloth around it by the SHO and 10 policemen about 30-40 times, after which Mr. Kanojia became unconscious. When he woke up, a small clip was put on his ear and he was given electric shocks twice till he became unconscious again.

This entire torture sequence was recorded on video by the Hazratganj police. Mr. Kanojia was asked no questions, nor given any reason for his torture by the UP police. After the brutal torture, he was then put back into the lockup. The entire night he was given no food or water. The next morning when he demanded to make a phone call to his lawyer or his wife he was refused and threatened by SHO Mr. Pandey.

On the morning of August 19, 2020, he was taken to the Hegdewar Government Hospital in Lucknow for an MLC, where no medical checkup was done nor were his injuries seen to; only his name was asked by the doctor, and a medical certificate claiming everything was fine was given. At 4:30 pm, he was produced before a magistrate, where he was made to stand far away, who sent him to a temporary jail- Ramswaroop College Chinhat in Lucknow for seven days of quarantine.

In the temporary jail, Mr. Kanojia was asked to do cleaning work by the policemen. When he refused, he was told that he will be punished by not being allowed to sleep all night. For the next 7 nights, Mr. Kanojia was not allowed to sleep all night in his cell and if he fell asleep, he was beaten. When Mr. Kanojia complained to the Deputy Jailor, Mr. Gaur, he was told that the punishment was valid since he refused to work.

Despite the raging COVID pandemic, Mr. Kanojia states that the conditions in the temporary jail were very unhygienic. There were 35-40 prisoners in his cell; there was no soap or sanitizer in the prison; the blankets were dirty, often of other corona positive patients. The detainees were told to get drinking water from the toilets to drink; and the water from the single non-toilet water tap was used exclusively by policemen. After 7 days of such harrowing experience, Mr. Kanojia was moved to Lucknow jail.

Mr. Prashant was in jail for over two months (80 days). In these two months, Mr. Kanojia was not allowed to meet or call his lawyer. His repeated requests to call his wife or lawyer were denied and he was threatened. He was allowed to speak twice to his wife after paying Rs 100, but never to his lawyer. Mr. Kanojia even read the news of his bail through newspapers since he couldn't be informed by the lawyer.

We would like to state **multiple violations of the Supreme Court guidelines on arrest and detention as ordered in D.K. Basu vs. State of West Bengal as well as the NHRC guidelines** in Mr. Kanojia's arrest, detention, torture. Guideline ii (police officer carrying out the arrest shall prepare a memo of arrest); Guideline (iii) (person who has been arrested or detained is entitled to have one friend or relative or other person known to him or having interest in his welfare being informed); Guideline (iv) and (v) (provides for the notification of the time, place of arrest and venue of custody of an arrestee by the police where the next friend or relative of the arrestee lives outside the district or town through the Legal Aid Organization); and Guideline (v) (person arrested aware of his right to have someone informed of his arrest or detention as soon as he is put under arrest or is detained) have all been violated by the UP police at the time of Mr. Kanojia's arrest.

Multiple CrPc guidelines were also violated like: Section 50(1) Cr.PC. (The person arrested should be shown the written reasons and also given a copy on demand.) and section 50 CrPc (police officer arresting any person to "forthwith communicate to him full particulars of the offence for which he is arrested or other grounds for such arrest")

We would also like to point out that the NHRC guidelines for prisons have also been violated as neither his family nor his lawyers were allowed to meet him. The person arrested should be permitted to meet his lawyer at any time during the interrogation.

However, the most serious and grave violation of human rights has been in the form of the heinous torture inflicted on Mr. Kanojia wherein he was beaten and electrocuted till he was unconscious in police custody at Hazratganj police station and then not allowed to sleep for 7 nights as punishment in the temporary jail.

Torture is prohibited both under the national and international law. The CrPc prohibits torture under Section 46 and 49 (protect those under custody from torture..) and "The

methods of interrogation must be consistent with the recognised rights to life, dignity and liberty and right against torture and degrading treatment.”

Indian Police Act Sections 29 states that “*Or who shall be guilty of cowardice, or who shall offer any unwarrantable personal violence to any person in his custody, shall be liable, on conviction before a Magistrate, to a penalty.*”

Sections 330, 331, 342 and 348 of the IPC have ostensibly been designed to deter a police officer, who is empowered to arrest a person and to interrogate him during investigation of an offence from resorting to third degree methods causing ‘torture’.

In the international arena, India as a member of the UN Human Rights Council has stated multiple times, that **‘we do not torture’**. We are also a signatory to the UN Convention Against Torture (CAT) (though not ratified.). However, the Universal Declaration of Human Rights (UDHR) ratified by India has provision for “Prohibiting the use of torture” under its ‘Article 5’. The article states that “No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment”. The International Covenant on Civil and Political Rights (ICCPR): ‘Article 7’ of this Covenant states that: “No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.”

Finally, the casteist abuses thrown at Mr. Kanojia by the SHO and other police personnel of the UP police are a violation of Section 3(1) of the Prevention of Atrocities Act/ SC ST Act which is a non bailable offense.

Mr. Kanojia’s illegal arrest, brutal torture and violation of all his rights are a violation of all national and international human rights laws. We believe that Mr. Prashant has been hounded, arrested and tortured for his work as a journalist in exposing news related to Dalits and for being critical of the UP Chief Minister in his tweets.

Our Constitution gives journalists the right to exercise freedom of speech. That a well-known Dalit journalist is targeted, tortured, subject to multiple violations of law, flouting every national and international human rights guideline without any repercussion faced by the police or the state should be a matter of great shame and concern for the world’s most populous democracy.

Appeal:

We urgently request the Hon’ble Commission to:

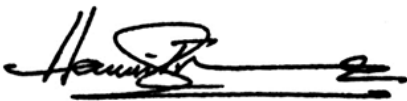
- Order an immediate, thorough, transparent, effective and impartial investigation into the above-mentioned incident of illegal detention, degrading inhuman treatment and torture of journalist and human rights defender Mr. Prashant Kanojia by the police personnel of Hazratganj police station, Lucknow and personnel of Ramswaroop Temporary Jail, Lucknow.

In the said investigation, the NHRC must enquire into UP Police complying to the procedures for inter-state arrests.

- Record Mr. Prashant Kanojia's statement in this case who is based in Delhi and will be willing to submit his detailed statement.
- Recommend strict and immediate legal action against SHO Mr. Anjani Kumar Pandey; and all other police personnel of Hazratganj police station, Lucknow for violating DK Basu guidelines, violation of the SC/ST Act and for brutal physical torture of journalist and human rights defender Mr. Prashant Kanojia.
- Recommend strict and immediate legal action against the Deputy Jailor Mr. Gaur and other personnel in the Ranswaroop Temporary Jail who subject Mr. Kanojia to torture and initiate criminal proceedings against them.
- Direct the Director General of Police of Uttar Pradesh to submit CCTV footage of Mr. Prashant Kanojia's stay in the Hazratganj police station.
- Direct the Prison Monitor of the NHRC, who may, along with a Member of the NHRC, undertake an immediate visit to the temporary jail at the Ranswaroop Temporary Jail to determine the living conditions during the pandemic.
- Direct the Uttar Pradesh government to pay a compensation of Rs 50 Lakh to Mr. Prashant Kanojia for the extreme physical and mental torture to which he has been subjected.

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 drawn underneath it.

(Henri Tiphagne)

National Working Secretary