



HUMAN RIGHTS DEFENDERS' ALERT - INDIA

NATIONAL SECRETARIAT

No. 555, West Cross 4th Street, K.K.Nagar, Madurai - 625 020, Tamil Nadu, India.

Mobile: 99943-68540

E.mail: hrda.india@gmail.com Web: www.hrdaindia.org

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October 28, 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 – Uttar Pradesh: Misuse of law and non-compliance with mandatory procedures to falsely implicate journalist and student activists falsely accused of planning violence and riots in Hathras, Uttar Pradesh.

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 journalist Mr. Siddique Kappan; student-activist and journalist Mr. Masood, student-activist Mr. Ateeq, and taxi-driver Mr. Alam, who have been falsely accused of planning violence and riots in Hathras, Uttar Pradesh.

HRDA would like to state that the four men are being politically scapegoated by the state administration and police which has been criticised nationally for its inefficiency and illegal actions in Hathras rape and murder case.

Source of Information:

- Communication with the HRDA North Regional Consultant
- Communication with the HRDs' families

- Communication with other HRDs in the region
- Media Reports

Date of Incident:

October 05, 2020

Place of Incident:

Hathras Border, Mathura, Uttar Pradesh

The Perpetrators:

- Police Personnel of Mant Police Station, Mathura, Uttar Pradesh
- Mr. Parbal Pratab Singh, Sub-Inspector Mant Police Station, Mathura
- District Administration of Mathura

About the Human Rights Defenders:

- Mr. Siddique Kappan (40) is a journalist from Kerala, living in Delhi, writing for Malayalam-language news organisations. He is currently working at Azhilimugam channel. Mr. Kappan is also an elected secretary of the KUWJ (Kerala Union of Working Journalists).
- Mr. Ateeq-Ur-Rehman (28) is a PhD student at the Meerut college, Meerut and a student activist with the Campus Front of India.
- Mr. Masood Ahmed (26) is a journalist and PhD student at the Jamia Milia Islamia University, Delhi and a student activist with the Campus Front of India,

Details of the incident:

On October 05, 2020, Mr. Kappan, Mr. Ateeq and Mr. Masood were going to Hathras by a hired car from Delhi for reporting on the rape and murder of a Dalit teenaged girl. Since Mr. Kappan didn't understand or speak Hindi, he chose to take the help of the student-activists Mr. Masood and Mr. Ateeq as translators. The taxi driver was hired to take the three to the Hathras.

Around 6 pm, the police stopped them for checking at Mathura check post, at the border of Hathras district. After the checking, all four including the taxi driver Mr. Alam were taken in custody. From October 5 to the morning of October 7, all of them, including the driver, were illegally detained by the UP police in the Mant police station, Mathura.

On October 07, 2020, at 06:13 am, an FIR was lodged against them in Mant police station by Sub-Inspector Mr. Parbal Pratap Singh under sections 124-A (*Sedition*), 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*) and 295-A (*Deliberate and malicious acts, intended to outrage religious feelings of any class by insulting its religion or religious beliefs*) of the IPC, sections 14 (*Offences to be cognizable*) and 17 (*Punishment for raising funds for terrorist act*) of UAPA, sections 65 (*Tampering with computer source documents*), 72 (*Penalty for Breach of confidentiality and privacy*) and 76 (*Confiscation*) of the Information Technology Act.

The FIR stated that the four were taken into custody at a toll plaza in Mathura while travelling in a car from Delhi to Hathras. The car was stopped after police found their activities suspicious. However, no details were given of what kind of suspicious activities were they indulging in that made the police take them into custody.

The FIR also alleged that these 4 people run a website named 'carrd.co' and collected money via the website to plan violence. It says that the website gave training on violence and how to run away afterwards. However absolutely no details are given on what connected them to the website. The police also claimed that they carried placards like "Am not India's daughter" and seized six mobiles and one laptop from them. On the afternoon of October 7, 2020, they were presented before the local court in Mathura and were then sent to 14 days judicial custody.

The Kerala Union of Working Journalists (KUWJ), in a letter to Chief Minister Yogi Adityanath, has demanded the release of Mr. Kappan, saying he was trying to perform his duty as a reporter. KUWJ has also appealed to several officials on this and the Press Club of India (PCI) also condemned this incident.

HRDA believes that this is a completely fabricated case by the Uttar Pradesh Police to scapegoat a journalist and his colleagues and its malafide attempts to communalise and suppress the national outrage against the rape and murder of a Dalit teen. It must be noted that the UP Police had also alleged an international conspiracy to tarnish the image of the UP chief minister in Hathras.

Mr. Kappan was going to Hathras to perform his duty as a journalist and report on the case. It is preposterous to think that a journalist who is also the senior office-bearer of

a state journalistic body will go to incite a riot as the police alleges. A free media is an extremely important fourth pillar of the Indian democracy. Our Constitution gives every citizen including journalists the right to exercise freedom of speech.

The right to freedom of opinion and expression encompasses three different aspects: 1) the right to hold opinions without interference; 2) the right of access to information; and 3) the right to impart information and ideas of all kind. It is stated that Declaration on Human Rights Defenders seeks to protect the monitoring and advocacy functions of defenders by recognizing their right to obtain and disseminate information relevant to the enjoyment of human rights. Mr. Kappan was merely exercising his right to access information and to impart it to his audience.

We would also like to point out that all relevant guidelines on arrest were flouted by the UP police. Mr. Kappan's wife and 3 children who live in Kerala came to know through well-wishers that he was arrested. There was no official intimation by the UP Police. Mr. Masood's family came to know about the arrest through media reports and Mr. Ateeq's family received a call from the police on October 7, 2020. On October 9, some policemen went to Mr. Masood's house in Bahraich to inquire about him.

These are serious lapses in the arrest procedures. We content that not informing the family immediately of the arrest or informing them after a few days is a gross violation of the DK Basu guidelines on arresting procedures and the NHRC guidelines which insist that the family be informed immediately along with an arrest memo given to accused along with witnesses. Not informing the family is also a violation of section 41B(c)- "inform the person arrested, unless the memorandum is attested by a member of his family, that he has a right to have a relative or a friend named by him to be informed of his arrest." and section 50A of the CrPC- "Obligation of person making arrest to inform about arrest, etc to a nominated person."

The draconian charges of sedition and UAPA are a travesty in this case and this is where no offense has taken place at all. Recently, the controversial laws have been extensively misused by authorities to silence dissent and criticism.

India's Supreme Court has imposed sharp limits on what construes sedition. In the landmark 1962 ruling in Kedar Nath Singh v State of Bihar, the Supreme Court ruled that unless the accused incited violence by their speech or action it would no longer constitute sedition, as it would otherwise violate the right to freedom of speech

guaranteed by the constitution. Since neither of the four have incited violence, a charge of sedition is to stop journalists and activists from speaking and writing critically and factually.

There is no information about their medical condition or if their MLC was even done. Mr. Ateeq is a heart patient and is getting treatment in AIIMS, Delhi, and his family says that without medical treatment the UP police will be responsible for his death.

We contend that the UP Police has behaved in a most lawless manner and misused its power completely to arrest an innocent journalist, students and taxi driver disregarding all mandatory provisions of law and procedures regarding arrests as laid out by the CrPC, NHRC and the Supreme Court, which have been are grossly violated at each stage.

We appeal to the NHRC to treat this urgently as a case of reprisal against journalist and human rights defenders and take necessary steps to get the UP Police to follow due process of the law.

Appeal:

We urge the Hon'ble Commission to immediately take necessary steps and:

- Direct the Director General of Police of Uttar Pradesh to produce within 48 hours all relevant documents pertaining to the arrest of HRDs 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 Mant police station on the relevant dates

- General Diaries, FIR and arrest registers of Mant police station
- CCTV footage from Mant police station, Mathura for October 5-7, 2020
- Examine compliance with all the mandatory procedures on arrest and detention laid down in Sections 41 of the CrPC, particularly with Sections 41A, 41B and 41D, and Sections 50, 50A, 51, 54, 55A, 56, 57, and 60A of the Code were followed by the police as well as the NHRC guidelines.
- Order an immediate, thorough, transparent, effective and impartial investigation into the above-mentioned incident, specially of role of the poor cab driver in the conspiracy.
- Direct the concerned authorities to report on the safety and the well-being of the four accused in prison within 24 hours.
- Take necessary steps to ensure that the false criminal case filed against the four men is withdrawn and the journalist and the HRDs are not harassed or intimidated or falsely implicated in future and give this assurance to the NHRC of India in writing immediately and urgently;
- Take immediate legal action on the perpetrators, in this case the UP Police, for attempting to criminalise the actions of journalist Mr. Kappan by filing a sedition and UAPA case and using all provisions of law to ensure that HRDs are not subjected to further harassment or attack through false implications in future.
- Guarantee in all circumstances the physical and psychological integrity and security of Mr. Kappan, Mr. Ateeq, Mr Masood and Mr. Alam by the perpetrators and give this assurance to the NHRC of India in writing immediately and urgently;

Looking forward to your immediate action in this regard,

Yours sincerely,



(Henri Tiphagne)
National Working Secretary