

February 27, 2021

To,
Mr. Bimbadhar Pradhan, IAS
Secretary General,
National Human Rights Commission.
Manav Adhikar Bhawan,
Block-C, GPO Complex, INA,
New Delhi – 110 023
Email: sgnhrc@nic.in

Dear Sir,

Urgent Appeal for Action – Haryana: Abduction, illegal detention, arbitrary arrest and custodial torture of HRD Mr. Shiv Kumar in Sonipat by Haryana Police.

Greetings from HRDA, CHRI and NDMJ!

HRD Alert - India (HRDA) 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.

The Commonwealth Human Rights Initiative (CHRI) is an independent, non-governmental, non-profit, organisation headquartered in New Delhi, with offices in London, UK, and Accra, Ghana. Since 1987, it has worked for the practical realization of human rights through research, strategic advocacy, capacity building, engagement and mobilization within the Commonwealth. CHRI specializes in the areas of access to justice, with a focus on police and prison reforms, and access to information. CHRI is a Commonwealth Accredited Organisation and has a Special Consultative Status with the UN ECOSOC.

National Dalit Movement for Justice (NDMJ)-NCDHR having its presence in more than 15 states of India is committed to the elimination of discrimination based on work and descent (caste) and work towards protection and promotion of human rights of Scheduled Castes (Dalits) and Scheduled Tribes (Adivasis) across India. NDMJ works towards the realization of all civil, cultural, economic, political and social human rights of Dalits and Adivasis in the country. NDMJ is actively involved in advocacy for the protection of HRDs working on the issues related to caste-based discrimination and atrocities and is also engaged in the effective implementation the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act 1989 and Rules 1995 across the country.

We are writing to express our concern regarding the abduction, illegal detention, arbitrary arrest and custodial torture of Human Rights Defender Mr. Shiv Kumar by the Crime Investigation Agency, Sonipat and police of the Kundli police station, Sonipat, Haryana.

Source of Information:

- Information from HRDA North regional consultant
- Media reports

Date of Incident:

January 16, 2021 – February 2, 2021

Place of Incident:

Singhu, Old Kacheri and Kundli police station

Alleged Perpetrators:

- Mr. Ravi Kumar, Station House Officer, Kundli Police Station, Kundli, Sonipat
- Police personnel of the Kundli Police Station, Kundli, Sonipat
- Mr. JS Randhawa, Superintendent of Police, Sonipat
- Staff of Crime Investigation Agency, Sonipat
- Quick Response Team, Kundli Industrial Area, Kundli, Sonipat
- Kundli Industrial Association
- Mr. Subhash Gupta, President of Kundli Industrial Association
- Mr. Bijender Garewal, Security In-Charge, Kundli Industrial Association
- Mr. Lalit Khurana, Accountant Elecmech Pvt. Kundli, Sonipat

About the Human Rights Defender:

Mr. Shiv Kumar (24) is a worker and labour rights activist and is the president of the Mazdoor Adhikar Sangathan (MAS). He has a diploma from an ITI, where he was also part of the Chhatra Ekta Manch.

After graduating he has been employed with a factory in Kundli. He is blind in one eye and has partial vision in the other eye. He requires regular medical care for both his eyes.

MAS was formed in 2016 with the aim of organising workers against the discriminatory wage system, exploitation of women workers and has been working since 2018, among workers in the Kundli Industrial Area (KIA).

Background of the Incident:

On December 28, 2020, the workers of Kundli took out a march in factory area of Kundli, Sonipat, for payment of their pending wages. Some factories cleared their dues while other promised to pay later. During the march, KIA bouncers (henchmen) tried to disperse the protesting workers. They abused, attacked and manhandled the workers. One of the bouncers also opened fire on the ground in order to intimidate the workers, however, the workers stood there and resisted. Later in the day, an FIR (649/2020) was lodged by the KIA President Mr. Subhash Gupta against protestors in the Kundli police station. Shockingly, despite the HRD Mr. Shiv Kumar not being present for this protest, his name was included along with Ms. Nodeep Kaur and a few other workers stating that the labourers were causing trouble over payment. Mr. Bijender Garewal, KIA's Security In-charge, claimed the firing was in air as self-defence, when the labourers attacked them. However, Kundli police station's Station House Officer Mr. Ravi Kumar said that no firing took place on December 28, 2020, and that under the guise of supporting farmers, labourers were engaged in "money extortion" and an FIR had been registered against them. On the same day, the workers also sent a complaint letter about the whole incident to Mr. JS Randhawa, Superintendent of Police, Sonipat, Haryana, and even mailed it to his office but received no reply from the police.

On January 12, 2021, the workers under the leadership of the MAS conducted a strike and took out a march for non-payment of dues. MAS had already sent advance warning of the strike. Around 11:30 am, the workers march reached at plot number 349, Ph 4, where a worker's payment of Rs 5000 was pending. The workers approached the factory and started peacefully protesting, following which the company made stress calls to KIA's Quick Response Team (QRT) which reached the protest site and started threatening the workers. The workers resisted and started sloganeering against them. Around noon, 3-4 policemen, including Mr. Ravi Kumar, SHO Kundli Police station, reached the protest site and started abusing and manhandling the workers including the female workers. They also attempted to arrest Ms. Nodeep Kaur, leading to scuffle between the workers and policemen. The police lathi-charged the protestors. As the scuffle escalated, a police constable (unnamed) fired 8-10 rounds of live bullet shots. Fearing for their lives, the workers' dispersed and Ms. Nodeep Kaur was dragged and beaten by the henchmen of the KIA. Ms. Kaur was then taken to the Kundli police station by policemen. It is important to note here again that Mr. Shiv Kumar was not present for this protest.

On January 12, 2021, two FIRs were lodged at the Kundli police station, against Ms. Nodeep Kaur and other workers. One FIR (25/2021) was registered by police and another FIR registered (26/2021) by Mr. Lalit Khurana, Accountant at Elecmech Pvt. Ltd. Kundli. HRD Mr. Shiv Kumar was not named in either of these two FIRs.

Details of the Incident:

On January 16, 2021, Mr. Shiv Kumar was abducted by the staff of Crime Investigation Agency (CIA), Sonipat, from Singhu, where he was participating in the ongoing farmers' protest.

On February 19, 2021, in response to plea filed by Mr. Shiv Kumar's father, the Punjab and Haryana High Court directed that Mr. Shiv Kumar be examined in the Government Medical College and Hospital, Chandigarh. According to the medical report submitted by the five-member board to the High Court, Mr Kumar is quoted as saying that, he was abducted by the staff of Crime Investigation Agency (CIA), Sonipat, almost seven of them, between 2.30 p.m. and 3 p.m. on January 16, 2021. He was taken to the old kacheri where he was physically and mentally tortured by the CIA officials for the next seven days.

He was produced before the area Magistrate only on January 24, 2021, and was given police remand for 10 days. He was shifted to the Sonipat Jail on February 2, 2021. It is to be noted here that the police showed Mr. Shiv Kumar's arrest on January 23, 2021, a week after they abducted him on January 16, 2021. This amounts to illegal custody. Even during his remand at the police station, he was tortured by the police personnel, both mentally and physically.

A report was prepared by a five-member medical board of Chandigarh's Government Medical College & Hospital after the HRD Mr. Shiv Kumar was examined on February 20, 2021, at 11:45 am. The following is an excerpt from the medical report, which was submitted to the Punjab and Haryana High Court on February 23, 2021:

He was taken to the old kacheri, Sonapat where C.I Staff assaulted him. Both his feet were tied and he was laid on the ground. The police then hit him on the soles of his feet. His 2nd, 3rd and 5th toe nails of the right foot were torn and the nail of the big toe on the left foot turned blue. They also hit him with buttocks with flat sticks, then they tied his hands and stretched his legs. He was made to lie on the ground with both legs straight and a metal pipe was placed on his thigh and rolled over his thighs by two people. They also hit him on both hands and palms and also on the back of his head. He was not allowed to sleep for three days, the C.I staff took his statement and asked him to give names and when he could not so, they tied him to a chair and poured water to his head....He was mentally and physically abused in the police remand and they also poured hot water on his feet and any blisters that were formed were burst by them.

The medical report has stated that all injuries on the HRD were more than two weeks old and were caused by a blunt object/weapon. They said that a psychiatric evaluation suggests that the HRD is facing post traumatic disorder like symptoms.

The medical report has also listed out all the injuries inflicted on the HRD which include two fractures – one of the second digit of the left hand and one on the base of the HRD's right foot. Two possible fractures – one on his left foot and one on his right wrist.

The medical report also states nails of the left thumb and index finger showing “bluish black discolouration”, nail beds of 2nd and 3rd toe are broken and the underlying skin is reddish in colour and showing healing changes, swelling on the base of the right foot.

These actions make the concerned officials liable for criminal prosecution under Sections 320 and 322 of the Indian Penal Code which prohibits inflicting grievous bodily hurt including, but not limited to, inflicting fracture or dislocation of a bone, and Sections 350 (criminal force) and 351 (assault). Further, based on the statements of Mr. Shiv Kumar alleging illegal detention, the concerned officials are also liable for prosecution under Sections 339 and 341 (wrongful restraint), 340 and 342 (wrongful confinement), 343 (wrongful confinement for three days or more), and 166A(a) (public servant disobeying any direction of law which prohibits him from requiring the attendance at any place of any person for the purpose of investigation into an offence).

The abduction, followed by illegal detention, arbitrary arrest and brutal custodial torture of Mr. Shiv Kumar violate a host of rights, most importantly ‘Article 21 – Right to Life and Dignity’ guaranteed by the Indian Constitution. A plethora of procedural practices laid down by the CrPC, Hon’ble Supreme Court and Hon’ble Commission were grossly violated and not adhered to in this case. We believe that the Haryana Police has indulged in serious misuse and abuse of power.

Torture of any kind and under any circumstances is illegal. The DK Basu guidelines clearly state that the detainee has the right not to be ill-treated or tortured during arrest or in custody. The Supreme Court in one of the recent orders (Paramvir Singh Saini v. Baljit Singh & Ors., SLP (Criminal) No. 3543 of 2020) has held that in case a victim

faced human rights violations during an interrogation by any of the agencies like Police, CBI, NIA, ED etc., has a right to obtain the CCTV footage. The victim can approach the National/State Human Rights Commission, Superintendent of Police or Human Rights Courts. Further every interrogation room should have CCTV's installed. Thus, it is essential that CCTV footage of the interrogation of the HRD is given to the Hon'ble Commission at the soonest.

Section 41B, CrPC, requires every police officer to prepare, an arrest memo at the time of arrest which is to be attested by at least one witness and countersigned by the arrested person, and inform one family member of the arrest. It appears these procedures have not been followed. Section 54, CrPC, further mandates medical examination of every arrested person soon after an arrest. It prima facie appears that none of the above were followed and the HRD was subjected to illegal detention in police custody for over seven days.

Article 22 of the Indian Constitution states that a person cannot be denied the right to a lawyer. It states, *"No person who is arrested shall be detained in custody without being informed, as soon as may be, of the grounds for such arrest nor shall he be denied the right to consult, and to be defended by, a legal practitioner of his choice."* Section 41D of the Code of Criminal Procedure (CrPC) states the same.

Section 50A, CrPC states that a relative or friend should be informed about the arrest and the place of detention. It is the duty of the police to inform the arrested person of this right, and also to inform the relative or friend about the arrest. This information should be entered in a designated register at the police station. While the family and friends state that the HRD was picked up by police from Singhu on January 16, 2021, they came to know about his arrest on January 31, 2021, a week after his official arrest on January 23, 2021.

The CrPC in sections 57 and 76 lays down that a person should be produced before the nearest Magistrate within 24 hours from the time of your arrest. The police picked up the HRD on January 16, 2021, but have showed his arrest only on January 23, 2021. This amounts to abduction by the police and should be treated as such.

Further, we believe that this is also a case where the HRD was abducted, subjected to illegal detention, arbitrary arrest and brutal torture because of him belonging to the Dalit community. It is in this light, important to note that prima-facie the police personnel of the Kundli police station violated Section 3 (1) (p) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989.

Further, the HRD's condition was not known because the jail authorities did not allow either his family members nor his legal representatives to meet him in Sonipat prison between February 2, 2021 and February 20, 2021.

Appeal:

We urge that the Hon'ble Commission should urgently:

- Direct its independent investigation wing to conduct an immediate, thorough, transparent, effective and impartial investigation into the above-mentioned incident of abduction, illegal detention and arrest, inhuman treatment, custodial

torture and assault of Mr. Shiv Kumar by the police personnel of Kundli police station and submit a report to the Hon'ble Commission within two weeks.

- Direct the Director General of Police of Haryana to produce **within 48 hours** copies of all relevant documents pertaining to the arrest of Mr. Shiv Kumar for an independent examination by the Hon'ble Commission
 - 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 officers involved in his detention and arrest and Station In-Charge on duty in the Kundli police station on the relevant dates
 - General Diaries, FIRs (649/2020, 25/2021 and 26/2021) and arrest registers of Kundli police station (none of these are available online)
 - CCTV footages from the Kundli police station for January 16, 2020 – February 2, 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.
- Examine compliance with the NHRC Guidelines on Arrest.
- Examine whether the District Legal Services Authority was informed by the Kundli police station of the arrests and detentions.
- Based on independent examination of abduction, illegal detention, arbitrary arrest and custodial torture, recommend strict and immediate legal action against the perpetrators, including prosecution under appropriate sections of the IPC and the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, in this case against staff of Crime Investigation Agency, Sonipat, Mr. JS Randhawa, Superintendent of Police of Sonipat for wilful negligence, Mr. Ravi Kumar, Station House Officer, Kundli Police Station and other police personnel of Kundli police station who indulged in abduction, illegal detention, arbitrary arrest and custodial torture.
- Based on independent examination of abduction, illegal detention, arbitrary arrest and custodial torture, recommend immediate interim compensation of Rs. 5,00,000 and further in accordance with the provision of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989.

- Exercise Section 12 (b) of the Protection of Human Rights Act, 1993, and based on the findings of the independent investigation, intervene before the Punjab and Haryana High Court on aspects related to abduction, illegal detention, arbitrary arrest and custodial torture of HRD Mr. Shiv Kumar.
- Direct the Director General of Police of Haryana to periodically update the Hon'ble Commission on the status of investigation in the three FIRs and submit reasons why these three cases must not be closed against Mr. Shiv Kumar and other HRDs.
- Guarantee in all circumstances the physical and psychological integrity and security of Mr. Shiv Kumar who is still in Sonipat jail and direct the Jail Superintendent to ensure all procedures are respected and Mr. Shiv Kumar has access to his family and lawyers.
- Ensure provision of reparation, compensation, apology to the defender for the physical and psychological sufferings he underwent because of the physical assault, ill-treatment and custodial torture and provide a re-assurance of not engaging in such acts.
- Put an end to all acts of harassment and intimidation against all human rights defenders in general in Haryana to ensure that in all circumstances they carry out their activities as defenders of human rights without any hindrances.

Yours Sincerely,



Mr. Henri Tiphagne
National Working
Secretary
HRDA



Mr. Sanjoy Hazarika
International Director
CHRI



**Dr. V.A. Ramesh
Nathan,**
General Secretary,
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