



HUMAN RIGHTS DEFENDERS' ALERT - INDIA

NATIONAL SECRETARIAT

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HRDA/UA/South/TN/04/11/2023

November 21, 2023

To,
Mr. Indrajeet Kumar,
National Focal Point - Human Rights Defenders & Deputy Registrar,
National Human Rights Commission,
Manav Adhikar Bhawan,
Block-C, GPO Complex, New Delhi –110023
Email: hrd-nhrc@nic.in

Dear Sir,

Sub: HRD Alert – Urgent Appeal for Action – Tamil Nadu - Arani – Illegal arrest and fabricated charges against farmers and HRDs for protesting against land acquisition in Tamil Nadu.

Greetings from Human Rights Defenders Alert!

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 regarding the illegal arrests and fabricated cases on farmers who have been peacefully protesting for more than 128 days against acquisition of their land in Tiruvannamalai district of Tamil Nadu.

About the Human Rights Defenders:

1. Pachaiyappan, S/o Krishnan
2. Devan, S/o Munusamy
3. Thirumal, S/o Mohanam
4. Sozhan, S/o Nathikesavan
5. Arul, S/o Arumugam
6. Masilamani, S/o Chinnapaiyan

7. Bakkiyaraj, S/o Balakrishnan
8. Vijayan, S.o of Athimoolam
9. Perumar, S/o Subramani
10. Murugan, S/o of Kuppan
11. Venkatesan, S/o Kuppan
12. Thirumalai, S/o Kalidoss
13. Sundaramoorthi, S/o Nadesan
14. Sadasivan, S/o Shanmugam
15. Balaji, S/o Mani
16. Annamalai, S/o Veerasamu
17. Durairaj, S/o Arumugam
18. Anbalagan, S/o Durairaj
19. Babu, S/o Narayanan
20. Rajdurai, S/o Palani

All of them are farmers, land rights activist and Human Rights Defenders.

Source of Information:

- Communication with the HRDA South Regional Co-ordinator
- Communication with the HRDs
- Communication with other HRDs in the region

Perpetrators:

Police officials of Arani and Anakkavoor

Date of Incident:

November 4, 2023

Place of Incident:

Melma Junction (Melma Kutroad)

Background:

Hundreds of farmers in the Tiruvannamalai district of the state of Tamil Nadu have been protesting peacefully for more than 128 days against the government's proposed acquisition of about 3000 acres of agricultural wetlands for the SIPCOT (State Industries Promotion Corporation of Tamil Nadu Ltd (SIPCOT)), Industrial Park scheme, which will then subsequently be leased to private industries. The police had filed numerous false FIRs (First Information Reports) with criminal charges against the protestors as well as many false criminal cases (FIRs) against them.

Details of the Incident:

On November 4, 2023, the police arrested 21 farmers in early morning hours at around 2 am, by forcing entry into the houses of farmers, and thereafter remanded 20 of them to judicial custody.

No DK Basu guidelines of arrest were followed by the police. The arrested farmers were taken to different police station by the police. Those arrested including Pachaiyappan, were subsequently produced before the Cheyyar Judicial Magistrate who first remanded them to the Vellore Central Prison and were then transferred to various central prisons at Madurai Central Prison, Palayamkottai Central Prison, Trichy Central Prison, Cuddalore Central Prison, Salem Central Prison, Tamil Nadu. All of them are still in jail.

Their arrests were in connection with an FIR (No. 324 of 2023) filed at Anakkavoor police station on August 29, 2023, when Pachaiyappan and the other farmers were walking together for a public hearing. The public hearing was being organised by the district administration of Thiruvannamalai district when the police stopped them from walking and booked them under sections of unlawful assembly and other sections.

The sections under which they were booked had a maximum punishment of 5 years. The Supreme Court of India in its judgment in in Arnesh Kumar v. State of Bihar, 2014 has made it clear that remand persons for cases under 7 years of punishment should not be carried out mechanically and they should satisfy the conditions as laid down under Section 41 A of the Criminal Procedure Code (Cr.P.C). With respect to Sec. 41(1) of the Cr.P.C, the Supreme Court has repeatedly pointed out that arrest is justified only if the person accused of an offence is likely to run away and escape trial or threaten witnesses

or destroy evidence. If these conditions do not exist there is no need to arrest a person and issuing summons to such persons is sufficient.

Despite this, in contempt of several High Court and Supreme Court orders, the police officials of Anakkavoor PS, Tiruvannamalai district under the specific instructions from their higher officials such as their immediate Deputy Superintendents of Police of Cheyyar, Police Sub-Division, Vandavasi Sub-Division, and Thiruvannamalai Town Sub-Division, the Superintendent of Police, Thiruvannamalai District, the Deputy Inspector General of Police, Vellore and the Inspector General of Police, North Range arrested the peacefully protesting farmers.

We believe that the local police, with the district administration, plans to keep the key persons behind this peaceful protest behind bars with a number of false FIRs against them.

We also fear that they are gradually working towards invoking the preventive detention law called the **Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Drug Offenders, Goondas, Immoral Traffic Offenders, Forest Offenders, Sand Offenders, Slum-Grabbers and Video Pirates Act, 1982**, popularly known as the **Goondas Act** in Tamil Nadu, India.

It is to be noted that though these cases were registered against the peacefully protesting farmers, no formal arrests followed by judicial remand were however made against them on any of the occasions in the earlier months of July/August /September and none of them have a history of criminal cases being registered against them for criminal acts on their part.

In connection with the protest the police registered 10 different FIRs against the HRD Pachaiyappan.

1. On July 11, 2023, FIR No. **375 of 2023** in Cheyyar Police Station, Tiruvannamalai District under section 143, 341, 353 and 188 of Indian Penal Code.
2. On August 22, 2023 FIR no **195 of 2023** in police station Vandavasi North Police Station under section 143, 341, 285, 283 and 290 of Indian Penal Code

3. On August 28, 2023, FIR no **316 of 2023** in Anakkavoor police station under section 147, 341, 294(b) and 506(1) of Indian Penal Code
4. On August 28, 2023, FIR no **317 of 2023** in Anakkavoor police station under section 147, 341, 294(b) and 506(1) of Indian Penal Code
5. On August 28, 2023, FIR no **318 of 2023** in Anakkavoor police station under section 147, 341, 294(b) and 506(1) of Indian Penal Code
6. On August 28, 2023, FIR no **319 of 2023** in Anakkavoor police station under section 147, 341, 294(b) and 506(1) of Indian Penal Code
7. On August 28, 2023, FIR no **320 of 2023** in Anakkavoor police station under section 147, 341, 294(b) and 506(1) of Indian Penal Code
8. On August 29, 2023, FIR no **324 of 2023** in Anakkavoor police station under section 147, 341, 143, 294(b), 353, and 506(1) of Indian Penal Code and Section 3 of the Tamil Nādu Public Property (Prevention of Damage and Loss) Act 1992.
9. On August 29, 2023, FIR no **207 of 2023** in Vandavasi North Police Station under section 143, 341, 283, 290 and 109 of Indian Penal Code
10. On September 11, 2023, FIR No. **603 of 2023** in Tiruvannamalai East Police Station, Tiruvannamalai District under section 143, 341, 353 and 188 of Indian Penal Code

It is pertinent to note that a series of five FIRs is dated 28th August 2023 (FIRs in Crime Nos 316, 317, 318, 319 and 320 of 2023). The times of occurrence in each of the FIRs are : 8.30 AM (2 FIRs) , 9 AM, 9.30 AM and 11.30 AM. Five FIRs one day for incidents from 8.30 AM to 11.30 AM itself speaks to the arbitrariness in the use of the power to even register a criminal case against peaceful protestors by “receiving” five ‘different “ complaints, four of the five in a copy paste manner with the same content and only the name of the complainant differing, only to indicate that there are five cases pending against the accused.

This having taken place as early as on 28th August 2023 and with so many hierarchical layers of senior supervisory officers after the Sub Inspector of Police Mr. Kanniappan of Annakavur Police Station had registered the case, speaks of the total and absolute lack

of any supervisory powers by the DSP, the SP, the DIG and as well as the IG of Police in this matter.

Hence, this is not seen as only the illegality of the FIR registering officer but also equally or even more the negligence of superior officers of the rank of the Indian Police Service who have failed to supervise the existence of these FIRs now resulting in the arrests of those in judicial custody based on these past cases and obtaining "Prisoner Transit Warrants" (referred to in judicial language as PT Warrants) for each of those in detention so that they will now be forced to file bail applications in many more cases and making their being bailed out difficult.

During the arrest the directions of Criminal Procedure Code that are to be adhered to were not followed and neither were the DK. Basu Guidelines of the Supreme Court or the NHRC's guidelines at the time of arrest followed making the arrests illegal.

Every person has a the right to life and liberty enshrined under **Article 21** of Indian Constitution 1950, Article 3 of Universal Declaration of Human Rights 1948, Article 6 of International covenant on civil and political rights, 1966. The Right to life includes right against arbitrary arrest or detention. These instances amount to complete violation of the fundamental right to life and personal liberty granted by **Article 21** of the Indian Constitution.

Declaration on human rights defenders adopted in 1998 by the UN general Assembly was Clauses 2 and 3 of **Article 12** of the declaration state: "*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. 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.*"

The right to protest is an essential element of the right to participate in any democratic dispensation, and restrictions imposed on this right must be closely scrutinized with respect to their necessity and reasonableness.

The Right to protest is recognized under several international instruments, including:

- The International Covenant on Economic, Social and Cultural Rights (Article 8),
- Article 5 (a) of the Declaration on Human Rights Defenders 1998 states that “For the purpose of promoting and protecting human rights and fundamental freedoms, everyone has the right, individually and in association with others, to meet or assemble peacefully”.

Human rights defenders play a pivotal role in ensuring that protest and criticism are expressed in a peaceful and constructive manner. States should legitimize and empower human rights defenders in this role and encourage defenders to take full ownership of this role (A/62/225, para. 102).

Women defenders often face more risks when participating in collective public action because of perceptions of the traditional role of women in some societies, and they become targets of non-state actors (A/61/312, para. 72)

States must investigate and prosecute instances of gender-based violence against women defenders occurring during demonstrations as a matter of priority. It is important to give no-tolerance signals on gender-based violence (A/62/225, para. 101 (a)).

HRDA strongly believes that registration of FIRs against the HRD is an act of reprisal for their activism as a human right defender.

Appeal:

We urge the Hon’ble Commission to

- Urgently invoke the Commission’s powers under section 12 (b) to intervene in the lower courts to squash the false FIRs against the peacefully protesting farmers and in any intervention in the high court challenging the detention.
- Direct the Director General of Police Tamil Nadu to initiate an immediate, independent, thorough, transparent, effective, and impartial investigation into the

above-mentioned incident of illegal arrest of the 21 farmers in violation of the DK Basu guidelines and submit a written report to the NHRC within two weeks.

- Based on the result of the inquiry, direct the Director General of Police Tamil Nadu to take necessary action against the errant policemen who have made the fabricated charges and submit a report to the NHRC within two weeks.
- Direct the Director General of Police Tamil Nadu to take steps to conform to the provisions of the UN Declaration on Human Rights Defenders, adopted by the General Assembly of the United Nations on December 9, 1998 which recognizes the legitimacy of the activities of human rights defenders, their right to freedom of association and to carry out their activities without fear of reprisals.
- Direct the Director General of the Police of Tamil Nadu to ensure the complete physical and psychological safety of farmers and their families to protect them from further fabricated cases and harassment by the police.

We hope to hear from you soon,

Yours Sincerely,

A handwritten signature in black ink, appearing to read 'Henri Tiphagne', with a horizontal line underneath it.

(Henri Tiphagne)

National Working Secretary