



HUMAN RIGHTS DEFENDERS' ALERT - INDIA

NATIONAL SECRETARIAT

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NHRC Diary No. 10996/IN/2020 for the complaint submitted online

Ref No: HRDA/East/BH/08/07/2020

July 21, 2020

To,
Mr. Debindra Kundra,
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 – Bihar: Judicial harassment of gang rape survivor and two HRD caregivers – petition seeking PHRA S.12 (b) court intervention.

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 wrongful arrest of human rights defenders Kalyani Badola and Tanmay Nivedita, along with a 23-year-old gang rape survivor, on July 10, 2020. Following a public outcry and legal challenge to this arrest, on July 17, 2020, only the rape survivor was given bail. The two HRDs, who are the primary caregivers of the survivor, continue to be in jail.

Source of Information:

- HRDs in the region
- Media Reports

Date of Incident:

July 10, 2020

Place of Incident:

Araria, Bihar

The Perpetrators:

Magistrate Mustafa Shahi of the Araria District Court

About the Human Rights Defender(s):

Kalyani Badola and Tanmay Nivedita are human rights defenders and social activists, working with the registered trade union Jan Jagaran Shakti Sangathan (JJSS) and engaging with the unorganised sector workers in North Bihar. Kalyani and Tanmay are the primary caregivers of the 23-year-old gang rape survivor in this case.

Details of the Incident:

On July 10, 2020, a 23-year-old gang rape survivor was taken to a Araria court for her statement to be recorded by a magistrate under Section 164 of the Criminal Procedure Code (CrPC). The woman, who had been gang raped just four days before, demanded that the two human rights defenders and her caregiver – Kalyani and Tanmay of the JJSS – who had accompanied her to the court be present while her statement was recorded. The Magistrate Mustafa Shahi denied permission. The woman, who was already distraught, refused to sign the documents without having the activists read the documents. The magistrate wrongly perceiving survivor's disoriented state of mind as a personal affront, remanded her to jail on charges of obstructing the official legal proceedings. An FIR 61/20 was filed against the rape survivor, and the HRDs Kalyani and Tanmay. They were sent to Dalsinghsarai jail in Samastipur district – about 250 km away from Araria.

During the previous four days, the survivor had been made to narrate the details of the incident over and over again, and in the course of the investigation, the survivor's name was revealed to the mother of one of the accused as well as to other people in the neighbourhood. Family members of this accused began trying repeatedly to meet the survivor, and went to the extent of proposing that she marry the accused and drop the charges. Further, the survivor had made it clear at the outset that she did not wish her father to be present at every step, but the police did not heed this adult woman's request causing the survivor an immense amount of tension.

On July 17, 2020, during a bail hearing in the Araria Chief Judicial Magistrate Court, the rape survivor was given bail but the two HRDs were denied bail and sent back to prison.

HRDA believes that it is a perversion of justice to send an emotionally distraught rape survivor and her two HRD caregivers to jail. The insensitivity of the Magistrate Mustafa Shahi is highly condemnable and his act only increases the emotional trauma for the survivor and the HRDs. Furthermore, order of the chief judicial magistrate on July 17, 2020, not granting bail to the two HRDs is shocking.

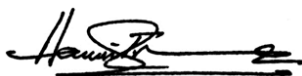
The chief judicial magistrate completely failed to understand the emotional and unstable mental condition of a gang rape survivor under deep stress and her emotional dependence on the HRDs who had been helping her since the rape. The victim was under a great deal of mental stress, and was still struggling to cope, mentally, physically and emotionally when she was brought to the court. All through that afternoon she had been waiting in the court's corridor, in intense heat with the accused also present in the same space.

Appeal:

This case highlights how tough it is for rape survivors and their caregivers in India to navigate a judicial system which does not handle such cases with sensitivity. Also in times of the coronavirus pandemic sending the two HRDs to jail for providing support to a rape survivor is not just unjust, it is inhuman. The Committee on Amendments to Criminal Law headed by Justice JS Verma, former Chairperson of the NHRC, has also recognised and advocated for the presence of members of women's organisations or others supporting the survivor for moral support.

We urge the NHRC to exercise Section 12 (b) of the Protection of the Human Rights Act (PHRA) and urgently place before the High Court of Bihar concerns on the arrests of the gang rape survivor and the two HRDs on the orders of the Araria Magistrate Mustafa Shahi. We urge the NHRC to appeal in the High Court for actions against the concerned magistrate/s, for being insensitive to a gang rape survivor and her caregivers and blatantly misusing their judicial powers.

Yours sincerely,



(Henri Tiphagne)

National Working Secretary