



HUMAN RIGHTS DEFENDERS' ALERT - INDIA

NATIONAL SECRETARIAT

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November 9, 2021

To
Mr. C.S Mawri,
National 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: Intimidation, torture and illegal arrest of WHRD Bindu Mahato and HRD Manilal Mahato under fabricated charges by Bihar Police.

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 in to express our concern over intimidation, assault and fabricated charges against Saguni gram panchayat sarpanch Ms. Bindu Mahato and lawyer Mr. Manilal Mahato, and the illegal arrest of Ms. Bindu Mahato by Bihar Police.

About the Human Rights Defenders:

Ms. Bindu Mahato holds a Masters' degree in rural development from Patna University and is the sarpanch of Saguni Gram Panchayat under Parsa block in Bihar since 2016, whereas Mr. Manilal Mahato is a lawyer with several years' experience in handling legal cases of poor villagers pro bono.

The HRDs are married to each other and reside in Saguni village in parsa block. They are both vocal about the exploitation of marginalised groups in the area and are actively involved in settling disputes in the village through the gram kach hari (village court).

Source of Information:

- Communication with the HRDs
- Communication with other HRDs in the region
- Police records
- Media reports

The Perpetrators:

- Mr. Santosh Kumar, Superintendent of Police, Saran
- Mr. Anjani Kumar, Sub Divisional Police Officer, Sonpur
- Mr. Amarendra Kumar, Thana Prabhari, Parsa Police Station
- Ms. Rupam Kumari, Sub Inspector, Parsa Police Station
- Mr. Lal Bahadur Paswan, Assistant Sub Inspector and Investigating Officer in FIR nos 381/21 and 382/21, Parsa Police Station
- Other police personnel

Date of Incident:

October 24, 2021

Place of Incident:

Saguni, Saran district, Bihar

Background of the incident:

Section 146 of the Bihar Panchayat Raj Act, 2006 mandates that gram kach haris or village courts must look after the judicial functions of gram panchayats. Headed by the sarpanch who is designated as a 3rd class magistrate, gram kach haris are empowered to settle disputes among villagers as well as adjudicate on minor offences under the Indian Penal Code.

As sarpanch of Saguni gram panchayat since 2016, Ms. Bindu Mahato was actively involved in implementing these provisions and running the Saguni gram kachari with assistance from her husband and lawyer Mr. Manilal Mahato and other panchayat members.

The kach-hari settled many disputes including cases of land encroachment such that complaints about these disputes were not lodged with the police station. The HRDs allege that since the disputes were solved by the village court, they did not go to the police denying police the opportunity to extract bribes from contending parties and thus the relationship between the HRDs and the police became strained.

Meanwhile, Mr. Manilal Mahato's relatives in the village were embroiled in a dispute over paternal property. The gram kachari headed by Ms. Bindu Mahato did not take up the case owing to conflict of interest although Mr. Mahato was one of the owners of the said property, and he lived separately with his wife in their own house and was not involved with either party.

Details of the Incident:

On October 24, 2021, between 10-11 AM, a fight broke out between the two parties involved in the family property dispute, led by Mr. Dharmendra Mahato and Mr. Pankaj Kumar Mahato respectively. Several persons including women sustained minor injuries in the assault carried out by both parties, whereas Mr. Pankaj Kumar Mahato was severely injured in the head with a rod and fell unconscious. All the injured were treated at the Parsa Primary Health Centre subsequently.

After relatives and villagers informed Mr. Manilal Mahato and Ms. Bindu Mahato – who lived some distance away – about the altercation, Mr. Manilal Mahato called the Parsa

Police Station Thana Prabhari Mr. Amarendra Kumar at 10.34 AM to intimate him about the incident. He stated that he and his wife feared they might be implicated falsely in the case at the behest of their political opponents, more so because panchayat polls were due in the area on December 12, 2021.

Mr. Mahato sent a WhatsApp message to the Thana Prabhari stating the same after the call, whereas at 12.08 PM, Ms. Bindu Mahato sent an application over WhatsApp to the Thana Prabhari written on her official letter pad, expressing fears of being falsely implicated in the case and asking for an impartial probe in the matter.

At around 2.30 PM, she visited the Parsa Police Station with a hard copy of the application, and the same was received and stamped by police personnel after much argument.

At 1.45 PM, Mr. Pankaj Kumar Mahato visited the Parsa Police Station and submitted a written complaint about the incident naming nine persons as being involved in the assault and attempt to murder him and his family members.

But despite the serious nature of the complaint, police registered an FIR in the matter several hours later at 7.30 PM under Sections 147, 148, 341, 323, 324, 307, 504 and 506 of the Indian Penal Code, and all the named accused freely roamed around in the area in the intervening period.

At around 5.45 PM, much after sunset, around 6-7 police personnel led by Sub Inspector Ms. Rupam Kumari arrived at the residence of Mr. Manilal Mahato and Ms. Bindu Mahato in a police vehicle; all personnel were in uniform and carried firearms but none of them had name tags for identification.

They asked Ms. Mahato to accompany them to the Parsa police station, but did not say why she was required there despite repeated queries. All nine accused named by Mr. Pankaj Kumar Mahato in the police complaint arrived at the HRDs' residence along with the police at this time and abused and heckled the HRDs.

SI Rupam Kumari slapped Ms. Mahato and the other police personnel (all men), assaulted her and other family members including women with fists and batons and abused them. Ms. Mahato's arm was twisted and she was dragged forcibly by police personnel, bundled into the police vehicle and taken to Parsa Police Station in violation of Supreme Court guidelines stating police must not take women accused to the police station after sunset. Police also confiscated her mobile phone on the way.

At the Parsa police station, Thana Prabhari Mr. Amarendra Kumar threatened Ms. Mahato, saying they would not allow her to contest the upcoming panchayat election. He also threatened to implicate her in a false case under the SC/ST Atrocities Act.

She was produced in the Chief Judicial Magistrate's Court at around 3 PM on October 25, and is currently lodged in Chhapra district jail, whereas Mr. Mahato fears being arrested by police.

Mr. Manilal Mahato called Mr. Amarendra Kumar at around 6.30 PM to ask why his wife had been taken to the police station and if police had registered an FIR regarding

the brawl over the property dispute, but the latter did not provide any answer and disconnected the call.

Thereafter, between 7.00-7.30 PM on October 24, Mr. Manilal Mahato called Saran Superintendent of Police Mr. Santosh Kumar and Sonpur Sub Divisional Police Officer Mr. Anjani Kumar on their mobile phone. He apprised them of Ms. Mahato's illegal detention, stated they feared being falsely implicated in the property dispute case, and asked them to intervene in the matter.

He also submitted applications to the same effect over WhatsApp with various police and administrative officials including the SP and DM of Saran and the DIG of Bihar during this period.

At 7.35 PM, police registered a counter-FIR regarding the brawl over the property dispute on the basis of a written complaint by Mr. Dharmendra Mahato. The complainant named 16 persons including Ms. Bindu Mahato and Mr. Manilal Mahato as being involved in a murderous attack on him and his family, and the accused were charged under Sections 147, 148, 341, 323, 325, 307, 504 and 506 of the Indian Penal Code.

We believe that this is a case of police harassment, torture and illegal arrest of an elected representative for their human rights work. Ms. Bindu Mahato and Mr. Manilal Mahato have been working actively for several years to deepen democracy and implement the judicial functions of gram panchayats in their capacity as sarpanch and lawyer respectively.

While Ms. Mahato was formally arrested in this case, she was neither provided access to a lawyer and nor allowed to contact her family or shown an arrest warrant in violation of DK Basu guidelines.

Mr. Mahato has been restricted from meeting or talking to his wife in jail owing to pandemic-related restrictions, and fears she may not be able to file nomination papers (between 18-24 November) for the panchayat elections from jail.

Several aspects of the case seem to indicate that police, were complicit in targeting and falsely implicating the HRDs and/ or arresting them in violation of due procedure thereby abusing their power.

Firstly, police dithered in registering an FIR on the basis of Mr. Pankaj Kumar Mahato's complaint regarding the attempt to murder him and his family for over five hours.

They neither apprehended nor questioned any of the named accused, who were all involved in heckling and abusing the HRDs later that evening. Further, they did not question or apprehend any of the accused even after the FIR was registered.

Secondly, the police registered a counter-FIR in the incident naming the HRDs as accused immediately upon the receipt of a complaint by Mr. Dharmendra Mahato without conducting any preliminary inquiry.

Thirdly, senior police officials including Parsa PS Thana Prabhari, Saran SP and Sonpur SDPO disregarded repeated pleas by the HRDs throughout the day on October 24 wherein they expressed fears regarding being implicated in a false case, and Ms. Bindu Mahato was illegally detained, tortured and arrested in the evening in violation of due procedure.

These instances amount to a gross abuse of the HRDs' fundamental right to life and personal liberty granted by Article 21 of the Indian Constitution as well as a complete violation of their human rights as guaranteed by national and international laws.

Torture is a serious violation of human rights law in national and international law. The Hon'ble Commission itself asked the State to criminalise torture. D.K.Basu vs. State of West Bengal, the Supreme Court of India called torture "one of the worst crimes in a civilised society governed by the Rule of Law".

Article 5 of the Universal Declaration of Human Rights and Article 7 of the International Covenant on Civil and Political Rights both provide that no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. Whereas Article 2 of the United Nations Convention against Torture prohibits torture, and requires state parties to take effective measures to prevent it in any territory under their jurisdiction.

Further, the 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."*

Appeal:

We thus request the Hon'ble Commission to urgently:

- Direct the Director General of Police of Bihar to initiate an independent inquiry into the fabricated case against the HRDs and/ or their illegal detention, torture and arrest, and submit a report to the NHRC within four weeks.
- Depending on the result of the inquiry, take stern action against errant police officials and quash false charges against the HRDs.
- Direct the jail authorities to allow Ms. Bindu Mahato to meet/ talk to Mr. Manilal Mahato and extend all possible assistance to her to file nomination papers for the panchayat poll within due date.

- Direct the state government to provide Rs. 10 lakhs compensation to the HRDs for their harassment and for tarnishing their image and ensure their complete physical safety, including protection from arrest without due procedure.

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 underneath.

Henri Tiphagne
National Working Secretary