



HUMAN RIGHTS DEFENDERS' ALERT - INDIA

NATIONAL SECRETARIAT

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HRDA/UA/East/OD/04/10/2023

28 October 2023

To,
Mr. Indrajeet Kumar,
National Focal Point - Human Rights Defenders & Deputy 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 – Urgent Appeal for Action – Odisha – Nayagarh –Fake charges and illegal arrest of RTI activist Mr. Dilip Samantray by Chandpur Police, in Odisha.

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 an FIR and illegal arrest of RTI and Environmental activist Mr. Dilip Samantray by Chandpur Police, Nayagarh District.

About the Human Rights Defender:

Mr. Dillip Kumar Samantaray, is a Right to Information, Environmental and Animal Rights Activist for last 15 years and a lawyer enrolled in Odisha State Bar Council. He has consistently been raising environmental issues in Odisha with regard to illegal mining, corruption in forest department, nexus of mafias and forest officers.

Source of Information:

- Communication with HRDA Regional Coordinator-East
- Communication with family of HRD
- Communication with other HRDs in the region

Perpetrators:

Police officials of Chandpur Police Station, district of Nayagarh, Odisha

Date of Incident:

October 26, 2023

Place of Incident:

Bhubaneswar, Odisha

Background:

In 2022, Mr. Samantray had filed a petition before National Green Tribunal (NGT) in OA No 83 of 2022 against illegal mining, and the NGT directed prosecution of Mr. Susanta Kumar Barad, involved in the mining industry, along with 9 government officers for illegal laterite stone mining in Mayur Jhalia, Ranpur, Nayagarh District, Odisha. The police of Nayagarh, arrested Mr. Susanta Kumar Barad and he was kept in judicial custody for 54 days before securing his release through bail.

On October 15, 2023, Mr. Susanta Kumar Barad lodged an FIR no. 0183 of 2023, against the Mr. Dillip Kumar Samantray, under sections 294 (Obscene acts and songs), 386 (Extortion by putting a person in fear of death on grievous hurt), 506 (Punishment for criminal intimidation) and 507 (Criminal intimidation by an anonymous communication) of Indian Penal Code. The FIR states that on October 15, 2023 the HRD abused in obscene languages, threatened to kill and demanded extortion of Rs 20 Lakhs over the phone.

Mr. Susanta Kumar Barad also lodged an FIR against District collector Nayagarh and 4 other activist including the HRD alleging extortion, in the month of December 2022, the FIR was found to be false after a through inquiry.

They are already 4 cases registered previously against Mr. Susanta Kumar Barad for threatening activists, (including Mr. Samantray) who have complained before NGT against illegal mining.

Details of the Incident:

On October 26, 2023, the HRD was proceeding to his house from Bhubaneswar in the evening, but was arrested by the Chandpur police, in Nayagarh. The police did not inform the grounds of arrest to the HRD, no detention or arrest memo was given, and the family members were not informed regarding his arrest. The current whereabouts and condition of the HRD are not known.

We believe that Mr. Samantray was illegally arrested and harassed due to his work as a RTI activist. We are deeply concerned regarding Mr. Samantray being subjected to

illegal arrest by the police officials of Chandpur police station in complete violation of the honorable Supreme Court's DK Basu Guidelines of arrest and detention. According to the DK Basu guidelines, every police officer making an arrest has to prepare an Arrest Memo that records details of the arrest.

The arrest memo must contain:

1. The signature of at least one witness, who can be a relative of the arrestee or a respectable person of the locality where the arrest is made.
 2. The time, date, and place of the arrest. The arrested person should sign the arrest memo after it is properly prepared. The police must also contact and inform the relative/friend of the time and place of arrest, and the exact location where the arrested person is detained, at the earliest.
- If the relative/friend is in a different district/city, the concerned police station should be informed by telegraph within 8-12 hours of the arrest and then convey the information to the relative/friend.
 - The information of the arrest should also be sent through the district legal aid committee.

The police must enter the details of every arrest made in the police station daily diary. The diary entry must include the name of the relative/friend who was informed about the arrest. The diary entry must state the name of the police officer in whose custody the arrested person is detained.

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 in the case.

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.

Violations of the DK Basu guidelines of arrest and of the CrPC must amount to an illegal abduction of the HRD by the police.

It is a gross abuse of Article 19(b) and Article 21 of the Indian Constitution, Indian laws, Constitution of India and the fundamental right to life and personal liberty. 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.

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.*"

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

Appeal:

We urge the Hon'ble Commission to take cognisance of the above case under Article 12b of the PHRA Act 1993 and urgently:

- Direct the SSP police Nayagarh District to immediately ensure the release of HRD Mr. Dillip Kumar Samantray.
- Submit the following:
 - arrest and detention memo for Mr. Samantray
 - CCTV camera footage, of Chandpur police station on October 26, 2023
 - police diary of Chandpur police station on October 26, 2023

- Direct the Director General of police of Odisha to initiate an urgent transparent, independent inquiry regarding the illegal arrest of HRD in violation of D.K Basu guidelines and the CrPc and submit the report to NHRC within two weeks.
- Based on the result of the inquiry, direct the Director General of Police Odisha to immediately suspend and file a case against policemen of Chandpur who illegally arrested up HRDs in violation of DK Basu guidelines and submit a report to the NHRC within two weeks.
- Direct the Director General of the Police of Orissa to ensure the safety of HRD's and their family to protect them from further harassment by the police and give in writing to the honourable Commission.

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