



HUMAN RIGHTS DEFENDERS' ALERT - INDIA

NATIONAL SECRETARIAT

No. 555, West Cross 4th Street, K.K.Nagar, Madurai - 625 020, Tamil Nadu, India.

Mobile: 99943-68540

E.mail: hrda.india@gmail.com Web: www.hrdaindia.org

HRDA/East/JH/05/08/2023

August 31, 2023

To,
Mr. Indrajeet Kumar,
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

Sub: HRD Alert – Urgent Appeal for Action – Jharkhand - Brutal custodial torture and death of HRD Washim Sajad by Jharkhand police in Dhurki Police station, District Garhwa.

Greetings from Human Rights Defenders Alert!

HRD Alert-India is a forum of human rights defenders for human rights defenders. Its endeavors to initiate actions on behalf of human rights defenders with security concerns.

We are writing to express our grave concern over the misuse of law, torture and custodial death of forest rights activist Mr. Washim Sajad whose illegal arrest by Dhurki thana police in Garhwa on April 7, 2023, and subsequent torture, resulted in his death.

About the Human Rights Defender:

Mr. Washim Sajad was a 25-year-old social and human rights activist working as a ground level staff at the NGO Van Andolan Jagriti Sangh in Jharkhand which works for forest rights.

Source of Information:

- Communication with HRDA East Co-ordinator
- Communication with HRD's family

- Communication with other HRDs in the region
- Police records as per FIR No 45 of 2023 at Dhurki Police station dated 08-04-2023, U/s 302 IPC, against accused Krishan Kumar Sub inspector, Dhurki Police station.

The Perpetrators:

- Krishan Kumar Sub inspector, Dhurki Police station and
- Other police personnel of Dhurki Police station

Date of Incident:

April 07, 2023

Place of Incident:

Dhurki village, Garhwa District, Jharkhand

Details of the Incident

On April 07, 2023, Mr. Washim Sajad went to Khala village for a meeting on Forest Rights Act.

At around 11:00 PM, 4-5 policemen (not in uniform) in white Tata sumo came to the Khala village and apprehended the HRD nearby his grandfather house. They abducted him without following the D.K Basu Guidelines of arrest or detention. Then the HRD was subjected to torture by the police in the vehicle and then by policemen at the police station of Dhurki.

The HRD was then shifted to the Dhurki Health Center in the same vehicle in which he was apprehended. HRD was given painkiller injections along with antibiotics at Dhurki Health center. Later the HRD succumbed to injuries sustained due to custodial torture.

According to the HRD's Father - At around 12 o'clock in the night HRD's father was informed by Dhurki Police station stating that Inspector Krishan Kumar and HRD is in the hospital and requested the HRD's father to come to the Dhurki primary hospital. The HRD's father Mr. Mumtaz Ansari went to Dhurki Primary Hospital at 12 o'clock in the night where he met his son. The HRD informed him that he was stomped on his chest and subjected to brutal torture by the Sub Inspector Krishan Kumar and other police officials of Dhurki Police station.

The Father of HRD, Mr. Mumtaz Ansari filed a FIR against the custodial death of the HRD in FIR No 45 of 2023 at Dhurki Police station dated 08-04-2023, U/s 302 IPC, against accused Krishan Kumar Sub inspector, Dhurki Police station.

We are shocked at the abduction, brutal custodial torture and killing of Mr. Washim Sajad by the Police officials of the Dhurki Police station. The first violation of law was by the illegal arrest and abduction of the HRD, violating the DK Basu guidelines by the honorable Supreme Court of arrest and detention.

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 of HRD Washim Sajad.

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 the Dhurki police at night no memo was given to any of his family.

The abduction was followed by brutal custodial torture and death violates a host of rights, most importantly 'Article 21' – Right to Life 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 Jharkhand police has indulged in serious misuse and abuse of power.

Torture of any kind and under any circumstances is illegal. 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".

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 CCTVs installed. Thus, it is essential that CCTV footage of the interrogation of the HRD is given to the Hon'ble Commission at the soonest.

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.

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 DK Basu guidelines of arrest, Indian laws, Constitution of India and the fundamental right to life and personal liberty granted by **Article 21** of the Indian Constitution.

Clauses 2 and 3 of **Article 12** of the **Declaration of Human Rights Defenders** adopted in 1998 by the UN general Assembly 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 urge the Hon'ble Commission to take cognizance of the above case and:

- Direct the Director General of Investigation of the NHRC to initiate a transparent, independent inquiry in the illegal arrest, custodial torture and death of the HRD and submit the report to NHRC within two weeks.
- Direct the Director General of Police of Jharkhand to produce within 48 hours copies of all relevant documents pertaining to the arrest and custodial death for an independent examination by the Hon'ble Commission and submit to the NHRC.
 - Arrest memo as required under Section 41 B of CrPC, including name and designation of the police officer who prepare the arrest memo.
 - Medico-legal certificate prepared under section 53 of 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 Mr. Sajad's detention and arrest and Station In-Charge on duty in the Dhurki police station on the relevant date.
 - General Diaries, FIRs (649/2020, 25/2021 and 26/2021) and arrest registers of Dhurki police station (none of these are available online).
 - CCTV footages from the Dhurki police station for April 08 -April 09, 2023.
 - 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.

- Autopsy report by forensic expert and receipt that it was provided to the family within the same day.
- FIR copy of the complaint against Sub inspector Krishna Kumar of Dhurki police station.
- Based on the result of the inquiry, direct the Director General of Police of Jharkhand to immediately suspend and file a cause of torture and murder against policemen who illegally picked up HRD in violation of DK Basu guidelines and tortured him in custody and submit a report to the NHRC within two weeks.
- Issue compensation of 10 lakhs to the family of the HRD for the illegal arrest and custodial torture with resulted in the death of HRD.
- Direct the Director General of the Police of Jharkhand to ensure the safety of HRD's family and to protect them from further harassment by the police.

We hope to hear from you soon,

Yours Sincerely,



(Henri Tiphagne)

National Working Secretary