



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/UA/NORTH/CHNDH/01/09/2024

September 20, 2024

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 – Chandigarh – Raid and arbitrary arrest of HRD Adv. Ajay Kumar in Chandigarh.

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 raid at the home of and arrest of Advocate Ajay Kumar in Chandigarh by National Investigation Agency. We believe that HRD Ajay Kumar is being targeted for his role as a HRD in various peaceful movements including the farmers movement.

About the Human Rights Defender:

Advocate Ajay Kumar is a lawyer who has been working for 30 years as an activist. Since his days as a student in Kurukshetra university, he has been active in various mass and democratic struggles like struggle against the illegal termination of canteen workers in Kurukshetra University and the struggle against the demolition of working-class neighbourhood of Gandhi Nagar, Kurukshetra. He participated in the peasant movement in Kandela, Haryana, was active in opposing the arrest of peasant leader Ghashi Ram and took lead in fact-finding missions on atrocities against Dalits in Haryana.

In Chandigarh, he was active in the movement against evictions of slum dwellers as well as the movements against the amendments to Santhal Pargana Tenancy Act and Chhota Nagpur Tenancy Act in 2016. Adv. Ajay has aided in the capacity-building of activists from the anti-displacement movements against Electro Steel Company in Santhal Pargana (Jharkhand), Grabanda Bera electricity project in Gumla (Jharkhand) and South Korean giant Posco in Jagatsinghpur (Odisha).

He was also founding member of Vistapan Virodhi Jan Vikas Andolan (VVJVA), a conglomeration of more than 50 organisations from across the country seeking to challenge the forcible displacement of peasants particularly Adivasis. He was also involved in Kisan Andolan and in organising the movement against the caste atrocities committed in Panchkula in the state of Haryana.

Source of Information:

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

The Perpetrators:

National Investigation Agency personnel.

Date of Incident:

August 30, 2024

Place of Incident:

Residence of HRD at Chandigarh.

Background of the incident:

Adv. Ajay Kumar's close association with other incarcerated activists made him a person of interest in the false case against Prof. G.N. Saibaba, with his name mentioned in the lower courts.

Details of the Incident:

On August 30, 2024 at 3:40 in the morning HRD Ajay Kumar was at his residence in Chandigarh with his wife and 9 year old daughter when 15-20 personnel raided his house and the searched his house till 12:40 in the noon. Some of them were in civilian clothes from the NIA and others were in uniform. At the time of raid Adv Ajay Kumar and his wife tried to ask for the search memo and FIR. They found that Mr. Ajay Kumar's name was not mentioned in FIR or in any search memo. HRD Ajay Kumar

submitted to NIA that he is a practicing lawyer in Punjab and Haryana High court Chandigarh and gave list of his cases which he appeared in court as lawyer.

After searching the house they took a hard disc, 3 mobiles and some documents. NIA personnel served him a notice to come to NIA office at Chandigarh.

Mr. Ajay Kumar went to NIA office as asked, where he was interrogated till 4:00 in the morning. At that time his wife Aarti who is also an advocate was given an arrest memo of Ajay Kumar. Mr. Ajay was continuously threatened by NIA officials to tell him names of other persons or they will send him to jail for a long time. Adv. Ajay was then arrested and taken to Lucknow and is currently in Lucknow jail.

The HRD was arrested under the *FIR no. RC-01/2023/NIA-LKW by NIA Lucknow under Section 154 Cr. P.C on June 19, 2023; Sections 120B, 121A of IPC and under Sections 18, 18B, 20, 38 & 39 of the UA (P) Act, 1967.*

The FIR says that "Reliable information has been received that concerted attempts are being made by the leaders, cadres and sympathizers/Over Ground Workers (OGWs) of CP) (Maoist), a banned terrorist organization for re-energizing their decrepit influence in Northern Regional Bureau comprising of UP, Uttarakhand, Delhi, Punjab, Haryana and Himachal Pradesh. Their longtime associates such as i) Virendra @ Anjani @ Suraj, in-charge of State Organizing Committee of CPI (Maoist) in Delhi, (ii) Surendra, in charge of State Organising Committee of CPI (Maoist) in Punjab, (iii) Aman, in-charge of State Organising Committee of CPI (Maoist) in Haryana, (iv) Manish Azad @Subhash, r/o Allahabad, in-charge of State Organising Committee of CPI (Maoist) in UP, (v) Rohit Vidyarthi, UP, (vi) Ritesh Bidyarthi, UP and other OGWs have been provided funds from Eastern Regional Bureau, especially from Jharkhand, to recruit cadres and raise the organization in these States. Several front organizations and student wings have been tasked to identify suitable persons who can work as underground cadres to wage war against the Government of India and to commit terrorist acts as per ideology of the 1CPI (Maoist). It has also been found that Vijay Arya, Central Committee member of the CPI (Maoist) who was active in Son-Vindyanchal region, was trying to raise an armed squad in Kaimur region of Bihar and to gather support from the locals in the name of protest against Kaimur Tiger Reserve Area. The website icspwindia.wordpress.com is being used by members of CPI (Maoist) to propagate their ideology & information about terrorist activities, to circulate

vital information to their members & supporters and to solicit international attention for their cause and also for carrying out their misconceived propaganda.”

The raid and his arbitrary arrest without his name being in the FIR, amounts to a gross abuse of the HRDs 'fundamental right to life and personal liberty. Article 21 of the Indian Constitution ensures all its citizen right to life – a life to live without fear, intimidation, harassment, or mental torture.

HRDA strongly condemns the raids and arrests of Advocate Ajay Kumar. HRDA believes Adv. Ajay Kumar is being targeted for his work as an HRD and this is an act of reprisal against him to silence his voice of dissent as a peaceful HRD.

The Declaration on Human Rights Defenders adopted in 1998 by the UN General Assembly provides for the support and protection of human rights defenders. The Declaration makes particular reference to the role of States to take all necessary measures to ensure the protection of everyone against any violence, threats, retaliation, adverse discrimination, pressure or any other arbitrary action as a consequence of his or her legitimate exercise of the rights referred to in the Declaration.

In July 2011, Ms. Margaret Sekaggya issued a Commentary on the Declaration, according to which states bear the primary responsibility for protecting individuals, including defenders under their jurisdiction, regardless of the status of the alleged perpetrators (A/HRC/13/22).

The State's duty to protect defenders from violations committed by States and non-State actors is derived from each State's primary responsibility and duty to protect all human rights, as enshrined in Article 2 of the International Covenant on Civil and Political Rights, which establishes the obligation of States to guarantee to all individuals within their territories and subject to their jurisdiction the rights recognized in the Covenant without discrimination (A/65/223, para. 30).

We would like to highlight that the UAPA is draconian and its provisions are in violation to the underlying principles of natural justice, rule of law, due process and principles of fair trial. The United Nations Security Council Resolution 1456 states that States must ensure that any measure taken to combat terrorism must comply with all their obligations under international law in particular international human rights, refugee and humanitarian law. However, the various provisions of the UAPA run in contradiction to

the international obligations of India under International law. Arrests made under UAPA assume the guilt of the accused and stand in contradiction to the underlying criminal law principle of presumption of innocence. The draconian provisions of the UAPA do not only run against the principles of a fair trial but also violates the principle of natural justice and due process. After the recent 2019 amendments to the Act, for any allegation by a state agency, the onus to contradict the guilt is on the accused. This is in sheer violation of the natural principles of justice and moral values of democracy. It further undermines the constitutionally guaranteed right to a fair trial, creating an enormous risk of wrongful prosecution, given the intolerance of the state towards human rights activists.

The International Convention on Civil and Political Rights (ICCPR), to which India is a party stipulates that presumption of innocence is a universal human rights principle. In contradiction to this, the UAPA reverses the burden of proof. This is not only inconsistent with the fundamental norm but also impels the deliberate planting of evidence.

The provisions of UAPA are in contravention of the requirements of Article 14 of the ICCPR and General Comment No. 32. Article 14(1) provides: “...everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law.” General Comment No. 32 clarifies that this requires access to first instance judicial remedies, and not appellate remedies as currently available under UAPA. Similarly, the absence of a hearing, the lack of a requirement for a reasoned decision, and the fact that the available review mechanisms are not impartial, all contravene the requirements of Article 14 and General Comment No. 32.

According to the Crime in India, published by the National Crime Records Bureau (NCRB), between 2014 and 2017, 68 per cent of cases under the UAPA ended in either acquittal or discharge. This clearly shows that without material evidence on record, charges under the UAPA are being levied. The legislation is being used over the years as a tool of repression — a weapon to keep people entangled in the legal system and throw people in jails for indefinite period at the fancies of the state. The UAPA gives disproportionate power to the government to implicate individuals for being proactive members of the society, ban critical thinking and criminalize dissent by designating them as terrorists.

Appeal:

We urge the Hon'ble Commission to take cognisance of the above case and urgently:

- Direct the Director General of Investigation of the NHRC to initiate a transparent, independent inquiry in the raid and arbitrary arrest of HRD Ajay Kumar and submit the report to NHRC within two weeks.
- Direct the concerned officials to submit to the NHRC in writing within 24 hours grounds for arresting Mr. Ajay Kumar.
- Order that the charges against Adv Ajay Kumar are dropped and he is immediately and unconditionally released;
- Ensure in all circumstances that human rights defenders and those who participated in the peaceful protests are not intimidated by any legal action, and;
- Guarantee in all circumstances the physical and psychological integrity of the activist and his family members from any further reprisals from the perpetrators and using all provisions of law to ensure that they not harassed or intimidated in future.
- Submit to the Government of India and the Indian Parliament expressing concerns on a series of prominent HRDs being charged under the anti-terror law UAPA and subjected to prolonged detention without trial.
- Exercise Section 12 (d) of the Protection of Human Rights Act and undertake a review of the UAPA based on the framework of international human rights law.

Looking forward to your immediate action in this regard.

Yours Sincerely,



(Henri Tiphagne)

National Working Secretary