



HUMAN RIGHTS DEFENDERS' ALERT - INDIA

NATIONAL SECRETARIAT

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March 25, 2022

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 -India – Urgent Appeal for Action – Chhattisgarh: Illegal detention and arrest of journalist Mr. Nilesh Sharma under fabricated charges in Raipur.

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 the harassment, illegal detention and arrest of journalist Mr. Nilesh Sharma under fabricated charges by Chhattisgarh Police.

About the Human Rights Defender:

Mr. Nilesh Sharma is a Raipur based journalist. He is the editor of news portal indiawriters.co.in and the India Writers print magazine. He also runs a popular satire column titled 'Ghurwa ke Maati' on digital platforms.

Source of Information:

- Communication from HRDA East Regional Consultant
- Communication with the HRD's family
- Communication with other HRDs in the region
- Media reports
- Police records

The Perpetrators:

- Police personnel attached to Civil Lines Police Station, Raipur
- Mr. Khilawan Nishad, associated with the Indian National Congress

Date of Incident:

March 02, 2022

Place of Incident:

Raipur, Chhattisgarh

Details of the Incident:

Media reports in Chhattisgarh have been rife with allegations of a power tussle within the ruling Congress party between Mr. Bhupesh Baghel and Mr. TS Singh Deo.

In the last week of February 2022, Mr. Nilesh Sharma wrote about the 'open secret' regarding the rumoured power sharing deal in Chhattisgarh between political leaders Mr. Bhupesh Baghel and Mr. TS Singh Deo in his satirical column 'Ghurwa Ke Maati.' Mr. Sharma used fictitious names to refer to political leaders in his column, which was published on indiawriters.co.in.

On February 26, 2022, Congress worker Mr. Khilawan Nishad, resident of Arang town, lodged a complaint with the cyber cell of Raipur Police. Mr. Nishad called Mr. Sharma a member of the 'Godi media' and alleged that the fictional characters in 'Ghurwa Ke Maati' resembled state ministers and Congress legislators. He also claimed Mr. Sharma used derogatory remarks in his column and drove a wedge between serving ministers.

On February 26, 2022, police registered an FIR (124/22) against Mr. Sharma at the Civil Lines Police Station in Raipur based on Mr. Nishad's complaint. He was charged under Indian Penal Code Sections 504 (intentionally provoke a breach of peace), 505 (public mischief), 505-1 (publishing a rumour) and 505-2 (statements promoting enmity, hatred or ill will). His portal Indiawriters.co.in was also suspended.

On March 2, 2022, at 7.30 PM, around 10-12 police personnel in plain clothes, barged into Mr. Sharma's residence in Raipur saying that they were from the Civil Lines police station and wanted to question him. They forcibly dragged him into one of the vehicles waiting outside. He was alone on the ground floor his residence and his brother was on the first floor.

They did not inform Mr. Sharma regarding any charges against him, and took him to the Civil Lines police station, where he was illegally detained overnight. The police did not allow him to inform his family or provide him access to a lawyer. He was arrested during his arbitrary detention in police custody and produced in the Raipur sessions court on March 3, 2022, following which he was remanded in judicial custody in Raipur Jail.

On March 5, 2022, Chhattisgarh police issued a press release bearing no signature of any designated authority, claiming to have found "objectionable" content on Mr. Sharma's phone. This included supposed evidence of him "indulging in prostitution" and "obscene chats with both genders". The statement also claimed that Sharma's phone had documents and phone recordings of a "confidential nature".

Following the police's purported discovery of objectionable material on the HRD's phone, fresh charges in the same FIR were pressed against Mr. Sharma under Section 67 of the IT Act (publishing or transmitting material containing sexually explicit acts) and Sections 4 and 5 of the Immoral Trafficking (Prevention) Act (PITA) (punishment

for living on the earnings of prostitution and procuring or inducing a person for the sake of prostitution, respectively).

Mr. Sharma was transferred to Bilaspur Jail on March 5, 2022, after the addition of new sections against him. His bail plea was rejected by the Raipur sessions court, and he is currently lodged in Bilaspur Jail.

Various civil society groups and journalists' associations have condemned his arrest and said he was being targeted for his critical comments, published through his columns. This reprisal against Mr. Sharma is another concerning incident of fabricated cases registered against journalists in Chhattisgarh in the past three years.

We firmly believe that the Chhattisgarh police abused its power and violated the right to freedom of speech and expression of a well-known journalist for being critical of the state government. Instead of inquiring into the allegations, police summarily registered an FIR against Mr. Sharma, arbitrarily detained and illegally arrested him. This amounts 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. Guidelines on arrest were grossly violated.

Our Constitution gives journalists the right to exercise freedom of speech and expression under Article 19(a) of the Indian Constitution which is crucial to the work of journalists. The right to freedom of expression encompasses three different aspects: 1) the right to hold opinions without interference; 2) the right of access to information; and 3) the right to impart information and ideas of all kind.

The UN Declaration on Human Rights Defenders 1998 seeks to protect the monitoring and advocacy functions of defenders by recognizing their right to obtain and disseminate information relevant to the enjoyment of human rights. If journalists are muffled up their reporting on facts when they criticise politicians and public officials, seldom will they dare to take a stand and the fourth pillar of the democracy will be crushed further.

The protection of journalists and human rights defenders, and ending impunity for attacks against them, is a priority for safeguarding freedom of expression. States are under an obligation to prevent, protect against, and prosecute attacks against journalists and human rights defenders. A free press and active civil society are essential to ensure the public's right to know, so that governments and institutions can be held accountable.

Appeal:

We appeal to the NHRC to treat this as a case of reprisal against a journalist and human rights defender for exercising his constitutionally guaranteed fundamental rights, and urge the NHRC to urgently –

- Direct the investigation wing of the NHRC to initiate an immediate, independent, thorough, transparent, effective and impartial investigation into the arbitrary detention and illegal arrest of journalist Mr. Nilesh Sharma. Towards this, examine:

- a. Footage from the CCTV cameras at Civil Lines police station, Raipur, to ascertain the exact time of Mr. Nilesh Sharma's detention and arrest.
 - b. Details from the log register at the Civil Lines police station, Raipur.
 - c. Details of all records to ascertain compliance to guidelines on arrest.
- Depending on the result of the investigation, recommend legal actions against police officials who misused their powers and provisions of law to arbitrarily detain and illegally arrest Mr. Nilesh Sharma.
 - Consider exercising Section 12 (b) of the Protection of Human Rights Act and intervene in the relevant courts to defend journalist Mr. Nilesh Sharma .
 - Direct the Chief Secretary of Chhattisgarh to create a safe atmosphere conducive to journalists and HRDs in the state.

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 it.

Henri Tiphagne
National Working Secretary