



HUMAN RIGHTS DEFENDERS' ALERT - INDIA

NATIONAL SECRETARIAT

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HRDA/UA/North/UP/01/05/2024

May 23, 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 – Uttar Pradesh Illegal -Arrest harassment and fake cases on HRD Brijesh Kushwaha by ATS and Uttar Pradesh Police.

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 illegal arrest and fake charges on HRD Mr Brijesh Kushwaha for working for rights of landless farmers in rural areas near Gorakhpur.

About the Human Rights Defenders:

HRD Brijesh Kushwaha 42, is a post graduate who founded a social organization Mazdoor Kisan Ekta Manch which organized landless farm labours of rural areas of Gorakhpur District Uttar Pradesh and participated in farmers protest. He was also associated with Laborers Farmers Unity Forum.

Source of Information:

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

The Perpetrators:

- Anti -Terrorism Squad Uttar Pradesh
- Personnel of Uttar Pradesh Police

Date of Incident:

October 18, 2023

Place of Incident:

House of HRD, Badi Rarbadi village, police station Khukhundu, Deoria

Details of the Incident:

On 8th July 2019 Mr. Brijesh's house was raided, and his laptop cell phone and pamphlets were seized.

On October 18, 2023, at 10 am, a large police force was sent to HRD's home in 6 vehicles, which included some personnel in black uniforms, some local police, and some in plain attire from the Anti-Terrorism Squad. A terror was created by surrounding the entire village.

Mr. Brijesh was at a bag shop located 4 kilometres away from his home. Therefore, half of the force surrounded the village and his house, while the rest went to his shop and brought him to his house. Then the entire house was searched, some pamphlets and magazines related to events like Bhagat Singh Jayanti, freedom fighters etc were seized, along with the confiscation of his phone. No search memo, arrest memo or seizure of electronic devices memo was given to him. His family in his house were told that he was being taken to the Deoria police lines and would be released by evening. No information was given to his family.

The next day, it was learned through the newspaper that he had been arrested under the **FIR ATS 4/19** and was accused under sections of **Indian Penal Code- 120 B**(Waging, or attempting to wage war, or abetting waging of war, against the Government of India), **121A**. (Conspiracy to commit offences punishable by section), **419** (Punishment for cheating by personation), **420** (Cheating and dishonestly inducing delivery of property), **467** (Forgery of a valuable security, will or authority to make or transfer any valuable security, or to receive any money, etc.), **468** (maximum punishment of seven years of imprisonment and a fine for individuals found guilty of forgery), **471** (Using as genuine a forged document) and **13((1)** Whoever- (a) takes

part in or commits, or (b) advocates abets, advises or incites the commission of, any unlawful activity, shall be punishable with imprisonment for a term which may extend to seven years, and shall also be liable to fine),**18**(punishment for recruiting of any person or persons for terrorist act'), **38**(A person, who commits the offence relating to membership of a terrorist organisation under sub-section (1), shall be punishable with imprisonment for a term not exceeding ten years, or with fine, or with both.) of the **Unlawful Activities (Prevention) Act**. The HRD is still in prison.

We believe that Mr. Brijesh was illegally arrested and harassed due to his work as a HRD in complete violation of the honourable Supreme Court's DK Basu Guidelines of arrest and detention. No Information of his arrest was not given to his family and relatives. No arrest memo was shown, no witness signatures were taken, his family was not informed and personnel were in plainclothes.

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, Cr.P.C, 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, Cr.P.C, 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, Cr.P.C 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 Cr.P.C 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.*"

Appeal:

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

- Direct the Director General of Police, Uttar Pradesh to immediately release Mr. Brijesh Kushwaha.
- Direct the Director General of Police, Uttar Pradesh quash the fraudulent cases against HRD. Mr. Brijesh Kushwaha.
- Direct the Director General of Investigations of NHRC to initiate an independent and urgent inquiry into the illegal arrest in violation of the DK Basu Guidelines of HRD Brijesh Kushwaha and the charges on him and submit a report to the NHRC within four weeks.
- On the basis of the investigation, direct the Director General of Police of Uttar Pradesh to take urgent action against the officials who were responsible for the illegal arrest of Mr. Brijesh Kushwaha.

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