



HUMAN RIGHTS DEFENDERS' ALERT - INDIA

NATIONAL SECRETARIAT

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Ref No: HRDA/Central/MP/01/10/2020

October 2, 2020

To,
Mr CS Mawri,
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

Dear Sir,

Sub: HRD Alert – Urgent Appeal for Action – Madhya Pradesh: Abduction, illegal detention and custodial torture of Adivasi activists by forest officials in Burhanpur.

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 grave concern regarding the kidnapping, illegal detention and custodial torture of Adivasi human rights defenders – Mr. Kailash Jamre and Mr. Pyarsing Vaskale– by forest department officials of the state.

Source of Information:

- Information from HRDs in the region
- Information from HRDA Central Regional Consultant
- Media reports

Date of Incident:

August 29 – 31, 2020

Place of Incident:

Khaknaar, district Burhanpur, Madhya Pradesh

Perpetrators:

- Mr. Abhay Singh Tomar, Khaknar Range Officer
- Khaknar Range staff including Ms. Roopa More, Mr. Rajesh Solanki and others
- Bordali Range staff: Mr. Dongar Singh Kanase and others
- Police Personnel at Khaknar Police Station - Thana in-charge Mr. Roop Singh Chauhan and Head Constable Mr. Pagare
- Mr. Sukhram Golkar, Tehsildar of Khaknar

About the Human Rights Defender:

Mr. Kailash Jamre and Mr. Pyarsing Vaskale are Adivasi residents of Rehmanpur village in Khaknar block in Madhya Pradesh. They are active members of *Jagrit Adivasi Dalit Sangathan* and work at educating Adivasis about the provisions of the Forest Rights Act and their other legal rights. They are also claimants under the Forest Rights Act.

They have also been vocal against the illegal clearing of forests which has been happening in the region in last two months with the active collusion of local forest officials as alleged by the adivasis.

Background of the incident:

On August 29, 2020, two Adivasis, Mr. Jabarsing Vaskale and Mr. Somla Ajnare, were picked up by the forest officials of the Khaknar Range led by Range Officer Mr. Abhay Singh Tomar as they were returning to their village after buying groceries. They were handcuffed and kept all night in a room in the range office premises. No information was provided to their families or the residents of their village regarding this incident.

The following morning, i.e. August 30, 2020, Mr. Kailash Jamre, an Adivasi activist, inquired with the staff under the jurisdiction of the Khaknar range office and asked them about the missing persons. Upon his inquiry, officials from the range office told him and others to come to Burhanpur District Court to apply for bail for Mr. Vaskale and Mr. Ajnare.

Details of the Incident:

On August 30, 2020, Mr. Abarsing Vaskale, brother of Mr. Vaskale, and Mr. Pyarsing Vaskale accompanied Mr. Jamre to Burhanpur District Court and they attended the hearing of Mr. Vaskale and Mr. Ajnare. The forest department officials neither presented about the crimes allegedly committed by the two nor provided any evidence in the court. However, the bail application was rejected by the presiding judge Mr. RS Baghel. The two were sent to Khandwa Jail, which is the closest prison to Burhanpur, nearly 75 km away.

As Mr. Jamre and Mr. Pyarsing Vaskale were exiting the court premises at around 5:30 pm on August 30, 2020, when they were forcibly abducted by the Khaknar Range Officer Mr. Tomar and a few forest department personnel from the court premises, in a white jeep that belonged to the forest department. They were both handcuffed.

As in the previous case, the families of Mr. Pyarsing Vaskale and Mr. Jamre or other residents of their village were not informed about the same. Mr. Jamre and Mr. Pyarsing Vaskale were taken to Khaknar range office, around 40 km away from the court, where they were illegally detained all night. They were brutally beaten up by around 20 staff and officers of the range office and the Bordali range office of the Madhya Pradesh Forest Department. The staff and officers, most of whom had consumed liquor, took turns to beat them up through the night. Two to three people held their limbs while the others relentlessly beat them with lathis. When they were not being beaten, they were handcuffed to a shut window.

They were verbally abused by the staff and the officers for “speaking about the law” and “being active with the ‘Sangathan’” (*The Sangathan referred to is Jagrit Adivasi Dalit Sangathan, of which both of them are members and have been working to raise awareness among Adivasis in the region about their rights and specifically about rights enshrined under the Forests Rights Act, 2006.*)

News of their abduction reached the village late in the evening on August 30, 2020, from Mr. Abarsing Vaskale, brother of Mr. Jabarsing Vaskale, who had accompanied Mr. Pyarsing Vaskale and Mr. Kailash Jamre to the court but had managed to evade the forest officials.

Upon getting the news about a 100 villagers from Rehmanpur village and adjoining villages, including many women, walked upto 15 kilometres to reach Khaknar police

station to file a complaint and to demand that the missing persons be found. The officials present at the Khaknar police station, including the Thana In-charge Mr. Roop Singh Chauhan and Head Constable Mr Pagare refused to file a complaint or register an FIR. Instead they threatened the villagers with arrest if they continued to press their demands.

When the villagers stated their intention of going to the Khaknar range office, the policemen assured them that no ill treatment had been meted out to the HRDs and that they had already been taken to Burhanpur, where they would be produced in the morning. The villagers were present at the police station from around 9 pm to 3 a.m. at the police thana of Khaknar. During this period the Tehsildar, Mr. Sukhram Golkar, also arrived and asserted that the two were not being ill-treated. He also made insulting remarks about Adivasi women being out late at night.

On August 31, 2020, at around 10 am, forest officials gave a handwritten note to Mr. Pyarsing Vaskale's sister that only stated that he had been arrested and would be produced at the Burhanpur District Court the same day. This note did not give any information regarding the date and time of arrest, the charges against them, where they were being held or any other details required by the Supreme Court guidelines.

The forest officials took Mr. Jamre and Mr. Pyarsing Vaskale for a medical examination at the Khaknar Primary Health Centre. The forest officials told the doctor that they were fine and there was no need to examine them. The doctor then issued a medical certificate without proper examination. They were handcuffed throughout.

The two Adivasi HRDs were produced in Burhanpur Court on August 31, 2020, at around 3 pm. Since the case was registered under the forest related laws there is no FIR but a Preliminary Offence Report (POR) with case number 5338/19. This was the only information provided by forest officials to the HRDs. They were charged under the same sections as Mr. Jabarsing Vaskale and Mr. Somla Ajnare.

Mr. Jamre fainted in the corridor of the court due to the torture he had endured overnight in the range office premises. He was rushed to the district hospital, where also he was not examined for injuries. In the hospital he continued to be unconscious and his family felt that he was not getting the medical attention that he needed and hence they took him to a private hospital called 'All Is Well' where he was admitted for 6 days. Blunt trauma injuries were found on his body, especially on the lower half of

his body. The extent of trauma inflicted is evident from the fact that Mr. Jamre was unable to eat for nearly five days and is still unable to walk properly.

The contents of the POR have been not revealed in court. During the hearing, it was learnt that the HRDs have been charged under Section 26 of the Indian Forest Act, 1927, Section 2 (16) and (15) and Section 51 of the Wild Life Protection Act, 1972 and Sections 3,4,7 and 55 of the Biological Diversity Act, 2002. No documentation to this effect has been given to the HRDs or their lawyers.

The Court presided by Judicial Magistrate Mr. R.S Baghel on August 31, 2020, denied bail to Mr. Pyarsing Vaskale, who was then sent to Khandwa Jail. The counsel for Mr. Pyarsing Vaskale submitted an application for MLC examination, who in court stated that he had been beaten.

However, Mr. Baghel ordered that since according to the case diary he has already been examined and no visible injuries were found, so any further MLC was not required and ordered Mr. Pyarsing Vaskale be remanded directly to judicial custody. Mr. Vaskale was brought before the court in handcuffs. Seeing this Mr. Baghel had instructed forest officers to remove handcuffs.

Mr. Jabarsing Vaskale and Mr. Somla Ajnare were granted bail on September 2, 2020, by the Sessions Court, while Mr. Pyarsing Vaskale was granted bail on September 3, 2020, by JMFC court on grounds of parity. Mr. Jamre was discharged from the hospital and was presented to the District Court of Burhanpur on September 5, 2020, where he was granted bail.

HRDA states with grave concern that the officials of the forest department have acted in complete breach of the law. The violations are as follows:

Wrongful Arrest and Illegal confinement: The HRDs were kept in illegal confinement for upto 23 hours in a building that appears to be a residential quarters within the range office premises.

The HRDs have been charged under Section 64 of Indian Forest Act 1927, which grants forest officials the power of arrest to, but section 64 (2) clearly specifies that *“every officer making an arrest under this section shall, without unnecessary delay and subject to the provisions of this Act as to release on bond, take or send the person*

arrested before the Magistrate having jurisdiction in the case, or to the officer in charge of the nearest police station".

Section 65 provides for the accused to be released on a bond for appearance, if and when required, before the Magistrate or nearest police station. Section (2) (16) and (15) and Section 51 of the Wild Life Protection Act, 1927 have been applied and these do not allow arrest. Sections 3,4,5,6,7 to which section 55 (the section that allows arrest) of the Biological Diversity Act have been applied to the HRDs case and are completely inapplicable to poor Adivasi farmers since they concern intellectual property rights, commercial misuse and regulation of research.

Section 55 of the Biological Diversity Act, 2002, which carries a sentence of a prison term of up to five years and a fine that may extend to Rs. 10 lakh or more if the damage exceeds Rs. 10 lakhs. The damage or the crime is laid out in section 3, section 4 and section 6 of the Act. pertain to research and results pertaining to biodiversity and the preservation of the same and an application of Intellectual Property Rights which need to be made only with prior consent of the National Biodiversity Authority.

It must be noted that all offences under this Act shall be cognizable and non-bailable. The forest officials have provided no evidence of any kind and have not mentioned the actions that HRDs have committed to attract the aforementioned charges. Section 55 appears to have been applied only in order to harass these adivasis with non-bailable provisions. There are no procedures for arrest defined in this Act.

While section 64 of the Indian Forest Act allows forest officials to arrest an individual, they do not have the right of custody and are not covered by section 57 of the CrPC which allows police officers to detain accused for not more than 24 hours. Moreover, the range office premises is not a legal custodial centre. According to the description and the building identified by the victims as the place where they were held appears to be a residential quarters.

Mental and physical torture in custody: These HRDs were handcuffed and beaten repeatedly. They were told that their offence is that they campaign about the Forest Right Act and other legal entitlements and are members of a community organisation that does the same.

Without examining the victims, the doctor at the CHC Khaknar provided the forest officials with a false medical report of Mr. Jamre and Mr. Pyarsing Vaskale. Despite orders of the court, no medical examination was conducted of Mr. Pyarsing Vaskale.

Upon admission to the private hospital 'All is Well' in Burhanpur, Mr. Jamre was found to have blunt trauma injuries on buttocks and thighs and was unable to walk and suffered from severe dizziness and pain. On the sixth day when he was able to take a few steps with help, he was discharged from the hospital. He left the hospital in a wheel chair and had to be carried up to the courtroom on the first floor where he applied for and was granted bail. He was not able to eat for five days after the torture, and had to be fed by drip.

Violation of Supreme Court Guidelines during arrest

The guidelines laid down by the Supreme Court with regards to the arrest are also a part of 'The Wildlife Crime Investigation Handbook' of the Wildlife Crime Control Bureau of the Ministry of Environment, Forests and Climate Change, which are applicable to forest officials.

The Wildlife Crime Investigation Handbook states that the proceedings of the arrest should be recorded on an Arrest cum Personal Search Memo and the reasons for the arrest should be mentioned in the Memo. All pages of the Arrest cum Personal Search Memo should be signed by the accused, the independent witnesses and the investigating officer or the officer making the arrest. Left hand thumb impression of the accused is also to be obtained on the last page of the Arrest cum Personal Search Memo. Copy of the same should be supplied to the accused under acknowledgment.

It states that preferably the arrests should be made *"in the presence of a relative or well-wisher of the accused or in the presence of two independent witnesses."*

Furthermore, it states that intimation of arrest should be given immediately to a family member/relative/well-wisher of the accused, which has been suggested by the accused and also to the jurisdictional police station. If the intimation is given telephonically, the same should be confirmed in writing at the earliest.

None of the above arrest procedures were followed by forest officers of the Khaknar Range Office. In this case all mandatory arrests procedures were ignored. Though the case diary has not been made available to the victims, the following points emerge from the statements of forest staff and the accused:

1. The arrest memo is not signed by any relative or independent witness, but merely by two forest staff.
2. Pertinent information was not provided to relatives/ well-wishers as required by the guidelines. Though Mr. Jamre and Mr. Pyarsing Vaskale were picked up at around 5 pm on August 30, 2020, but it was only at around 10 am on August 31, 2020, that Mr. Vaskale's sister was given a handwritten note stating that Mr. Jamre and Mr. Pyarsing Vaskale have been arrested and would be produced in the court on August 31, 2020. This note does not mention date or time of arrest, what are the charges or where they have been detained. This despite over a hundred people having walked 15 km to the police station on the night of August 30, 2020, seeking information about Mr. Jamre and Mr. Pyarsing Vaskale and asking the police and tehsildar to intervene.

HRDs were illegally detained all night and subject to extreme custodial torture. Thus, the actions of the forest officials and staff amounts to abduction to subject a person to grievous hurt punishable under Section 367 of the Indian Penal Code.

The Handbook also states that if custodial interrogation of an accused is required, a petition for the same should be filed in the court under section 167 of the Code of Criminal Procedure (CrPC). It further states that interrogation should be avoided between 6 pm and 6 am and "physical coercion/torture should not be resorted to at any point of the arrest, detention or custodial interrogation of the accused".

The act of the forest officers and staff is a clear case of torture which goes against the Article 7 of the International Covenant on Civil and Political Rights (ICCPR), which India is a party to. It states that no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. Furthermore, Article 5 of the United Declaration of Human Rights states that no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.

The Wildlife Crime Investigation Handbook also states that the medical examination of the arrested should be done before being produced in Court. However, the HRDs were only asked about their past medical and health issues by the hospital staff. Upon being admitted to a private hospital, it was noted that Mr. Jamre had suffered grievous injuries to the lower half of the body.

Appeal:

This is prima-facie a case where all laws pertaining to arrests – NHRC’s guidelines, guidelines in DK Basu and provisions of the Criminal Procedure Code (CrPC) are grossly violated. This is also a case of life and liberty, and dignity of the two Adivasi HRDs.

The case also shows that while the forest officials were the main perpetrators of the crime, the actions of the local district and police administration aided and abetted the gross violations on the life, liberty and dignity of the two Adivasi HRDs.

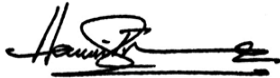
We appeal that the NHRC immediately intervenes in this case and:

- Direct the independent investigation wing of the NHRC to do an independent and transparent inquiry of the kidnapping, illegal detention and torture of the two HRDs and ask the forest officials to produce within 48 hours:
 - A copy of the arrest warrant or memo made while arresting the two HRDs
 - The entire CCTV camera footage of the night of the Khaknar Range Office, as well as the names of all the forest department officials who were present on duty on the night of August 30, 2002, Khaknar Range Office.
 - A copy of the duty register of the Khaknar Range Office
 - A copy of the medical report of the HRDs before and after their illegal detentions.
- Direct the Chief Secretary of Madhya Pradesh to take action against Range Officer Mr. Abhay Singh Tomar; and other officials and officials of Bordali Range responsible for the abduction, illegal detention and custodial torture of the HRDs.
- Direct the Superintendent of Police of Burhanpur to immediately arrest the perpetrators and register a case under the relevant sections of the Indian Penal Code pertaining to abduction and torture as well as importantly under the relevant sections of the SC/ST (Prevention of) Atrocities Act.

- Direct the Director General of Police of Madhya Pradesh to take actions against the police officials at Khaknar police station for deliberately lying to villagers and aiding and abetting the torture and kidnapping of the HRDs. The local police had refused to file a complaint or register a missing person's FIR.
- Direct the District Collector of Burhanpur to immediately take action against the tehsildar, who had also assured the villagers that the HRD were in no danger and there would be no ill treatment.
- Direct the Superintendent of Police of Burhanputo arrest all those involved in the illegal detention of Mr. Jabarsingh Vaskale and Mr. Sumla Ajnera.
- Direct the State government to give a compensation of Rs. 50 lakhs to Mr. Vaskale and Mr. Jamre for the extreme physical and mental torture they had to undergo at the hands of the Forest department officials.

Hoping for immediate action from your side.

Yours Sincerely,



(Henri Tiphagne)

National Working Secretary