



HUMAN RIGHTS DEFENDERS' ALERT - INDIA

NATIONAL SECRETARIAT

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September 18, 2019

To

Mr.Khaleel Ahmed

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 – Gujarat: False and fabricated case filed against human rights defender and Advocate Bilal Kagzi - Reg

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 now writing to express our grave concern regarding the false and fabricated case filed against human rights defender and Advocate Bilal Kagzi.

Source of Information on the Incident:

- Communication from Mr. Bilal Kagzi
- Media sources
- Communication with activists in the region
- The Regional Coordinator for the South & West of India

About the Human Rights Defenders under attack:

Mr.Bilal Gulam Rasul Kagazi is a practicing advocate at Surat district court and the Sessions court since 2007. He lives in the Adivasis area since the year 2007 and is representing victims of police atrocities and custodial torture and is also engaged in cases of misuse of power, malpractice amongst others . He also represents victims at

the Gujarat State Human Rights Commission and Police Compliant Authority . He is also working for implementation of Scheduled Caste and Scheduled Tribes (Prevention of Atrocities Act) 1989 and is associated with adivasi rights organisations as legal advisor. He also represents clients in criminal cases as an advocate and towards this he has filed five cases against Kosamba Police Station sub-inspector P.H. Nai and police constable Nilesh Bhojawala and the Gujarat State Human Rights Commission and the competent police authority have taken cognizance of these matters.

The Perpetrators:

- Mr.P. H. Nai, Sub Inspector of Police
- Mr. Nilesh Bhojawala, Police constable , Kosamba police station

Place of Incident:

Kosamba, Surat, Gujarat

Incident:

On the 12 of August 2019, an FIR had been registered in Crime No.136/2019 under Section 143, 144, 148, 149, 307,323, 324, 325, 427, 120-B, 504 and 506(2) of the Indian Penal Code at the Kosamba Police Station, in Surat. The said FIR has been filed against eight persons including advocate Bilal. The complainant in this case alleged that all the accused persons attempted to kill him. But, Bilal was at his home due to the festival of Bakrid and was nowhere near the place where the alleged offence took place, but his name was inserted and added by the police in collusion with the complainant, in order to nurse a grudge against him – as he is representing the co-accused in number of criminal cases against the complainant.

The FIR also falsely alleges that that the complainant in this case had met Bilal on June 20, 2019 near Surat Railway Station, and was threatened.

Bilal gave written representation to the Investigating Officer, Deputy Superintendent of Police (DSP) on August 16, 19 with CCTV footage from his home for the police to investigate and to clearly establish the fact that when the alleged offence took place advocate Bilal was at his home. Despite several weeks, the police had not investigated anything about the actual involvement of Bilal who further gave a written representation about the same with more details and materials to DSP, Surat on August 25, 2019.

In spite of this several detailed representations and evidences given, the Police have not taken any steps to investigate about the same, hence, an application for Anticipatory Bail was filed which was granted by the Additional Sessions Judge, Surat on August 29, 2019.

The entire motive of adding the name of Adv. Bilal in the FIR by the complainant was to take out a personal vengeance and to stop him from representing the complainant's opponents. The background to this case is also that, since the last two years, there has been a dispute going on in Kosamba village between two groups, wherein Bilal has been representing one group in a number of criminal cases as an advocate because of which the complainant has been aggrieved as he supports the other group.

The police are making moves to silence advocate Bilal and have therefore registered a false and fabricated case against him. It is pointed out that the video evidence used against him was neither accepted nor registered as part of evidence by the Investigating Officer as advocate Bilal was not present at the time and place of the incident. In the past too advocate Bilal has been threatened, attacked and assaulted by the police and even locked up. He has threats from anti-social elements that are conspiring to kill him.

Pertinent to this particular case of advocate Bilal, it is pointed out that under the Declaration of Human Rights Defenders, it is stated that in the context of human rights violations by third parties, the obligation to protect, first, involves ensuring that defenders do not suffer from violations of their rights by non-State actors. Failure to protect could, in particular circumstances, engage the State's responsibility. Even acts and omissions committed by non-State actors under the instructions, control or direction of the State can, under certain circumstances, give rise to State responsibility. Therefore, it is paramount that prompt and full investigations are conducted and perpetrators brought to justice. Failure by States to prosecute and punish such perpetrators is a clear violation of Article 12 of the Declaration on Human Rights Defenders.

Appeal

We therefore urge you to immediately take necessary steps to ensure that the Superintendent of Police, the District Collector and District Magistrate of Surat District:

- Order an immediate, thorough, transparent, effective and impartial investigation into the above-mentioned incident of intimidation, harassment, fabricated and false case filed on human rights defender and Advocate Bilal Kagzi;
- Take steps to provide adequate security to human rights defender and Advocate Bilal Kagzi;
- Take immediate action on the perpetrators by and using all provisions of law to ensure that the defenders, like Advocate Bilal Kagzi are not harassed or attacked in future and provide a re-assurance of not engaging in such acts against HRDs;
- Ensure provision of reparation, compensation, apology to the human rights defenders and their family members for the mental harassment, physical and psychological sufferings they have undergone and give this assurance to the NHRC of India in writing immediately and urgently;

Looking forward to your immediate action in this regard,

Yours sincerely,



Henri Tiphagne

Honorary National Working Secretary