

Death in Police custody and violation of legal procedures

MASUM <masumindia@gmail.com>

6 February 2020 at 05:43

To: NHRC Complaint <cr.nhrc@nic.in>, Secretary General <sgnhrc@nic.in>, Surajit Dey <registrar-nhrc@nic.in>
Cc: Chief Secretary Gov of WB <cs-westbengal@nic.in>, Home Ministry <hm@nic.in>, "Home Secretary Govt of W.B." <wb.secyhome@gmail.com>, "DG & IGP, West Bengal Police." <dgpwestbengal@gmail.com>, DM Cooch Behar Kaushik Saha <dmcoochbehar@gmail.com>, SP Cooch Behar <spdibcbr@gmail.com>, SDO Dinhata <sdodinhata@gmail.com>, UN SR On Torture <Sr-torture@ohchr.org>, UN SR on EJK <eje@ohchr.org>, UN SR on Health <srhealth@ohchr.org>, IMA <hsg@ima-india.org>



Banglar

Manab Adhikar Suraksha Mancha (masum)

40A, Barabagan Lane, Serempore,
Hooghly - 712 203 West Bengal, India

Phone : +91-33-2622-0843. /45,
Tele Fax : +91-33-2622-0843
E-mail : masumindia@gmail.com
Web : www.masum.org.in

5 February 2020

The Chairman
National Human Rights Commission
Manav Adhikar Bhawan
Block-C, GPO Complex, INA
New Delhi- 110023

Respected Sir,

Through this complaint, I would like to bring to your attention a case of custodial death due to torture in the custody of Dinhata Police Station, Cooch Behar. The facts in this case have been manipulated by the police, starting from the arrest of the deceased, the lodging of FIR, admission to the hospital, conduction of post-mortem and so on. The police presents the case as a death due to ill-health whereas there are several testimonies and facts that point towards the culpability of the police in the death of the victim.

1. The victim was arrested by the police prior to the lodging of FIR or the General Diary Entry; the victim was arrested at 11:30pm on 30.12.2019 while the FIR was lodged at 12:15am on 31.12.2019.
2. The police did not follow due procedure while arresting the victim. They criminally trespassed in the victim's house. They had no lady police personnel with them even though the victim's wife and the wife of the victim's son were present in the house.
3. The police did not make a memo of arrest after taking the victims in custody.
4. The time of receiving information by the police and the lodging of FIR is the same, i.e. 12:15 am on 31.12.2019.
5. On the FIR, the complainant NurAlam Hossain's signature is missing. This reveals that he was not physically present at the time of lodging FIR.
6. In the FIR report, the names of the accused start from serial number 2. This indicates that the FIR has been manufactured by the police and can be altered by them whenever they wish to do so.
7. The complaint received by the Dinhata Police Station has the stamp of the Inspector-in-Charge but has been received by the Sub-inspector on duty. The police has not followed due procedure while receiving complaint.
8. On 09.01.2020, while the UTP was in the custody of Dinhata Police Station, he was admitted to the Dinhata Subdivision Hospital without informing his family members.
9. On 12.01.2020, he was taken from the hospital and transferred to the Kotwali Police Station in Cooch Behar. He was admitted to the MJN hospital in Cooch Behar later that night because of his deteriorating health, again without informing his family members.
10. Allegedly, the police failed to get the permission from the court authorizing the transfer of the UTP from the custody of Dinhata Police Station to Kotwali Police Station in Cooch Behar.
11. The police violated the order received from the Superintendent of Dinhata Subsidiary Correctional Home asking the Inspector-in-charge to inform the family of the UTP about his ill-health and allowing them to meet him.
12. On 13.01.2020, the UTP died in the custody of Kotwali Police Station and his family was finally informed about his death. Before the post-mortem, the family found the body of the deceased wearing no clothes with his testicles bandaged in the hospital, indicating that he had acquired an injury while in the custody of the police. What happened to the clothes of the deceased? Is the police trying to hide certain evidence of mistreatment by taking away his clothes?
13. Our fact finding team inquired about the details of inquest at Kotwali Police Station and found out that inquest was done by Sub-inspector Prasunjit Barua violating Section 176 1(A) of the CrPC. This indicates the illegality in the actions of the police.

14. In the dead body challan issued by the police, the address of the victim is incorrect. It also states that the dead body was found in “gown changing room”, instead of a hospital bed or a morgue. The section on “date and hour of dispatch and distance from place of post-mortem” has been left blank by the police.

15. Post the victim’s death, the party office of the BJP filed a complaint to the Inspector-in-charge of Dinhata Police Station saying that they have received information that the victim “succumbed to his death due to custodial torture”. The complaint also asks for a judicial inquiry into the incident.

16. The pictures of the dead body reveal that his skull has not been cut open even after the post-mortem examination. This means that due procedure has not been followed while conducting post-mortem and therefore, the PME report that will be given cannot be deemed reliable.

The incident violates Articles 19 and 21 of the Constitution of India. The incident also violates several sections of the Criminal Procedure Code, particularly those on arrest guidelines and Section 176 1(A) which requires inquest in cases of custodial death to be done by Judicial Magistrate. The police have also violated the DK Basu guidelines given by the Supreme Court of India. The details of the case are given in the fact finding report attached below.

Therefore, I seek your urgent intervention in the case through taking the following measures:

- An independent and impartial inquiry should be initiated in the case by either the investigative team of the NHRC or the CID.
- The Police should be asked to submit evidence of why the FIR was lodged after the victims’ arrest.
- The Police should be held accountable for not following the guidelines of arrest.
- The post-mortem examination report of the victim should not be deemed reliable because due procedure was not followed while conducting the examination.
- The family of the deceased should receive adequate compensation for torture and death in police custody.

Thank you.

Yours Sincerely,
Dipyaman Adhikary
Assistant Secretary

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Details of the Victim: Ram Prasad Barai; s/o Lt. Jibon Barai; 66 years; Address: Khalisha Gosanimari village, Dinhata Subdivision, Dinhata Police Station, Cooch Behar District

Details of secondary victims: 1. Prasanjit Barai; s/o Ram Prasad Barai

2. Mrinal Krishna Sarkar; nephew of Ram Prasad Barai

Details of the Perpetrators: Inspector-in-Charge and other police officers of Dinhata Police Station and Kotwali Police Station.

Date and Time of Incident: 13.01.2020 around 4 am

Place of Incident: In custody of Kotwali Police Station

Details of Incident: Ram Prasad Barai owned a small cloth shop in Khalisha Gosani Mari village. He was well-known in the community because of his former political affiliation with CPI (M). However, since 2011, he had no political leanings while his two sons are currently affiliated with the BJP. On 30.12.2019, during a function in the village where a MLA from the Trinamool Congress was invited, some people ransacked the MLA’s car. On the same night, at 11:30 pm, the police from Dinhata Police Station arrested Ram Prasad Barai, his youngest son, Prasanjit Barai and his nephew Mrinal Krishna Sarkar, alleging them to be the culprits of the incident. The police did not follow the guidelines of arrest listed in the CrPC. They had no lady police personnel with them even though the victims’ wives were present at the residence at the time of arrest. They also did not make a memo of arrest and criminally trespassed into the victim’s residence. Barai had come straight home from his shop and had not participated in the function but in spite of this alibi, he was arrested by the police. The police lodged a case against the deceased and others vide FIR no. 549/19 dated 31.12.2019 at 12:15am. This is the first point of contention in the police narrative. The police received the complaint and lodged the FIR against the deceased after they made the arrests, which hints at the clear possibility that the arrest had been pre-planned. On the FIR, the complainant Nur Alam Hossain’s signature is missing. This reveals that he was not physically present at the time of lodging FIR. Nur Alam Hossain is a party worker of the TMC which hints at the possibility that this could be a case of political rivalry in which the deceased was implicated. In the FIR report, the names of the accused start from serial number 2. This indicates that the FIR has been manufactured by the police and can be altered by them whenever they wish to do so.

On 31.12.2019, all of them were presented before the ACJM Court at Dinhata and were denied bail. On 09.01.2020, the police noticed the health of Ram Prasad Barai deteriorating and took him to the Dinhata Subdivision hospital. On 11.01.2020, the doctors said that he can be released from the hospital. In spite of this, the police did not take him back to prison that day but waited till the next day to do so. Moreover, the Superintendent of Dinhata Subsidiary Correctional Home wrote to the Inspector-in-Charge (IC) of Dinhata Police Station vide Memo no. 27/AB, ordering him to inform



ভারত সরকার
Government of India

১৯৫১





রাম প্রসাদ বাড়ুই
RAM PRASAD BARAI
পিতা : জীবন চন্দ্র বাড়ুই
Father : JIBAN CH. BARAI
জন্ম সাল / Year of Birth : ১৯৫১
পুরুষ / Male



৪৪৮৭ ৩৫১৮ ০৬৮৩

আধার - সাধারণ মানুষের অধিকার


ভাৰতীয় জনতা পাৰ্টি


কোচবিহার জেলা

বাঙলতলা রোড, কোচবিহার-৭৩৬১০১ (প.স)

03582-728696 | Phone: 03582-728696

Mobile: 99967991979

ARATIYA JANATA PARTY	COOCH BEHAR DISTRICT	BANGCHATRA ROAD	COOCH BEHAR-736101 (W.B)
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No. _____ Date _____

We demand for judicial enquiry regarding the aforesaid death of our worker, to perform postmortem and autopsy observing all formalities under the guideline of the Human Rights Commission.


Please do the needful steps for the same as expeditiously as possible.

Thanking you.

Yours truly,

Malati Rava Roy
 18/01/2020

District President
 Bharatiya Janata Party
 Cooch Behar

 **GOVERNMENT OF WEST BENGAL**
OFFICE OF THE SUPERINTENDENT
DINHATA SUBSIDIARY CORRECTIONAL HOME

Dated-11.01.2020.

To
The Inspector In Charge,
Dinhata Police Station,
Dinhata.


Sub : Information to the nearest relatives of UTP Ram Prosad Barui S/o - Lt Jibon Baroi , VIII- Khalisha, Gosanimari, PS. -Dinhata , Coochbehar.

Ref : Dinhata PS. Case No 549/19 Dated 31/12/19 .

U/S-143(186)/189/353/323/307/506 IPC

Addl Sec 3/4 P.D.P Act . GR .581/19

Kindly inform to the nearest relatives of UTP. namely Ram Prosad Barui S/o - Lt Jibon Baroi , VIII-Khalisha, Gosanimari, PS. -Dinhata , Coochbehar. The UTP has been admitted on 10/01/2022 at S.D. Hospital, Dinhata, Cooch Behar at police cell . The relatives of the said UTP may see him at the said Hospital as per rule at their own cost.


Superintendent
Dinhata Subsidiary Correctional Home

Memo No.27/1/AB

Date: 11.01.2020.

Copy forwarded for favour of kind information to the Addl. Court of Additional Chief Judicial Magistrate, Dinhata, Cooch Behar

Superintendent
Dinhata Subsidiary Correctional Home

WFO Form 200, Item 27
 FIRST INFORMATION REPORT
 File information of a complaint received by the police

81500

1. Suspect's Address: 141214 2013 10/25/14
 2. Name of Suspect: James, R. C. 10/25/14 10/25/14
 3. Name of Victim: James, R. C. 10/25/14 10/25/14
 4. Name of Officer: James, R. C. 10/25/14 10/25/14
 5. Name of Station: 10/25/14 10/25/14 10/25/14

6. Date of Complaint: 10/25/14
 7. Time of Complaint: 10/25/14
 8. Type of Incident: 10/25/14
 9. Name of Victim: James, R. C.
 10. Name of Suspect: James, R. C.
 11. Name of Officer: James, R. C.
 12. Name of Station: 10/25/14
 13. Name of District: 10/25/14
 14. Name of Precinct: 10/25/14
 15. Name of Substation: 10/25/14
 16. Name of Division: 10/25/14
 17. Name of Bureau: 10/25/14
 18. Name of Office: 10/25/14
 19. Name of Unit: 10/25/14
 20. Name of Section: 10/25/14
 21. Name of Team: 10/25/14
 22. Name of Detail: 10/25/14
 23. Name of Assignment: 10/25/14
 24. Name of Shift: 10/25/14
 25. Name of Duty Station: 10/25/14
 26. Name of Reporting Officer: 10/25/14
 27. Name of Reviewing Officer: 10/25/14
 28. Name of Approving Officer: 10/25/14
 29. Name of Submitting Officer: 10/25/14
 30. Name of Receiving Officer: 10/25/14
 31. Name of Forwarding Officer: 10/25/14
 32. Name of Distributing Officer: 10/25/14
 33. Name of Processing Officer: 10/25/14
 34. Name of Filing Officer: 10/25/14
 35. Name of Archiving Officer: 10/25/14
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 98. Name of Destruction Officer: 10/25/14
 99. Name of Transfer Officer: 10/25/14
 100. Name of Receiving Officer: 10/25/14

GR-581/17

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