

**Bangladeshi woman is illegally detained in Indian prison - We demand immediate repatriation**

**MASUM** <masumindia@gmail.com>

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To: Secretary General <sgnhrc@nic.in>, NHRC <chairnhrc@nic.in>, NHRC1 <cr.nhrc@nic.in>

Cc: Chief Secretary Gov of WB <cs-westbengal@nic.in>, "Home Secretary Govt of W.B."

<wb.secyhome@gmail.com>, Home Ministry <hm@nic.in>, "DG & IGP, West Bengal Police."

<dgpwestbengal@gmail.com>, DG BSF <edpdt@bsf.nic.in>, DG Eastern Command BSF <hqspldgeast@bsf.nic.in>,

Bangladesh High Commission <mission.kolkata@mofa.gov.bd>, SP Cooch Behar <spcbr@policewb.gov.in>, DM

Cooch Behar <dmcoochbehar@gmail.com>



*Banglar*

**Manabdhikar 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

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

16.02.2022

Respected Sir,

I would like to lodge this present complaint for the following Bangladeshi woman who was accused and arrested under Section 14 of the Foreigners Act, 1946 which was in violation of advisory issued by the Government of India vide office memorandum No. 14051/14/[2011-F.VI](#) of Ministry of Home Affairs (Foreigners Division) Government of India dated 1st May, 2012. This complaint is in continuation of my several previous complaints of similar nature before the Commission.

In connection with Sahebganj Police Station Case No. 23/22 dated 15.01.2022 under section 14 of Foreigners Act, the following Bangladeshi woman was arrested :-

(1) Ms. Afsana Mini (21 years), Daughter of Afjal, residential address:- Village - Kathgara, Post Office – Viyer Pukur, Upzila – Shibganj, District – Bogura, Bangladesh .

Our fact finding reveals that on 15.01.2022 at around 11:15 A.M Ms. Afsana Mini entered India. She had a relationship with an Indian boy through mobile phone and social media. She came to India in search of that boy. In this case she might be the victim of trafficking. At the time of entering India she was apprehended by the BSF personnel attached with Dighaltari Border Out Post, D Company, 129 Battalion on 15.01.2022 at about 11:15 A.M from approx 14 kilometer North east near Border Post number 983/m under Dighaltari Border Out Post. BSF personnel handed over the said victim to Sahebganj Police station at around 05:15 P.M. along with one complaint lodged by BSF which was diarized vide General Diary Entry number 602 dated 15.01.2022 and started Sahebganj Police Station Case number 23/22 dated 15.01.2022 under section 14A of Foreigners Act. On 16.01.2022 she was produced before the Court of Additional Chief Judicial Magistrate, Dinhata, Coochbehar. The said court sent her to Cooch Behar District Correctional Home for detention of 14 days. After 14 days of custody on the basis of the court order again she was sent to Cooch Behar Correctional Home for detention of 14 days.

According to the BSF's written compliant on 15.01.2022 Ms. Afsana Mimi 21 years, BD National came at OP/MCP point no-06 at about 11:15 hrs on dated 15.01.2022, in the AOR of BOP Digaltari, 129 BN BSF during morning MCP duty CT/MP at MCP point stopped her (Afsana Mimi) and asked her about her identity. She hesitated to show her Aadhar card, which seems to be fake. On getting doubt OP Comdr futher informed Coy Comdr about the lady. Coy Comdr along with "G" rep reached the spot and further query revealed her identity that she is a Bangladeshi National. After initial PQ she accepted that she is BD National and was illegally infiltrating into India further she was apprehended at about 11:15 hrs and brought to BOP Digaltari.

In this connection I want to mention several points where the authorities violated the general rule for dealing with the case of trafficked victims like this.

The Bangladeshi person arrested was treated as accused under the Foreigners Act and no attempt has been taken up by the police or the concerned court to ascertain whether she was the victim of human trafficking or not. Such approach of the criminal justice system is against the advisory issued by the Government of India vide office memorandum No. 14051/14/[2011-F.VI](#) of Ministry of Home Affairs (Foreigners Division) Government of India Dated 1st May, 2012 clearly states as “(IV) it is seen that in general, the foreign victims of human trafficking are found without valid passport or visa. If, after investigation, the woman or child is found to be a victim, she should not be prosecuted under the Foreigners Act. If the investigation reveals that she did not come to India or did not indulge in crime out of her own free will, the State Government / UT Administration may not file a charge sheet against the victim. If the charge sheet has already been filed under the Foreigners Act and other relevant laws of the land, steps may be taken to withdraw the case from prosecution so far as the victim is concerned. Immediate action may be taken to furnish the details of such victims to the Ministry of External Affairs (Consular Division), Patiala House, New Delhi so as to ensure that the person concerned is repatriated to the country of her origin through diplomatic channels” and (v) During the interim period, pending repatriation, the victim may be taken care of in an appropriate children’s home, or “Ujjawala” home or appropriate shelter home either of the State Government concerned or of any NGO aided by the Government of India / State Government.’

BSF in their complaint letter informed that the victim showed her Aadhar card, which seem to be fake but no seizure of the Aadhar card of the victim was mentioned by the BSF authority in their complaint. Even in the FIR copy there is no mention of the seizure of the fake Aadhar card of the victim.

As a member state of SAARC, it is duty and responsibility of Indian state to follow the resolutions passed there. It is constitutional duty of every citizen of India to foster respect as enshrined in Article 51C of Indian Constitution. SAARC, in its Convention in Kathmandu 2010 and in Paro, Bhutan on 11-12 April 2013, clearly took stand against trafficking of women and children. Ministry of Home Affairs issued Standard Operating Procedure (SOP) to all states and Union Territories. Judicial Colloquiums were held to sensitize the decision by the Government of India. If, the Standard Operating Procedure is not followed by police, BSF, even judiciary; the erring officials be booked accordingly. Section 12 (f) of PHRA 1993 empowers Your Commission to study the treaties and make recommendations thereto.

I hereby want to recall the Memorandum of Understanding signed by India and Bangladesh on bilateral cooperation to prevent human trafficking in women and children; signed by both countries on 30 May 2015. The present complaint reflects that the law enforcing agency by arresting the above stated women and children and implicating the women victims under the Foreigners Act as accused persons acted mechanically without giving any importance to legitimate entitlements of those arrested persons. The incidents are not only violating the advisory of Government of India but in violation of Goal Number 16 of Sustainable Development Goals of United Nations, Government of India is a party to set the goals and bound to adhering the same.

Under the circumstances I hope that the Commission intervene in this present complaint and consider the following demands of justice for the victims:-

- The series of incidents, including the current one flouting the Government of India’s advisory must be investigated by one neutral investigating authority.
- The concerned authority must be directed to hold an inquiry in compliance with the advisory issued by the Government of India vide office memorandum No. 14051/14/[2011-F.VI](#) of Ministry of Home Affairs (Foreigners Division) Government of India Dated 1st May, 2012 and pending the inquiry the victim women and children must not be treated as accused.
- The victim girl should be repatriated to her own country and prosecution launched against her should be withdrawn at the earliest.
- This systemic violation should be stopped and urged to your authority to take stringent step in connection with this case and recommended to the Government of India and Government of West Bengal and its line departments including judiciary a proper legal framework to deal with trafficking / slavery cases in line with the “Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime” adopted by General Assembly Resolution 55/25 of 15 November 2000.

Thanking you,  
Yours truly

Dipyaman Adhikary  
Assistant Secretary  
Banglar Manabdhikar Suraksha Mancha (MASUM)

