

9 May 2022

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

Respected Sir,

I am writing this complaint regarding detention of Bangladeshi woman and child in West Bengal and accusing and treating them as criminals under Foreigners Act, 1946. Since long MASUM is trying to bring the on-going malpractice into light by making numerous complaints to the NHRC and other relevant departments. The authorities including police and Border Security Force are not at all concerned to enquire into whether the persons including women and children crossed the border from Bangladesh to India were the victims of human trafficking or not. Here I am appending a case detail for your perusal.

Case: In connection with Mekhliganj Police Station Case no. 100/22 dated 01.04.2022 under section 14 of Foreigners Act, the following Bangladeshi woman was arrested:

- 1) Ms. Chandana Sarkar, wife of Hriday Mondal, Aged - 28 years, residential address:- Village – Lohojong, Post Office and P.S – Lohojong, District - Munshiganj, Bangladesh.

The victim is a Bangladeshi national, who entered India from Bangladesh on 01.04.2022 at around 09:05 A.M and took shelter in a rented house at Kashiabari Amtala, ward no 09 Uttarpara from there she was apprehended by the Haldibari Police. The victim was produced before the Mekhliganj ACJM court on 01.04.2022 and sent to the Jalpaiguri Central Correctional Home for 14-days in jail custody. It was revealed that she came to India in search of job.

Our fact finding reveals that the arrested Bangladeshi woman entered India for the purpose of working in India as the woman is terribly poverty-stricken people with no jobs in Bangladesh. The Bangladeshi persons arrested were treated as accused under the Foreigners Act and no attempt is being taken up by the police or the concerned court to ascertain whether they were the victims 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.*

I want to mention Article 3 of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children supplementing the United Nations Convention against Transitional Organized Crime dated 08 January, 2001. Here the protocol defines the term ‘trafficking’ which shall mean the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the

removal of organs.” I am sure that the investigating officer during the time of investigation did not find out the fact about whether she was the victim of trafficking or not based on the definition of the trafficking stated in the international protocol. The Bangladeshi women victims are poor and thereby for better earning she was generally duped by various people who tempted her and offered less money for different works in India and making control over them. Slavery is another form of trafficking. Only recording the statement of the victim is not enough in connection with this type of case.

According to the Indian Evidence Act, confession of an accused to a police officer is inadmissible in evidence. Therefore, the statement of those accused before the investigating officer must be challenged. We challenge such types of investigation in these types of cases.

This approach is also violating the Article 6, 7, 8, 11 and 12 of the MOU between The Government of the Republic of India and The Government of the People’s Republic of Bangladesh on Bilateral Cooperation for Preventing of Human Trafficking especially trafficking in Women and Children; signed by both countries on 30th May 2015.

I also want to mention that State agencies should pay respect to Constitution of India, in Article 51(c).

The present complaint reflects that the law enforcing agency by arresting the above stated persons and implicating them 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 UN, Government of India is a party to set the goals and obliged to adhere the same.

Under the circumstances I would request your authority to intervene in this present complaint and consider the following demands of justice for the victims: -

- The whole matter must be investigated by one neutral investigating authority.
- The mechanical approach of investigation by police which is continued by prosecution and judiciary must be stopped. Sensitizing of stakeholders of criminal justice administration be taken up by NHRC.
- 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 woman must not be treated as an accused.
- The victim person should be immediately repatriated to their own country and prosecution launched against them should be withdrawn at the earliest.
- The constant flouting of advisory of Ministry of Home Affairs (Foreigners Division) Government of India by various components of criminal justice administration should be dealt with concern and offenders must be punished accordingly

Thanking you
Yours truly

Kirity Roy
Secretary, MASUM

To
Inspector In-charge,
Haldibari PS, Cooch-Bihar

- First Information Report.

In producing herewith 02 (Two) arrested FIR named Bangladeshi National namely (1) Hriday Mandal (32 years) S/O Lebu Mandal and (2) Chandana Sarkar (28 Years) W/O Hriday Mandal both of Vill Lohajong, P.O. Lohajong, PS. Lohajong, District Munshiganj, Bangladesh.

On 01.04.2022 at 09.05 hrs, I received a secret source information from one of my reliable source that some Bangladeshi nationals were staying illegally near Haldibari College, Uttar Para after crossing the border from Bangladesh side through Mekhliganj Border.

Accordingly, I informed the matter to IC Haldibari PS and as per direction by IC Haldibari PS, to noted down the information in the General Diary of the PS and thereafter to work out on the information. Then I noted the fact in GD vide Haldibari PS GDE No. 10 dated 01.04.2022 and then I along with Special HG 1110 Subhash Chandra Roy, Special HG 1124 Sukumar Roy LC1278 Anjali Barman all of Haldibari PS Dist Cooch Behar left for spot to verify the veracity of information in hand.

At 09:15 Hrs I along with force reached in front of Haldibari College and then I contacted with my source who informed me that the said Bangladeshi nationals have taken in the shelter in the rented house of one Sital Mandal S/O Dhiren Mandal of Kashiabari Amtala at Ward No 09 Uttarpara. At around 09.55 hours held raid in the rented house of Sital Mandal and found above noted accused persons, detained them and on being identified by source I, interrogated them and on interrogation they disclosed their name and address as noted above. And also admit that they are Bangladeshi National and they entered into India illegally without any valid document, passport visa etc and could not produce any documents in respect to entered in to India.

I then arrested them after observing all arrest formalities and prepared the Memo of Arrest, arrest was made within 10:15 to 10:35 Hrs.

Hence I would like to pray that a case under proper sections of law may kindly be started against them and arrange for its investigation.

Enclosed:

1] Arrest Memo.

Received on 01/04/22 at 11.57 hrs vide
Haldibari PS GDE No. 10/22 dt 01/04/22
and started 1101/22 PS Cooch Behar dt 01/04/22
dt 01/04/22 U/S 140/17 C.F.M. and sent
to SI Nanda Khatu memo to SI B. M. Vaidya

Yours faithfully,

SI
01/04/2022
SI Surajit Biswas
Haldibari P.S. CBR