

## **Lack of appropriate medical care and arbitrary detention**

**Case IND 040808**

**Arbitrary detention/ Alleged excessive use of force/ Lack of appropriate medical care/ Fear for safety**

The International Secretariat of the World Organisation Against Torture (OMCT) requests your URGENT intervention in the following situation in India.

### **Brief description of the situation**

The International Secretariat of OMCT has been informed by a reliable source and by Antenna International, a member of OMCT SOS-Torture network, about the arbitrary detention, excessive use of force and subsequent lack of appropriate medical treatment for **Mr. Md. Aptarul Hossain** alias Aktarul Jamal, 21 year old Indian national, resident of Pipligram, Post Office Tetul Bere, Gaighata, District North 24 Parganas, West Bengal.

According to the information received, on 15 February 2008 at about 12pm, Mr. Md. Aptarul Hossain was cleaning rice crops in the paddy fields near Out Post no. 2 when Border Security Force (BSF) Constable, Mr. Birendra Kumar Singh, of Battalion no. 126, E-Company, B.O.P. Barnoberia, reportedly showed up and asked him whether his name was “Akbar”. When Mr. Md. Aptarul Hossain answered by the negative and gave his name, the BSF constable allegedly fired with his rifle on his leg not believing what Mr. Md. Aptarul Hossain had said. Mr. Md. Aptarul Hossain reportedly sustained severe injuries.

Mr. Md. Aptarul Hossain was then reportedly arrested by BSF constable Birendra Kumar Singh and Assistant Commandant Nandan Singh, who had come to assist, and brought to the Bongaon Sub-Divisional Hospital before being transferred to R.G.Kar Medical College and Hospital, Kolkata, under police custody. On 9 March 2008, he was brought to Gaighata Police Station following a memo of arrest dated 8 March 2008. He was then presented before the Additional Chief Judicial Magistrate, Bongaon and then remanded to judicial custody at Bongaon Sub-Correctional Home. On the same day, Mr. Md. Aptarul Hossain was admitted at Dr. J.R. Dhar Hospital, Bongaon. However, he was reportedly not provided with appropriate medical care. On 10 June 2008, the victim was shifted to Dum Dum Central Correctional Home. According to the information, when Mr. Md. Aptarul Hossain was presented before the Bongaon Court on 24 June 2008, he reported that he had lost flexibility in his left leg due to the injury; it was swollen and had not properly healed. On 8 July 2008, Mr. Md. Aptarul Hossain was presented before the Additional Chief Judicial Magistrate Court. Mr. Md. Aptarul Hossain reportedly informed the court that his injury had not healed properly but the concerned Public Prosecutor allegedly did not take it into account. On 24 July 2008, Mr. Md. Aptarul Hossain was brought to the Bongaon court lock-up but he was not presented before the court because of his

condition.

MASUM Ld. Advocate reportedly filed, on behalf of Mr. Md Aftarul Hossain, an application before the court mentioning the facts that since 15 February 2008 he has not been undergoing appropriate medical treatment and requesting his release on bail with regard his physical condition. However, the court reportedly refused the bail request and Mr. Md Aftarul Hosain was remanded to Dum Dum Central Correctional Home. Nonetheless, the Court reportedly requested a report into his condition. His next hearing was fixed on 20 August 2008.

According to the BSF constable complaint, three intruders, two of whom he reportedly recognized as being Mr. Paran Mulla and Mr. Akbar, both resident of Muslimpara Village Barnaberia Bongaon, North 24 Pgs. (W.B.), had entered India from Bangladesh. Following his order to stop, the three individuals reportedly attacked him and he responded by firing at the unidentified individual while Mr. Paran Mulla and Mr. Akbar reportedly managed to flee. According to MASUM fact finding mission, the event was witnessed by two villagers who reportedly opposed this version.

Mr. Md. Aftarul Hossain was subsequently charged along with Mr. Paran Molla and Mr. Akbar of obstructing public servant in discharge of public functions (under section 186), attempt to murder (under section 307), assault or criminal force to deter public servant from discharge of his duty (under section 353) of the Indian Penal Code and also under section 14 of the Foreigners Act as the BSF alleged that Mr. Md. Aftarul Hossain was a Bangladeshi national having crossed the border without valid documents. The BSF further claimed to have seized an iron dah (sickle) and 300 Taka (Bangladeshi currency) from the victim but the latter could reportedly not be found in the seizure lists. Moreover, it was later confirmed that Mr. Md. Aftarul Hossain is an Indian national but no explanation has been giving why the charge under section 14 of the Foreigners Act was not dropped. The two others were reportedly released on bail.

According to the same information received, other irregularities were reported in the course of the arrest and subsequent detention, in addition to the fact that the name and the nationality of the alleged intruder did not correspond to Mr. Md. Aftarul Hossain which, according to the source, was purposely done in order to confirm the charges and the event presented by the BSF officials. It is also reported that two memos of arrests were issued by BSF and the police respectively with two different dates and other inaccuracies over the events.

The International Secretariat of OMCT expresses its deep concern over the arbitrary detention and the lack of appropriate medical treatment provided to Mr. Md. Aftarul Hossain. OMCT urges the Indian authorities to immediately guarantee him appropriate medical care as provided for by international human rights standards, including the UN Standard Minimum Rules for the Treatment of Prisoners. OMCT also recalls that according to article 9 1) of the International Covenant on Civil and Political Rights (ICCPR) “no one shall be subjected to arbitrary arrest or detention”.

## **Action requested**

Please write to the authorities in India urging them to:

0. Guarantee, in all circumstances, the physical and psychological integrity of Mr. Md. Aptarul Hossain and that standard free appropriate medical treatment is provided to him;
0. Order his immediate release in the absence of valid legal charges that are consistent with international law and standards, or if such charges exist, bring him before an impartial and competent tribunal and guarantee his procedural rights at all times;
0. Order a thorough and impartial investigation into these events, in order to identify those responsible, bring them to trial and apply the penal and/or administrative sanctions as provided by law;
0. Guarantee that adequate compensation is awarded to the victim;
0. Ensure respect for human rights and fundamental freedoms throughout the country in accordance with national laws and international human rights standards.

## **Addresses**

- Shri Manmohan Singh, Prime Minister of India, Prime Minister's Office, Room number 152, South Block, New Delhi, Fax: + 91 11 2301 6857
- Shri Shivraj Patil, Union Minister of Home Affairs, Ministry of Home Affairs, 104-107 North Block, New Delhi 110 001 India, Fax: +91 11 2309 2979.
- Justice K. G. Balkrishnan, Chief Justice of India, Supreme Court, Tilak Marg, New Delhi -1, Fax: +91 11 233 83792, Email: [supremecourt@nic.in](mailto:supremecourt@nic.in)
- Justice Rajendra Babu, Chairperson, National Human Rights Commission of India, Faridkot House, Copernicus Marg, New Delhi 110 001, Tel: +91 11 230 74448, Fax: +91 11 2334 0016, Email: [chairnhrc@nic.in](mailto:chairnhrc@nic.in)
- Justice Shyamal Kumar Sen, Chairman, West Bengal Human Rights Commission, Bhabani Bhaban, Alipur, Kolkata - 27. Phone +91-33-24797727, 24791629, Fax - 24799633, Email: [wbhrc@cal3.vsnl.net.in](mailto:wbhrc@cal3.vsnl.net.in)
- Mr. Gopalkrishna Gandhi, Governor, West Bengal, Raj Bhaban, Kolkata – 62, Phone: +91 33-2200 1641, Fax: +91 33 – 2200 2444 / 2200 1649, [secy-gov-wb@nic.in](mailto:secy-gov-wb@nic.in)
- Ambassador Extraordinary and Plenipotentiary Permanent Representative to the United Nations (Geneva), Rue du Valais 9, 1202 Geneva, Tel: +41 22 906 86 86, Fax: +41 22 906 86 96, Email: [mission.india@ties.itu.int](mailto:mission.india@ties.itu.int)
- Ambassador, Embassy of India in Brussels, 217 Chaussée de Vleurgat, 1050 Brussels, Belgium, Fax: +32 (0)2 6489638 or +32 (0)2 6451869

Please also write to the embassies of India in your respective country.

Geneva, 04 August 2008

Kindly inform us of any action undertaken quoting the code of this appeal in your reply.

L'OMCT a son siège à Genève, en Suisse. Elle coordonne le réseau SOS-Torture composé de 282 organisations régionales et internationales dans 93 pays sur cinq continents.

Contact : [omct@omct.org](mailto:omct@omct.org)