

1 March 2022

To
The Chairman
National Human Rights Commission
Manav Adhikar Bhawan
Block-C, G.P.O Complex, INA
New Delhi-110023

Respected Sir,

This is to bring to your kind attention an incident of brutal killing of a poor marginalized youth namely Mr. Bikash Debnath from Uttar Chamta village under Sitai Block and Police Station in the district of Cooch Behar, by the perpetrator Border Security Force personnel attached with Battalion number 75 of Koimari Border Out Post. The victim was forcefully apprehended by the perpetrators Border Security Force on duty, and continuously tortured him for three hours. Later his body was recovered from Indo Bangladesh border side. It is a clear case of murder in custody of Border Security Force on duty.

Sitai Police took the body of the victim to the Sitai Block Hospital where the victim was declared as brought dead. Without doing inquest, the dead body of the victim was taken to Sitai Police Station and there the inquest was done by one police person of Sitai Police Station and one executive magistrate which was violated section 174 and 176 (1) (a) of the Criminal Procedure Code. During the post mortem examination of the deceased no videography was recorded which is also the violation of guidelines framed by NHRC in case of custodial death.

There were several injury marks in the body of the deceased observed by the family members and eye witnesses. Even they observed scratch marks in the land where the victim was beaten to death by the BSF personnel

On 12.12.2021 in the evening the family members lodged one written complaint to the Sitai Police Station against BSF for the death of the victim. The then on duty police officer took the written complaint but did not provide any received copy to the victim's family. No case was registered by the Police on that time. On the next day from the GR section we received the information that one case was registered by the police vide Sitai Police Station case number 198/21 dated 12.12.2021 under section 302. But in the FIR copy police did not mention the details of the accused just only mentioned 'unknown persons'. In the First Information Report one column is preserved for 'signature/thumb impression of the complainant/informant' but no signature or thumb impression of the complainant was received in the FIR. That means the police registered the case in the absence of the complainant. The on duty police officer of Sitai Police Station did not register the first written complaint of the victim's father but without receiving the complaint letter they kept the letter in their possession. Later the police personnel took the left thumb impression of Mr. Biseswar Debnath, elder brother of the victim in the white blank paper where another fabricated complaint was made. In that fabricated complaint police intentionally omitted the BSF's ill action which caused the death of the victim. Police personnel of Sitai Police Station with the nexus of BSF made a fabricated complaint and took the left thumb impression of Mr. Biseswar Debnath, elder brother of the victim

who is an illiterate person. This violates section 154 of the Code of Criminal Procedure and apex court guidelines in the case of Lalita Kumari vs. State of Uttar Pradesh [WP (Crl.) 68 of 2008] which clearly states that immediate registration of First Information Report is mandatory under section 154 of the Code of Criminal Procedure if the information discloses commission of a cognizable offence and provide the copy of the FIR to the complainant free of cost. As the police personnel of Sitai Police Station did not take any action in this respect, on 17.01.2022 Mr. Khageswar Debnath, father of the deceased sent one written complaint to the Superintendent of Police, Cooch Behar.

Salient points in this case:-

- It is a case of death due to torture in custody of BSF under Battalion number 75 of Koimari Border Out Post.
- Guidelines framed and circulated by N.H.R.C. in case of custodial death on 27 March 1997 was not followed by police personnel of Sitai Police Station and local civil administration.
- Supreme Court of India in various cases, laid down norms to be followed in case of cognizable offence like custodial death; such as, immediate register of F.I.R., investigation by CID or police team of another police station led by a senior officer, etc. which was not followed here.
- Why judicial Magistrate was not done the inquest of the victim as section 176 (1) (a) of the Code of Criminal Procedure mandates that for custodial death one judicial magistrate must inquest the deceased?
- Why the inquest was not done in the Sitai Block Hospital where the victim was declared dead? Section 174 of the Code of Criminal Procedure mandates that the inquest over a dead body must be done at the place where the person was declared dead by one doctor. In this case why the dead body of the victim was taken to the police station from the Sitai Block Hospital and in the Sitai Police Station the inquest was conducted?
- Why the duty officer of the Sitai Police Station did not register the written complaint of the family members of the victim at first?
- Why the post mortem examination of the deceased was not video graphed?
- Why in the FIR police omitted the fact of BSF's ill action which caused the death of the victim?
- Why the police tried to save the perpetrators?
- Till date place of incidents, witnesses, family members were not examined; scratch in the earth of the place of incidence, hair, fibbers were not collected.
- The case of killing of human within Cooch Behar district is not only this one. Even under the Sitai Police Station jurisdiction area this is not a first killing done by BSF. In each case of killing, BSF and investigating police including civil administration nexus throttled the throat of criminal justice system.
- This case manifests systematic impunity in our state of West Bengal

It must be mentioned that incidents of killing civilians by the Border Security force have significantly increased in the bordering districts of the state of West Bengal in the past few years. This case also adding the list of murders in Border Security Force's Custody where the higher official and police administration with a nexus tries to save the perpetrators.

The perpetrator Border Security force personnel not only violated the rights guaranteed in Article 21 of Indian Constitution but also the premise of Article 7 of International Covenant on Civil and Political Rights as well as the Goal number 8 and 16 of Sustainable Development Goal earmarked by United Nations and in both these international instruments; the government of India is a party and have agreement. The incident and subsequent impunity legitimize our long standing demand for immediate ratification of United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment and Punishment.

Hence I seek your urgent intervention in this present complaint with the following demands of justice to the family of the victim –

- BSF should be posted in actual border and not inside the villages.
- The whole incident must be investigated by a neutral agency appointed by the Commission.
- This unlawful death should be properly investigated in line with Minnesota Protocol.
- The unnatural death case initiated by Sitai Police Station on 12.12.2021 must be investigated properly under the appropriate legal provision.
- The administration must take appropriate steps to control cross border smuggling in bordering villages.
- The guilty Border Security Force personnel involved in killing in custody must be booked and prosecuted in open court of law; not under in camera proceedings where accused, prosecutor and judge are brothers.
- Disciplinary action should be initiated against the then on duty police personnel of Sitai Police Station who without doing the inquest in the place where the victim was declared dead, taking the victim's dead body to the Sitai Police Station.
- Sitai Police with the nexus of BSF made fabricated the original written complaint of the victim's family. Therefore, immediate steps to be taken to record the statements of the victim's family members by one judicial magistrate under section 164 of the Code of Criminal Procedure.
- Police personnel involved in fabricating the victim's complaint should be immediately charged with section 192 and 201 of the Indian Penal Code.
- The family of the victim must be duly compensated and security and safety of the witnesses and family members must be ensured.

Thanking you,
Yours truly

Kirity Roy
Secretary, MASUM
&
National Convener, PACTI

Details of the victim: Mr. Bikash Debnath, son of Mr. Khageshwar Debnath, aged about 31 years, Religion Hindu, residing at Uttar Chamta village under Sitai Block and Police Station in the district of Cooch Behar.

Details of the secondary victims: (1) Mr. Khageshwar Debnath, father of the deceased victim, aged about 58 years, by occupation labour; (2) Mrs. Jayanti Debnath, mother of the deceased victim, aged about 48 years by occupation labour (3) Master Samir Debnath, elder son of the deceased victim, aged about 12 years; (4) Master Sagar Debnath, son of the deceased victim, aged about 9 years. All are residing at Digaltari village under Dinjata II Block and Sahebganj Police Station, District Cooch Behar.

Date and Time of the incident: On 12.12.2021 at about 1.15 am and subsequent thereafter.

Place from where victim's body was recovered: In the field 20 meter distance from the border fencing gate number 35

Details of the witnesses: (1) Mr. Chandan Debnath, residing at Uttar Chamta village under Sitai Block and Police Station in the district of Cooch Behar.

Details of the perpetrators: (1) Company Commandant and on duty Border Security Force personnel of Koimari Border Out Post, Battalion number 75; (2) On duty police officer at Sitai Police Station dated 12.12.2021, (3) Inspector in Charge of Sitai Police Station

Details of the incident: The family of Mr. Bikash Debnath is very poor. Most of the time in a year they worked in various states as migrant labours. His parents are working in the brick field as labour. Few years back, the victim's wife ran away from the house with another boy, when the victim was going for work as a migrant labour. He has two children and presently he is working in his locality as daily wage labour. As his financial condition is very weak, some people lured him to earn more money by smuggling things throughout the Indo-Bangladesh border. On 11.12.2021 at about 6 pm they called him and took him away with them. On the next day dated 12.12.2021 at about 11 am the family members of the victim were informed by the villagers that their son's body was later in the field. It is alleged that on 12.12.2021 at about 1.30 am 4 to 5 BSF constables attached with Koimari Border Out Post, Battalion number 75 apprehend the victim near the fencing gate number 35. He was tortured brutally and beaten with rifle butt, boots, and fists. BSF personnel with their boot cladding feet pressurized upon the chest of the victim. The victim started to scream in great pain. From 1.30 am to 3.30 am those BSF personnel continuous tortured the victim inhumanly and after that they left the victim in that place and allowed him to die. They did not take the victim to the hospital for his treatment. The villagers told to our fact finder that in the place of incidence there are some scratch marks on the land.

On 12.12.2021 police personnel of Sitai Police Station came to the spot at about 12.30 pm and took the body of the victim to the Sitai Block Hospital where the on duty doctor declared the victim as brought dead. One Unnatural Death case was registered vide Sitai Police Station U/D Case number 33/2021 dated 12.12.2021. Under section 174 of the Code of Criminal Procedure it is the general rule that in which place the body is declared dead, at that place and in same situation the inquest over the dead body must be done. But here the police personnel of Sitai Police station took the deceased body of the victim to Sitai Police Station and there at about 5 pm the inquest was

done by one police officer and one Executive Magistrate. Mr. Bisweswar Debnath one elder brother of the deceased victim presented there at the time of inquest. It is also to be noted that under section 176 (1) (a) of the Code of Criminal Procedure it is mandatory to inquest the dead body of the victim of custodial death case by one judicial magistrate, but in this case no judicial magistrate inquest the body of the victim.

On 13.12.2021 post mortem examination of the deceased victim was conducted at Mathabhnaga Sub Divisional Hospital and at about 5 pm on that day the dead body of the victim was handed over to the family members of the victim.

On 12.12.2021 Mr. Khageswar Debnath, father of the victim lodged one written complaint to the Sitai Police Station. The then on duty police officer took the written complaint of the victim's father but did not provide any received copy of the complaint. Till time the victim's family have no information whether their complaint was acknowledged or not. Section 154 of the Code of Criminal Procedure mandated that after receiving any complaint of cognizable offence, the on duty police officer have to register such complaint and a copy of the same must be provided to the complainant at free of cost but in this case the police did not perform their duties properly. The on duty police officer told to the father of the victim that he would provide him the received copy of the complaint after four to five days but till time the concerned police did not provide any received copy of his complaint letter and even no action has been taken on his allegation of custodial murder of his son by the BSF.

On the next dated 13.12.2021 day from the GR section we received the information that one case was registered by the Sitai police vide Sitai Police Station case number 198/21 dated 12.12.2021 under section 302 of Indian Penal Code. But in the FIR copy police did not mention the details of the accused just only mentioned 'unknown persons'. No signature or thumb impression of the complainant was received in the FIR copy. In the complaint copy attach with FIR there is no specific allegation against the BSF authority. We have an apprehension that police with the nexus of BSF made a fabricated complaint and took the signature of Mr. Biseswar Debnath, elder brother of the victim who is also an illiterate person. The original written complaint submitted before the Inspector in Charge of Sitai Police Station by Khageswar Debnath which was not registered but after that police with the nexus of BSF made one fabricated complaint where there is no allegation against BSF and registered that complaint by receiving the thumb impression of Mr. Biseswar Debnath, elder brother of the deceased. In this connection the involved police personnel must be charged with fabricating false evidences and causing disappearance of evidences of offence.

As police personnel of Sitai Police Station did not take any action in this respect and fabricated the documents, on 17.01.2022 Mr. Khageswar Debnath, father of the victim again sent one complaint letter to the Superintendent of Police, Cooch Behar through registered post but till date no investigation has been started to dig out the truth of the victim's death.

To conclude, I pray before Commission, please treat this case as an example and thorough enquiry should be done by the Commission's Special Rapporteur of Eastern Zone.

To
The IC
Sital Police Station
Cooch Behar

दिनांक: 12/12/2021

काठमा,

पोलीस

आमि विप्रेषण सुवगाय, जिन अरुवाय सुवगाय, ग्राम (अ)

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*I received the complaint
and forwarded
to IC Sital PS on 12/12/21
a Special Case on 30/12/21
by Sd/- Sumant Nathaniary*

*Sd/- A. Bardhan to file
investigation in case*

*12/12/21 at 15:55hr
Camp at Roimur*



LTI
निलेश सुवगाय
8816724139

Received at Sital PS at 10.50 hrs vide Sital PS CAENO 480
no entries Sital PS CAENO 198/21 of 12-12-21 483023PC and
endorsed to SI ANAR BARDHAN for its investigation.

*Sd/- 12/12/2021
Inspector in-Charge
Sital P.S, Dist.-Cooch Behar*

Police started one case of murder according to this written complaint, but no copy was given to the complainant, no signature was taken in the FIR format as complainant, not written according to his statement.



Body as was lying



Two minors (sons) after Hindu rituals



Car used to carry dead body