

National Human Rights Commission

Harihar Bhavan, Lalitpur

Summary of the NHRC report on the investigation with regard to the incident related to the death of Sanu Sunar, a resident from Godavari, VDC -9, Lalitpur who was arrested and declared dead due to the torture inflicted on him while in police custody.

1. Background of the Incident

Sanu Sunar, 46, the resident of Godavari-9, currently residing at Bholdhoka, Lalitpur sub-metropolitan was arrested along with two other accomplices on 9th Jestha, 2067 at Khasi Bazaar under metropolitan police unit, Kalanki at 11 A.M. and handed over to the Kalimati Police Circle. Later that night, at about 10 P.M, he fell unconscious and was taken to Bir Hospital where he was declared dead during treatment on 11th Jestha, 2067. Having received the information about the death caused due to the torture in police custody, the NHRC deployed an investigation team immediately. A complaint in connection with the same incident, which states the police personnel to be held responsible for inflicting torture on Sanu Sunar that led him to the death, has been received by the Office of the Commission on 14th Jestha, 2067.

Soon after the death of Sanu Sunar, the police made it known that Bishnu Prasad Kapri, Namjung Ghuseeni VDC -02, Gorkha district, currently residing at Gongubu, Kathmandu, was the one who allegedly involved himself in an attempt to kill Sanu Sunar. They arrested Bishnu Prasad Kapri and carried out the investigation but a complaint was lodged later at the Commission on 13th Jestha, 2067 about his illegal detention. The Commission, thereafter, conducted a comprehensive investigation with effect from 11th till 26th Jestha, 2067 and has decided to forward the necessary recommendations to the Government of Nepal (GoN) with regard to both incidents - the death of Sanu Sunar and the unlawful arrest of Bishnu Prasad Kapri.

2. The case analysis through the facts obtained through the investigation

Following are the facts and evidences obtained by the Commission during investigation.

2.1: With regard to the death of Sanu Sunar

1. Bishnu Prasad Kapri, Krishna Bahadur B.K., the resident of Bishnu VDC, Kathmandu district and the deceased Sanu Sunar had met and talked on 7th Jestha, 2067. Following this, Sanu Sunar and Krishna Bahadur B.K. borrowed RS. 25000/- from Bishnu Prasad Kapri on 8th Jestha, 2067. It is learnt that

Sunu Sunar had requested for additional RS 200,000/- from Bishnu Prasad Kapri.

2. Suspecting that he was being defrauded, he made a plan to seek help from the Traffic ASI on duty at Kalanki in order to have his money back. He requested him to help him do so on the pretext of lending an additional amount to Sanu Sunar. Advised by the police on duty to go to the civil police at Khasi Bazar police post, they went to the on-duty ASI Rajesh Giri and requested his help for getting his money back. After the request made, a police constable was deployed in civil dress. Thereafter, Sanu Sunar and Krishna B.K., who came by a taxi, met Bishnu Prasad at a bridge which is close by Kalanki Police post. Over there, the dispute erupted among them attracted a crowd suddenly. Then, the constable in civil dress attempted to stop the taxi, but it hit him and ran away. The Traffic ASI Laxman Aire followed the taxi on his motorcycle and stopped it at Gakhel, Balkhu. A few people, who followed the taxi on 2-3 motorcycles, slightly manhandled the people boarded on taxi. They were taken to the police post immediately after that. Until they were brought to the police post, two of them boarded on taxi were spared from any injuries expect for a minor injury in the driver's finger due to the door slam.

3. On that day, there was a program of the President's visit to the area. After the program of President's visit, ASI Bijay Shahi of Metropolitan Police Station, Syutchar, and Inspector Prakash Parajuli, Kalimati Police Circle took all the three (Sanu Sunar, Krishna B.K. and taxi driver) to Kalimati Police Circle by the police van at around 1 P.M. It was learnt that the police beat all three of them in the van and as a result of beating; bruises were found on various parts of the body of the taxi driver Shyam Tandukar.

4. Of the total 25,000 borrowed form Bishnu Kapri, Suna Sunar was in possession of RS 22,500 only and since the dispute over the issue did not come to an end, they were kept under the police custody at Kalimati Police Circle on 9th Jestha, 2067. However, it was learnt that their health condition was not checked up prior to sending them to the custody. That evening, Geeta Sunar brought the meals for her husband around 5:30 o'clock. Later that night, around 10 o'clock on 9th Jestha, 2067, Sanu Sunar, fell unconscious with bubbles in his mouth all of a sudden and was taken to Bir hospital immediately. As per the doctor's advice, he underwent the CT scan of his head followed by an operation. Despite the successful medical report submitted to the police, he died at 3 P.M. on 11th Jestha, 2067 during treatment. The taxi driver was given the clean chit and released on 10th Jestha, 2067 and Krishna B.K. was released on 11th Jestha, 2067 as no evidences of their involvement in the incident were found. Eye witnesses say that the police at Kalimati Police Circle hit Sanu Sunar with their boots. However, the police were found to have prepared the papers entirely based on the written complaint, and the statement given by Krishna Bahadur B.K.

and Shyam Tandukar thereby intending to show that crowd collected by Bishnu Prasad Kapri thrashed Sanu Sunar till he fell unconscious which led him to death during treatment.

5. Shanti Sunar, the second wife of Sanu Sunar, in her statement given to the Commission in person says, "After the release from the custody, Krishna Bahadur B.K. came to my house and said that my husband had a vomiting sensation. Since he seemed to have too much pain and difficulty; the police brought him out for fresh air. After a while, the police said that my husband had a lot of pain and demanded if anyone has any money. I learned that Krishna Bahadur had RS 18,000/- at that moment which he gave to the police. Then they took my husband to hospital, according to Krishna Bahadur".

6. The post mortem of deceased Sanu Sunar was conducted at TU Teaching Hospital. The post mortem Report says, "Craniotomy sutured wound in left temple of the head, multiple contusions over front of chest, back of chest, lower back, both sides of the chest and on legs of different shapes and sizes. Scalp contusion over left temple of the head with operation fracture of the bone, dura matter is sutured at operated site, diffuse subdural blood clots in left hemisphere of brain and over cerebellum with underlying subarachnoid haemorrhages, brain is swollen. It was revealed in post mortem report that Sunu Sunar had consumed excessive alcohol and his liver was swollen. In Elucidation of finding in post mortem report, it is mentioned that there are other blunt force injuries in different parts of the body which are not severe to lead death. However, the report does not reveal that these are the causes of death. The cause of death has been found as blunt force head injury.

7. It was found that Sanu Sunar was taken to the hospital in a very critical condition. He was treated immediately in coma condition in Intensive Care Unit (ICU), operated in emergency condition while he suffered from internal bleeding in brain (entra dural hematoma). He was also found to have scars and bruises all over his body part.

8. During the inspection conducted at Kaimati Police Circle, the investigating team from the Commission found that the planks, laid on the floor as bed in the custody room were hardly of 10" -13" in size. Eyewitnesses say that the head injury of Sanu Sunar must have been caused while he fell in the same custody. Upon analysing the facts obtained from the various sources and the post mortem report, it is well understood now that the death of Sanu Sunar was apparently due to the severe injury sustained through the torture while he was in police custody at Kalimati Police Circle.

9. The death of a "Dalit" has, therefore, eventually drawn the attention of various quarters of the society. The agencies and organizations working for the Dalit Community and a few politicians even organized the "sit in" program in front of the Metropolitan Police Circle, Kalimati and the issue has been raised in the various formal programs as well.

2.2 With regard to the Arrest and Illegal Detention of Bishnu Prasad Kapri

1. After the death of Sanu Sunar, the police authorities say that Bishnu Prasad Kapri has been arrested and kept in custody for the necessary legal action against him for homicide on the basis of the case filed against him by Geeta Sunar. It is also discovered that his custody period has been extended again and again in the court for the investigation but no statement was taken from him till 19th Jestha, 2067. Upon being demanded the statement noted and signed in the Nepali paper after the arrest on 10th Jestha, 2067, the police refused to provide it whereas both the detention notice and the arrest notice were handed over on 12th Jestha, 2067, according to Bishnu Prasad Kapri.

2. The investigation conducted by the Commission discovered that Geeta Sunar, the wife of Sanu Sunar, was taken to Bir hospital on 11th Jestha, 2067 at 11 A.M. and asked to sign in paper assuring that it would be easy to unearth the persons involved in the incident, but was not aware of what was written in the paper.

"Never have I submitted an FIR (First Information Report) against anybody's name" said Geeta Sunar at the Commission in person on the 14th Jestha, 2067. This statement has been in the news content of various media as well.

3. The investigation conducted by the Commission also revealed that prior to the submission of FIR only the Bishnu Prasad Kapri was arrested on 10th Jestha, 2067 and was handed over with the arrest notice and detention notice only on 12th Jestha, 2067. The despatch no. 4374 has been mentioned in the detention notice dated 10th Jestha, 2067 and the same notice has been registered on the 11th Jestha, 2067 whereas the particulars are not filled up in the record file about the recipient of the despatch letter. Likewise, it has been noticed that the columns have been filled up with different inks on 26th Jestha,, 2067. Thus, the act of keeping Bishnu Kapri under detention turns out to be an illegal one.

4. The police, therefore, apparently failed to prove that the arrest was made after the FIR was registered. It has been confirmed that Bishnu Prasad Kapri was arrested and kept in custody on 10th Jestha, 2067 at around 7 A.M. without the issuance of the arrest notice to him. He was arrested only after Sanu Sunar's health condition worsened very much. Gita Sunar, the wife of Sanu Sunar, was actually asked to submit the FIR on the 11th Jestha, 2067.

It, therefore, appears that the police arrested Bishnu Prasad Kapri to cover their ill-intended act. That he was said to have been involved in beating was not confirmed then as per the eye witnesses.

3. Conclusion:

3.1 Through the facts and evidences obtained from various sources furnished herein, it has been found that RS. 25,000/- was lent to Sanu Sunar in the presence of Krishna Bahadur B.K. and Bishnu Prasad Kapri himself. Thereafter, Bishnu Prasad Kapri had given the information to the police about the involvement of Sanu Sunar and Krishna Bahadur B.K. about swindling of his money. Following this, Police arrested Sanu Sunar without issuing the arrest notice in his name and kept in police post prior to handing him over to Kalimati Police Circle at about 7 A.M. Thus it has been confirmed that his death was caused due to the beating of the police. The head and other constables from Metropolitan Police Circle, Kalimati deployed to take Sanu Sunar, were found to have been involved in this beating incident. It is learnt that Sanu Sunar sustained severe injury due to the torture inflicted on him while in custody at Kalimati Police Circle.

3.2 It is clear that the police personnel intended to give different turning point to the incident as because Gita Sunar, who never submitted FIR, was made to sign without having given the details in the FIR. The police didn't even note the statements from the eye witnesses in an independent way.

3.3. Despite the prevalent legal provision to conduct the necessary health check up of any person prior to keeping him in custody, the suspect has been kept in custody without necessary health check up. Similarly, they conducted investigation of an innocent person in custody without identifying the accused involved in the incident. Likewise, the necessary documents have been prepared fraudulently in order to put shadow on the reality of the episodes of the incidents. The attempt has been made to give different twist to the legal process after the unlawful arrest of Sanu Sunar and Bishnu Prasad Kapri, by demanding the extension of court process again and again but the statement was taken only after the post mortem report was received. The beating was said to have been perpetrated by the crowd collected by Bishnu Kapri, but no arrest including the person involved in beating was made. These incidents including the act such as turning a blind eye to the beating all took place in Kalimati Police Circle. It is now clear that DSP Bhola Bahadur Rawal and his associates handling the case in the office have to be made accountable on moral ground.

3.4 Sanu Sunar's Right to Life was found to be violated due to the act of police involved in the incidents. Similarly, with Bishnu Prasad Kapri's unlawful arrest and detention in custody, the police have deliberately underestimated

the Rule of Law by violating the Right to Freedom, Right against Unlawful Arrest as well as Right to Justice.

3.5. This incident took place not because of the person belonging to the Dalit or any other community. The various concerned agencies and organizations, political activists or responsible person in the society working in the related field ought to be cautioned against giving any expression such as the death of Sanu Sunar was caused just because of being a Dalit. Such expression or action might deter the ethnic or communal harmony in due course.

4. Recommendations of the Investigating Team of the Commission:

The act of Police Personnel involved in the incident has apparently violated the Universal Declaration of Human Rights (UDHR), 1948, International Covenant on Civil and Political Rights, 1966, Convention against Torture, 1948, Interim Constitution, 2063 as well as Human Rights provisions enshrined in the Compensation against Torture Act, 2053. Thus the Commission hereby puts forward the recommendations as furnished hereunder.

- Identify the police personnel and constables involved in the act of inflicting torture on Sanu Sunar and take legal action against them.
- Take department action against DSP Bhola Bahadur Rawal and the employees of the case section for they didn't cease from inflicting torture in custody. Instead, they were resorted to perform various illegal acts such as making the unlawful arrest into lawful thereby covering up their blameworthiness.
- Provide Compensation amount RS 300,000/- (Three hundred thousand only) to the closest beneficiary of the family of deceased Sanu Sunar in accordance with the NHRC (Complaint, Action and Compensation Delineation) Regulation, 2057.
- Provide @ RS 200/ - per day as Compensation to Bishnu Prasad Kapri or the nearest beneficiary as per the NHRC (Complaint, Action and Compensation Delineation) Regulation, 2057 for violating the human rights thereby arresting and detaining him unlawfully.
- Take action against the police personnel involved for the unlawful arrest and detention of Bishnu Prasad Kapri and recommend to the Government of Nepal for the withdrawal of the case filed against him.
- Make arrangement for the after-release health check up of the person kept in custody effective and implement as per the section 2 (3) of Compensation against Torture Act, 2053.

The end