

Opinion No. 3/2010 (India)

Communication addressed to the Government on 29 January 2010

Concerning: Mr. Jamali Khan

The State is a party to the International Covenant on Civil and Political Rights.

1. (Same text as paragraph 1 of Opinion No. 18/2009)
2. The Working Group regrets that the Government has not replied within the 90-days deadline.
3. (Same text as paragraph 3 of Opinion No. 18/2009)

Communication from the source

4. According to the information received, Mr. Jamali Khan, 50 years of age, an Indian citizen, employed in the building and construction sector, usually residing in Lajpat Nagar, New Delhi, was arrested without a warrant by officials from the Jammu and Kashmir Police on 3 November 2007 in Udampur, Jammu and Kashmir, pursuant to sections 13, 17, 18, 21, 24, and 40, of the Unlawful Activities Act (case No. FIR No. 252/2007).

5. Mr. Khan was arrested when he and his family were on their way to visit his in-laws in Srinagar. Mr. Khan was carrying money with him to purchase a small plot of land in Srinagar in the name of his wife. He was routinely checked by the police, arrested and then accused of being a money-launderer.
6. On 19 December 2007, the District Magistrate, Udhampur, ordered Mr. Khan's detention. On 4 January 2008 the Chief Judicial Magistrate, Udhampur, granted Mr. Khan bail. However, instead of releasing Mr. Khan on bail, the State invoked the Public Safety Act and ordered his detention in a high-security jail.
7. According to the source, the High Court of Jammu has since then twice quashed his detention as being arbitrary and prejudiced and ordered his release (Writ petition in the High Court of Jammu, OWP 143/2008, 16 September 2008; Writ petition in the High Court of Jammu, HCP 38/2008, 27 July 2009). Following the first decision a release order was furnished by the jail authorities on 19 September 2008. However, instead of his release, Mr. Khan, was taken into unlawful custody by the Joint Interrogation Cell until 6 October 2008 when the District Magistrate, Udhampur, passed another detention order.
8. Following the second decision of the High Court, on 28 July 2009, a release order was served on Jail Supt., Kot Balwal. Mr. Khan was released, however, handed over to the Joint Interrogation Cell where he was illegally detained until the next day. On 29 July 2009, Mr. Khan was transferred to the Udhampur District Jail and again unlawfully detained until 31 July 2009, when the Government issued another detention order under the Public Security Act, and Mr. Khan was put into custody at Kot Balwal Jail, Jammu. On 28 September 2009, the Government of Jammu & Kashmir revoked the detention order.
9. On 3 October 2009, Mr. Khan was presented before the trial court in relation to the original crime with which he was charged. As Mr. Khan had been granted bail more than a year before the session judge ordered his release. Mr. Khan was transferred back to Kot Balwal Jail to be released from there. When he left the jail, he was again arrested and taken to the Joint Interrogation Cell. His wife was promised that he would be released on 5 October 2009; however, when she went there on that day she was told by a senior officer that her husband was fine and that "he has spent two years in Kot Balwal, let him spend two years with us, too".
10. Mr. Khan's exact place of detention in Srinagar, Jammu and Kashmir, is not known at present.
11. In addition to the various court proceedings initiated by Mr. Khan or on his behalf, petitions were also made to the Chief Minister, Jammu and Kashmir State; the President of India; the National Human Rights Commission; the State Human Rights Commission; and the National Commission for Minorities.

Deliberation

12. Even in the absence of any reply from the Government, the Working Group considers that it could render an Opinion on this case.
13. Mr. Khan has been deprived of his liberty without any judicial order. His arrest was carried out on 3 November 2007 without any arrest warrant. It was only 46 days later, on 19 December 2007, that his detention was ordered by a District magistrate. However, on 4 January 2008, he was granted bail.
14. Mr. Khan's fundamental right not to be arbitrarily deprived of his liberty was further denied when he was immediately rearrested by police agents, on the same day, in application of the Public Safety Act. The judicial order was clearly not respected. That was in violation of Article 9.3., *in fine*, of the International Covenant on Civil and Political Rights.

15. Mr. Khan was subjected to several rearrests. His liberty was ordered in two occasions by the High Court of Jammu (on 16 September 2008 and on 28 July 2009) and in one occasion by the Government (on 28 September 2009). However, those orders were not respected. On 3 October 2009 he was rearrested for a fifth time. But this time his detention is more serious because his place of detention is unknown.

16. Mr. Khan has not been brought to trial before an independent and impartial tribunal. The charges brought against him have been changing from money-laundering to generic unlawful activities. His right to be presumed innocent has not either been respected.

17. Consequently, the Working Group renders the following Opinion:

The privation of liberty of Mr. Jamali Khan is arbitrary, contrary to article 9 of the Universal Declaration of Human Rights and articles 9 and 14 of the International Covenant on Civil and Political Rights and correspond to categories I and III applicable by the Working Group in its consideration of cases of detention.

18. The Working Group requests the Government of India:

- (a) To immediately release Mr. Jamali Khan;
- (b) Alternatively, to release him on bail respecting the judicial decisions in that sense and to submit him to a judicial process with all the guarantees of due process and fair trial;
- (c) To consider provide him with an effective reparation for the damage caused for his arbitrary detention.

Adopted on 4 May 2010