The Case of Sarath Kumara NAIDOS

Illegal Arrest – Illegal Detention – Torture
Falsification of Charges by the Moratuwa Police

Held under arrest from Noon on July 5th to the morning of July 13th

Charged with possession of 2,300 milligrams of heroin on July 12th at 11:30 p.m.

Asian Human Rights Commission

INTRODUCTION

These documents present the case of Sarath Kumar Naidos. The basic chronology is as follows:

On July 5, 2008 Sarath was arrested by one police officer in uniform and another in civilian dress; he was assaulted there and then and was put on the floor of a three-wheeler while the two officers sat on the seat and placed their feet on him. He was taken to the Moratuwa Police Station.

He was kept in the Moratuwa Police Station from noon of the 5th to the morning of the July 1.

He was assaulted every day when a group of policemen lead by an officer named, Damith, demanded gold items allegedly stolen by him. He was visited daily by his wife and his sister. His mother made several visits during this period together with his sister's mother in law. The sister's husband and two of his friends also visited Sarath at the police station.

He complained daily to all of them about the assaults and all of them saw his physical condition.

Oral complaints and telephone complaints were made to the Human Rights Commission of Sri Lanka and a written complaint was made by his mother on July 11 about illegal arrest, detention and torture.

Written complaints was also sent to the Inspector General of Police, the DIG of the area and the National Police Commission by fax.

Two lawyers visited him several times between July 5 and the 13th.

The SP in charge of the Moratuwa Police Station was met by family members on July 9 and he visited the Moratuwa Police Station with them. The SP talked to the police officers and saw Sarath in the cell and after talking to officers said that he had been brought regarding a theft.

On July 12 the family with some human rights representatives met a former DIG who is now a practicing lawyer. He sent a lawyer's notice by fax to high ranking police officers about this whole incident.

On July 13 Sarath was produced in court and the police filed two cases. One regarding a theft and the other for being in possession of 2,300 milligrams of heroin at 11:30 p.m. on July 12.

The Magistrate gave bail for the case where the charge was theft but he had no power to give bail on the case on the drug charges.

Complaints have been made to all the authorities of the police and also to the Human Rights Commission and the National Police Commission to make special intervention regarding the fabricated charges on the basis of the physical impossibility of being in possession of heroin at midnight of July 12, 2008.

Your kind intervention is sought to bring this gross miscarriage of justice and gross abuse of human rights to an end and to bring the perpetrators of this to justice.

Asian Human Rights Commission

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Translation of the fax sent by Siriwardenege Don Asilin on July 11, 2008 to:

1. The Chairperson of the Human Rights Commission No. 36 Kingsley Rad, Colombo 8
2. The Chairperson of the National Police Commission, Rotunda Twrs, 3/F No 109 Gaule Rd, Colombo 3
3. Inspector General of Police, Police Headquarters, Colombo 1
4. C.D. Wickramaratne – Deputy Inspector General of Police Western Province (South), Mirihana, Nugegoda.

Written Complaint

Siriwardenege Don Asilin (Aged 64) married with Five Children living at 8/2 Samagi Mawathe, Parantha, Keselwatte. Dated 11.7.2008

Sarath Kumara Naidos who is 38 years-of-age, married with one child, assistant in construction work is my son.

On 5.7.2008 when my son was working at a house in Samagi Mawathe, Keselwatte police officers have come in a three-wheeler and assaulted my son inhumanely and took him into custody. After inquiring as to who these officers were it was found that the officers were from Maratuwa Police Station.

My son is being kept at the police station and he has been assaulted inhumanely and he now in a sickly condition. No medical treatment has been given to him.

When inquiries were made from the police about the reason for the arrest of my son they say that he has been arrested for taking some goods and until he brings these things back he will not be released. Though we told the police that we do not have anything that has been taken from others the police do not release him.

We have informed about this to the Assistant Superintendent of Police Moratuwa and he stated that the son will be produced after things are brought back. Until then he will not be produced in court. To-date, seven days has elapsed from the time of his arrest. Up to now he has not been produced in court.

I request,

Takes steps to stop beating my son, provide him with medical treatment and produce him immediately before court.

To take steps according to law against the police officers who have illegally arrested, assaulted and fabricated charges against my son.

Signed
S.D. Asilin
Siriwardenege Don Asilin
Mother

The circumstances of the arrest of Sarath Kumara Naidos from an affidavit of M. Nandawathie Peiris (64 yrs)

I am the mother of Neil D Alwis, who is the wife of Sriyani Mangalike Naidos, the sister of Sarath Kumara Naidos. On 5.7.2008 during noon I was watching Sarath Kumara Naidos working in a house which belonged to Padmawaithie, which is in front of our house. He was helping a mason mixing cement.

One police officer and another person in civilian dress arrived at this place in a three-wheeler. These two officers came to the place where Sarath Kumara Naidos was working and the one who was wearing the official dress assaulted him with his hands and feet and dragged him to the three-wheeler and forced him to lie flat on the floor of the three-wheeler and the two officers sat on back seat of the three-wheeler and put their feet on him. As I did not know where he was taken my daughter, Sriyani Alwis, went to the Keselwatte Police Station at Pandadura (North) and inquired from the police about the arrest and was told that no one was brought to this police station.

After that both of us went to the Moratuwa Police Station and there we saw Sarath Kumara Naidos in the police cell and we were allowed to see him.

By this time he had been assaulted severely, he spoke to us and told us that he had been assaulted and that some gold ornaments had been demanded from him. We promised to inform the family about this.

We went with a lady lawyer to the police station and went near the police cell and talked to him. Later the lady lawyer spoke to the police officer named Damith and after that said something to Sriyani. After coming out of the police station the lady lawyer told my daughter Sriyani Mangalike that tomorrow he will be produced in court and if not to come and see her and paid Rs. 3,000/= as fees.

On 9.7.2008 around 4:p.m. my daughter-in-law Sriyani Mangalike, her mother, and myself went and met the Superintendent of Police, Moratuwa and complained that from the 5th Sarath Kumara had been under arrest and that he was continuously assaulted. Then he (the SP) made a phone call to the police station and inquired something and told us, you go to the police station and I will come there.

We went to the police station and the SP also come to the police station and asked Damith and other police officers whether a person called Sarath Kumara had been brought in. Then they told the ASP something. After that the SP talked to us and asked, “are you coming to whitewash thieves, what can be done other than to beat up thieves. You people behave like innocent people after eating those things and now are you trying to whitewash these things”? He scolded us like that. Later when I was talking to my younger brother one of the police officers who talked to the SP came there and said that he also assaulted him. When we came out of the police station one officer called us and said, you people have complained to higher ups and now we will do something to keep you in for two or three years. On 11.7.2008 Sarath Kumara’s mother complained to the Human Rights Commission of Sri Lanka, the National Police Commission, the Inspector General of Police, DIG (Colombo West) through faxes and informed about the arrest and assault. On 11.7.2008 in the evening my daughter-in-law Sriyani Mangalike, spoke to a lady lawyers, Shyamila over the telephone. After that we went to the police station and the lady lawyer also came there. The lady lawyer spoke with the police and told my daughter-in-law that tomorrow Sarath Kumara will be produced in court. Sarath Kumara told us that he had been assaulted continuously by the police demanding some gold items.

Until 13.7.2008 Sarath Kumara was kept in the custody of the Moratuwa Police Station. His wife and other relatives went to visit him there and I learned that on 13.7.2008 he was sent to the remand prison.

The affidavit of Gamage Don Shirani, the wife of Sarath Kumara Naidos (36 yrs) the mother of a 2-year-old child.

I am married to my husband, Sarath Kumara Naidos for five years now and am the mother of a 2-year-old child by him. We live at 312/51 Moragodawatte, Kaspave, Piliyandale. He works as a helper at construction sites. On 5.7.2008 he was staying at the house of his sister at Keselwatte, Pandadura and at the end of every week he comes home.

During the entire period of which I am married him he did not have any case against him and to my knowledge he is not using any drugs.

On 6.7.2008 the sister of my husband informed me over the telephone that on 5.7.2008 my husband was taken into custody by the Moratuwa police on the allegation of the theft of some gold items. On the same day I went with my child to the house of the sister of my husband at Keselwatter and his mother also came to the same place.

The mother of my husband, his sister and myself with my child went to the Moratuwa police station and my husband was at the police cell. He stated that the previous night he was assaulted by the police demanding over and over again some gold items. The assault was done by an officer called Damith and a few others. His hands were swollen and there was a wound near the eye and there was blood. He walked with great difficulty and stated that he cannot eat and asked only for tea. He couldn't raise his hand, cannot take rice and eat and somebody had to feed him, he said.

Later all the three met the office known by the name of Damith and my husband's sister said that he should be produced in court. Then the police officer said he cannot be produced in court until he brings back the 'things'. Then his sister asked, how can he bring things which he had not taken? Then the police officer said, though he said to you that he did not take, he told us that he did.

His sister asked, tell us who are the owners of these things, we will go and meet them. Then the officer named Damith stated, those people are of no concern to you. His sister further said that, don't assault her husband. He has fallen from a tree about a month back and has taken treatment. Then the officer told us in a rough manner, are you telling us not to hit thieves but to apply oil on them? My husband's sister showed me to the officer and said, she is also a sick person taking treatment. The officer said that is of no concern to them and that we should bring the things to them.

On 7.7.2008 I took food and went to the Moratuwa Police Station to see my husband. He had not eaten the food that was brought to him the day before. He said: bring the chain worn by the child. These people assault me and ask for things. As I cannot take any more beatings I said that I promise to bring the things.

On 7.7.2008 I went to see my husband with his mother and sister.

On the same day in the evening, I went with the mother and sister of my husband and a neighbour named Ranjith to meet a lady lawyer and then I went with food for the night for my husband.

When I gave the food he said: he cannot eat rice and refused to take the food. I told him somehow eat even a little and do not stay in hunger. Then he said: again, bring and give the chain worn by the child, if not they will hit me again. After that I met the police office named Damith and told him there is no way to bring the things. How can bring the things that we have not taken? Put this person before court. Then he said: don't try to tell lies, and chased me away.

The night of the same day, the husband of his sister and a friend went to visit him at the police station and they took boiled coriander water with Panadol from home.

Later the husband of his sister gave her a call and informed that my husband has been assaulted again and to inform the lady lawyer.

My husband's sister informed this to Ranjith who said that he informed the lady lawyer over the telephone and she had said that will make a phone call to the police.

The husband of his sister and Sanjeewa came home and informed us that when they went to the police station my husband was not in the cell and when they inquired about it an officer has said that my husband had been taken upstairs for taking a statement. While they were at the police station they heard my husband shouting in pain. Sometime later my husband came down limping with great difficulty, just behind him police officer who had a cricket pole came behind him. He put my husband inside the cell.

My husband had spoken to his sister's husband and Sanjeewa, crying, and told that now he was hung and beaten and asked them to save him. They had given him the boiled coriander water however, he was even unable to take it by hand and he fell down inside the cell. His hands were swollen and they gave him the Panadol.

On 8.7.2008 I and the mother of my husband and his sister went to see him at the police station but they were not allowed to enter the police station and only I was allowed to go in. my husband said, that the previous night also he was hung by his fingers and assaulted by officer Damith and a number of others. He said I can't live like this, bring me some poison to drink and die.

After that I went all around the police station looking for the officer called Damith and met him and told him that I am suffering from a heart problem and I cannot walk about. I told him to put my husband before the court and bring it to an end. He told me that I am not concerned about that, bring the things and give it to me.

I went with his mother and sister and met the lady lawyer and informed her that he had not been produced before court. The lady lawyer told us that there is no time to speak now and come back after 4:p.m.

Again I took food for lunch and went to the Moratuwa Police Station to see my husband. After giving the food I met a lady police officer who was in that place and told her about the incident and she said we don't know, tell the person who brought him. In that place there was another police officer who was typing and I went and told this to him also. Then he said: bring the things then it is possible to put him out and he said: you will not be able to get him out and then chased me away.

On 8.7.2008 at 4:p.m. I went to the house of the lady lawyer with the mother and sister of my husband. That evening also I went to see my husband and took food for him.

On 9.7.2008 the mother and sister of my husband and the mother-in-law of my husband's sister, Nadawathe Peiris went to meet the Assistant Superintendent of Police and that day morning when I went to see my husband the police officer at the gate of the police station said, it is not possible to allow you to go in. there is a meeting. Sir is here. Leave the food and go.

During noon of the same day I took food and went to the gate of the police station and the officer at the gate said the meeting is not over, leave the food and go. I left the food and came back.

On 9.7.2008 I went to see my husband taking food and that time I was allowed to see him. I went to the cell and asked him if he got the food I left him for lunch. He said that the food had got mixed up. Some officer came to the police station and I was taken upstairs and kept hidden.
On 10.7.2008 I went to the police station to see my husband and give him food. He said that previous day also he was assaulted. When he was being beaten he has urinated and he washed his trousers and gave me the wet trousers to be taken back. That day I saw his legs were swollen. He said they are asked for the things and had been beating him.

I went to the police officer called Damith and asked him how can we give the things we have not taken. I told him, Sir, do not beat him up. He said though he has not told you he told us that he had taken the things. Then I went back to my husband and asked him if he said he had taken the things. He said due to fear as a result of the beating he wanted to save himself and said that he took it.

After that I came out of the police station and gave a telephone call to his sister and told her that the previous day also he had been assaulted and that he is in a sick condition. She told me to meet and inform the lady lawyer.

I met the lady lawyer and informed her that my husband had been assaulted. She got into the car and took me also and came to the Moratuwa Police Station. The lady lawyer told officer Damith that he does not have the things with him. The child's chain with a religious emblem can be brought and given to him. Then Damith said I don't need that. If you bring the things we will put him to the court. The lady lawyer said how can they give thing they have not taken? After that the lady lawyer spoke to the police and informed me that he will be brought to court on Friday.

Again, during noon, I took food and went to see my husband.

That day afternoon I sent the food through Sanjeewa who was living near his sister's house and sent the food through him. When he returned he said tomorrow my husband will be produced in court. On 11.7.2008 in the morning I took food and went to the police station. I gave food to my husband and came back home. During the noon also, I took food. When I came home I learned that the mother of my husband has sent faxes to the Human Rights Commission of Sri Lanka, to the National Police Commission and the DIG (West) informing about the arrest and assault of my husband. That evening also I took food and went to the police station.

On 12.7.2008 in the morning I took food and went to the police station and my husband was crying and said, previous night also he was hung and Damith and four others assaulted him. When he was assaulted he lost controls of his bowels and also he urinated on his clothes and he gave me the clothes to be taken away.

After that I came home and informed my husband's sister about this and then also went and informed a human rights organisation in Panadura about this. His sister's husband said that he will telephone the Human Rights Commission of Sri Lanka.

Again I went to see him at noon and he was in sickly condition at this time.

After that at about 3:30 I went with the lady lawyer Niluka D Silva and three others to the Moratuwa Police Station. The lady lawyer inquired from the police officers about my husband. The lady lawyer also spoke to my husband.

The lady lawyer asked as to whether a Head Quarters Police Inspector is present from another police officer. Then that officer replied the Head Quarters Police Inspector and the Officer-in-Charge of the crimes branch is not present as they have gone for a discussion at Mirihane. Then the lady lawyer inquired as to who else was there? Then some officers on the veranda showed the lawyer one police officer.

The police officer called Damith was there with a few others. The lady lawyer went to that place and spoke to Damith. The officer came with the lady lawyer to the police station and said that my husband had been arrested over a theft and has been kept in the police station for several days and that he will be produced in court when he receives an order from the Officer-in-Charge of the Police Station. After that the lady lawyer went with others to my husband and talked to him. He told the lady lawyer that he had been assaulted and that he is in a sickly condition. I brought Panadol and siddallape to him.

The next day that the 13.7.2008 I went to the police station taking food and then my husband told me that today he will produced in court and that the officer named Damith has told him you people have

gone to complain to human rights and therefore we will do something to keep you inside for 2-3 years.

A police officer came and took my husband out of the cell and I saw the police officer recording some statement from my husband.

After that saying that my husband is being taken to Lunave hospital and he was put inside a jeep and taken away. I came back immediately and went to see my husband to the police station. Then the police officers told me that my husband has been remanded and will be produced for an identification parade on the 25th.

On 17.7.2008 I went to the Wellikade remand prison and saw my husband. He said that he has been treated at the remand hospital and that a case relating to drugs and robbery has been filed against him. According to what the lady lawyer Shamila told him on 13.7.2008.

On 18.7.2008 I went to court and got a motion filed to get my husband produced before a Judicial Medical Officer.

From 5.7.2008 to 13.7.2008 my husband was kept at the Moratuwa Police Station and detained illegally and also assaulted continuously be police officers and later produced fraudulently implicated in a drug case and produced in court.

On 23.7.2008 my husband was produced in court from the remand prison and it was informed that he had been produced before a JMO and the court granted him bail on the theft charges.

On 28.7.2008 when my husband was produced in court regarding the drug and theft case the Moratuwa police also filed another theft case against my husband.

The affidavit of Sriyani Mangalika Naidos – the sister of Sarath Kumara Naidos

(Married with two children)

Sarath Kumara Naidos is my brother.

On 5.7.2008 when I returned from work I learned from my mother in law, Nandawathie Peires, that my brother Sarath Kumara had been arrested by the Moratuwa police about a theft and had been assaulted.

That evening I went with my husband Alwis to the Moratuwa Police Station to see my brother. My brother was in the police cell and he said that some things have been lost from a house at Lunave and that he had been arrested about that. Those people had come to the police station and the police had assaulted him. An officer named Damith and several others whose names are not known to him have arrested him.

Myself and my husband met Damith and asked why he was arrested. Then this officer said that gold some items and a mobile telephone and Rs 20,000/= have been stolen and to bring these things are brought back and then he will be released.

I asked him if this person is doing that kind of robberies why he has he to go and work for Rs 600 or 700 daily wage? The officer replied that somebody in the area has told them that this person has two or three chains in his neck. And that he has a lot of money in his hand all the time. He further said that until the things are brought he will not be produced in court.

On 6.7.2008 I took a telephone call to my mother and informed her that my brother had been arrested and my sister in law (Sarath Kumara's wife) was also informed that the police have arrested her husband.

At noon the same day my sister in law Sriyani, my brother's small child and my mother came to my house.

Sriyani, my mother and their little son went to the Moratuwa Police Station to see my brother and he was in the police cell. He stated that previous day night he had been assaulted demanding from him the stolen goods. My brother's hand was swollen and there was a wound near the eye. He walked with great difficulty and could not eat and asked for some tea to drink. He could not raise his hand to eat rice. He said that somebody has to feed him.

Later, all three of us meet the police officer named Damith. We told him to produce this person in court. He replied that he will not produce him in court until things are brought back. I told him how can we bring back things we have not taken. Then he said although he has told you that he has not taken them, he has told us that he had taken the things.

Then I asked him tell us as to whose goods are these. We will go and meet them. Then he said those people are of no concern to you. Bring back the goods. I told him not to assault him. He had fallen from a tree some time back and then this officer told us if we are not going to assault the thieves are you asking us to apply ointments on them. I told him this is my brother's wife, and that she is suffering from heart problem and is taking treatment continuously. The officer replied that is no concern to us, bring the things back.

On 7.7008 at noon myself and my mother went to see my brother at the police station and took food to him. He said to bring the chain worn by the child because out of fear I have promised to bring back the things.

On 7.7.2008 in the afternoon my mother, my mother in law and neighbour by the name of Ranjith went t to see a lady lawyer known to him named Sharmila at her house. We told her that my brother had been arrested by the m police at 5.7.2008 and he is assaulted at the police station as they are demanding to bring back the stolen good and we asked her to stop this and to bring him to court. She agreed to go to the police station immediately and asked for Rs 3000/= for fees to appear in the case.

The lady lawyer came with us to the police station and went to the police cell to talk to my brother. After that she spoke to Damith and after that talked to me and said listen to what this officer says.

The lady lawyer told us that the officer is telling that my brother has stolen things and that the servant women in the house had seen my brother steeling. Then I told the lady lawyer to tell the police not to assault my brother. Already due to assaults he cannot walk, his hands are swollen and the lady lawyer said if thieves are not to be assaulted are you asked them to stroke them kindly. She came out and said that tomorrow he will be produced in court and I paid her Rs 3000/= as her fees.

On the same day night my husband Neil and a neighbour named Sanjeewa went to the police station and they took boiled coriander water and Panadol to be given to him.

Later my husband called me and informed that my brother is being assaulted again.

I informed Ranjith about this and asked him to talk to the lady lawyer to inform her that the police have assaulted Sarath kumara again. Then the lady lawyer promised to make a call to the police.

Later my husband and Sanjeewa came home and informed us that when they went to eh police station my brother was not in the cell. When they inquired about it an officer said he has been taken upstairs for recording a statement. When they were inside they heard my brother shouting in pain. Sometime later he was brought down and he came with great difficulty and limping. Behind him a police officer with a cricket pole was walking. He put my brother inside a cell and closed it.

My brother has spoken to my husband and Sanjeewa and was crying. He said he has been hung and assaulted. He asked them to save him. They have given the coriander water in a bottle and he was not even able to take it in his hand. He has fallen inside the cell. His hands were swollen. They have given him the Panadol.

On 8.7.2008 I and my mother went to the court and met the lady lawyer. We informed her that my brother had not been produced in court. She said that there was no time to talk and to come back after 4 p.m.

Accordingly we went to see the lady lawyer at 4 p.m. and told her that the chain that my brother has told is his little son's chain and panchauda. We asked her whether to bring this. Then she said not to bring that. Then I told her that he will be assaulted that night also. Then she said I have taken a phone call to the police and they have said they will not assault him. If they assault him after I come back what can I do about it since I cannot stay there?

I asked the lady lawyer whether we should inform the Superintendent of Police and she said not to go do so.

On 9.7.2008 no permission was given to see my brother. Later we sent a neighbour to see him and he said that my brother had been severely beaten up and was in a sickly condition and that is why he is not allowed to be visited.

At 4 p.m. on 9.7. 2008 myself, my mother and my mother in law went to the Superintendent of Police at Moratuwa. We informed him that on the 5th my brother had been taken into police custody and that he has been beaten every day ever since. He made a phone call to the station about this and told us that you go to the police station and I will also come there.

We en to the police station and the Superintendent of Police also came. He spoke to Damith and other officers and asked whether there is a person called Sarath Kumara at the police station. They told something to the Superintendent of Police. Later the Superintendent of Police spoke to us and asked us are you coming to whitewash thieves? What to do to thieves except to beat them. You people have eaten these things and now come like innocent people to whitewash these things. Later when were we talking to my brother one of the officers who was talking to the Superintendent of Police came to us and said that he has also assaulted my brother. When we were coming back a police officer called us and said that you have gone to big people and now we will do something to keep him inside for 2-3 years.

On 10.7.2008 when my brother's wife went to the police station he informed her that on the previous day also the police assaulted him and she has met the lady lawyer again and informed that the police had against assaulted her husband.

On 11.7.2008 my mother complained to the Human Rights Commission of Sri Lanka, the National Police Commission, the Inspector General of Police and the Deputy Inspector General of Police (West) by fax about the arrest, detention and the assaults.

On 11.7.2008 in the evening I spoke to the lady lawyer Sharmila over the phone and informed her that my brother has not been produced in court still. I asked her to get him produced. Then the lady lawyer told me to come near the police station in the evening and myself and my mother in law went to the police station. The attorney at law also come to the station and talked to the police officers and came back and informed me that tomorrow my brother would be produced in court. I went and talked to my brother and he said the police are continuously beating him demanding the things.

On 12.7.2008 my brother's wife went to see my brother and told us that on the previous day also he had been hung and assaulted. He is in a very sickly condition and even cannot control his bowels and cannot stop urinating on his clothes and she cried.

Later my husband informed the Human Rights Commission again over the telephone.

On 12.7.2008 my brother's wife went to the police station with another lady lawyer Niluka D Silva and informed me about it.

On 13.7.2008 I learned from my brother's wife that my brother has been produced before a magistrate and remanded.

17.7.2008 I went to the remand prison and saw my brother. He was talking treatment at the remand hospital and was still feeling sickly. He said that a theft case and a drug case has been filed against him.

18.7.2008 we filed a motion through a lawyer to produce my brother before a Judicial Medical Officer through the remand prison. We also informed the court that on 5.7.2008 my brother had been taken into police custody and kept there until 13.7.2008. He was repeatedly assaulted demanding some stolen goods and a fabricated case had been filed against him for possession of 2,300 milligrams of heroin

On 23.7.2008 these two cases were called before the Magistrate's Court and he was produced at am identification parade about some theft and he obtained bail.

On 28.7.2008 both these cases were called again at the Magistrate's Court and a further fabricated case was filed against my brother.

The affidavit of Neil D Alwis the brother-in-law of Sarath Kumara Naidos (aged 43) father of two children

I am married to Sriyani Mangalika Naidos who is the sister of Sarath Kumara Naidos.

On 5.7.2008 I learned from my mother that my said brother-in-law had been taken to the Moratuwa Police Station and had been beaten by the police officers.

On 5.7.2008 myself and my wife went to the police station to see her brother. He was in the police cell. He has been told that something has been lost from a house in Lunave from which some goods were lost and that was the reason for the arrest. At the police station an officer named Damith and several others had assaulted him. He does not know the names of the others who assaulted him.

My wife and myself met Damith and asked him why this person has been arrested. This officer informed that some gold items, mobile phone and Rs 20,000/= have been taken and to bring these things and then this person will be given back.

7.7.2008 in the evening myself and a friend of mine named Sanjeewa went to see Sarath Kumara and took boiled coriander water, Panadol and food for the night. When we went there Sarath Kumara was not in the cell and an officer informed that Sarath had been taken upstairs for taking a statement.

When we were there for some time we heard Sarath Kumara shouting in pain saying don't hit me. I went out of the police station and informed my wife to let the lady lawyer know about this.

Little later Sarath Kumara came down walking with difficulty and limping. A police officer came behind him with a cricket pole in his hand. He put Sarath Kumara inside a cell and we went and spoke to him.

Sarath Kumara showed us both hands crying. He said that he had been assaulted now also. I saw that his hands were swollen. He asked us to save him.

We gave the bottle containing the boiled coriander water and he was unable to take with his hands. He fell on the floor. He did not eat. He said that because his hands were swollen he cannot take the food and eat.

From 5.7.2008 to 13.7.2008 Sarath Kumara was kept at the Moratuwa police station and was assaulted. Myself, my wife and several relatives went to see him and also two lady lawyers also went to see him. On 13.7.2008 I learned that he had been remanded.

Letters sent by the Asian Human Rights Commission

Letter sent to the Special Rapporteur on the Question of Torture

July 25, 2008
Prof. Manfred Nowak
Special Rapporteur on the Question of Torture
C/o OHCHR-UNOG
1211 Geneva 10
SWITZERLAND

Fax: +41 229179016 (ATTN: SPECIAL RAPPORTEUR TORTURE)
E-mail: ssyedohchr.org

Dear Mr. Syed,

Re: The illegal detention, torture and fabrication of charges for possession of heroin against Sarath Kumara Naidos by the Moratuwa Police

Mr. Sarath Kumara Naidos was arrested by the Moratuwa Police regarding an allegation of theft on July 5 and was detained at the Moratuwa Police Station. During this period from July *5* to July 13, Mr. Naidos was repeatedly tortured and was told to hand over some stolen properties. As he denied the charges and was in no position to return them he was constantly assaulted. When representations were made on his behalf it was said that if he hands over the stolen property he would be released.

The following persons visited Mr. Naidos at the Moratuwa Police Station during his detention: his wife, with their child visited him many times. An attorney-at-Law, Ms. Shamila, visited him twice between the July *5* and July 11. On July 11 at 3 p.m., Ms. Niluka Silva, Attorney-at-law also visited him at the station and she was accompanied by three other persons. On July 11, the Human Rights Commission of Sri Lanka (I-IRCSL), the National Police Commission, the Inspector General of Police, and a Deputy Inspector General of Police, Western Province were informed about the arrest, detention and torture of Mr. Naidos through facsimile messages. On July Il the HRCSL was also informed about these matters by telephone and on July 12, during the day, three telephone calls were made to inform the HRCSL about the matter. At around 3:30 p.m. on the 12th Mr. Thangavelu, Attorney-at-Law who was formerly a deputy Inspector General of Police was contacted on this matter and he issued a lawyer's notice to the IGP and other high ranking police officers of the area about the matters mentioned above.

On the July 13 the Moratuwa police produced Mr. Naidos at the Moratuwa Magistrate's Court and filed two cases against him. One was case No. 89984 for alleged theft. A further case bearing No. 90215 was filed alleging that Mr. Naidos was arrested on July 12, 2008 at 11:30 p.m. for alleged possession of 2,300 milligrams of heroin.

We request your urgent intervention to ensure the following redress from the Sri Lankan government:

a. To investigate the allegation of torture of Mr. Naidos over this whole period while he was in detention.
b. b. To immediately take steps to investigate the fabricated charge of possession of heroin which is a charge which is non-bailable and can lead to the death sentence. As the suspect, Mr. Naidos was in police custody from July 5 up to July 13 when he was produced in the Magistrates Court it was simply impossible for him to have been in possession of 2,300 milligrams of heroin on 11:30 p.m. on July 12. The evidence of the persons who visited Mr. Naidos from July 5 to July 13 at the Moratuwa police station can be adduced to demonstrate the falsity of this charge.

c. Investigate into the illegal detention of Mr. Naidos from July 5 to July 13 on a charge of theft where the prescribed period of detention is only 24 hours.

As this person needs physical medical treatment for prolonged torture and also that he could be in serious danger if the fabricated charge of possession of heroin is pursued you prompt intervention on this matter would bring relief to this victim. There were earlier instances when attempts were made to introduce bombs in the possession of torture victims. However, due to timely intervention which lead to inquiries such charges have not been pursued. The case of Palitha Thissa Kumara was one such instance.

Thank you.

Yours sincerely,

Danilo Reyes
Programme Assistant
Asian Human Rights Commission

Letters by the Asian Human Rights Commission to various Sri Lankan police officers:

Similar letters were sent to:

The Inspector General of Police
The Secretary, National Police Commission
The Secretary, Human Rights Commission of Sri Lanka
The Area Deputy Inspector General of Police

August 7, 2008

Mr. Jayantha Wickramaratne
Inspector General of Police (IGP)
New Secretariat
Colombo 1
SRI LANKA

Fax: +94 11 2 440440/327877
E-mail: igp@police.lk

Dear Mr. Wickramaratne,

Re: Request for Special Attention on an Urgent Basis to stop an ongoing Miscarriage of Justice and a gross abuse of human rights regarding Sarath Kumara Naidos – denied bail on the basis of fabricated charged by the Moratuwa Police

On the 11th July 2008 you were informed by Siriwardenege Don Asilin that her son, Sarath Kumara Naidos had been in the custody of the Moratuwa Police Station since the 5th July and was held there at the time and was being continuously assaulted by the officers who demanded that he should bring some gold items that he was supposed to have stolen. The mother's complaint was registered with the Human Rights Commission under reference HRC/3552/08.

On the 13th July the Moratuwa Police produced Mr. Naidos at the Magistrate's Court of Moratuwa. At that time two cases were filed: a. Case No. 89984 for alleged theft of some gold items; b. Case No. 90215 alleging that on the 12th July at 11:30 p.m. he was arrested, allegedly in possession of 2,300 milligrams of heroin.

The Magistrate granted bail to him on the theft charge but the Magistrate cannot grant bail on the charge of possession of heroin.

To the very knowledge of your office Mr. Naidos was in police custody from the 5th July. There is a written complaint to you on this matter dated 11th July. He is supposed to have been found in possession of heroin at 11:30 p.m. of the 12th July.
To the very facts that are available to you by way of the fax sent to you on 11th July by the mother of the suspect. It is blatantly clear that the allegation of possession of heroin at 11:30 p.m. of July 12th 2008 is physically impossible and is therefore a totally fabricated charge.

It is entirely within the power of your commission to look into such blatant abuse of power and all matters can easily be verified by you by requesting a thorough report from the Deputy Inspector General of Police of the area.

We urge your special and urgent intervention in your case on the basis of facts which are already in your possession. We also draw your attention to our letter on this subject sent to you on 25th July, 2008.

Thank you

Yours sincerely,

Danilo Reyes
Programme Assistant
Asian Human Rights Commission

Attached: The translation of the fax sent to you on 11th July, 2008

The letter sent to the Superintendent of Police, Moratuwa

August 7, 2008

K.A. Dayananda
Superintendent of Police
Moratuwa
Western Province
Sri Lanka

Fax: 94 11 2645544

Dear Mr. Dayananda,

Fabricated charges against Sarath Kumara Naidos for possession of heroin on 12th July 2008 at 11:30 p.m. while he was in fact in the custody of the Moratuwa Police Station from the 5th to the 13th July and assaulted for the return of allegedly stolen gold items

On 9th July 2008 several members from the family of Sarath Kumara Naidos met you at your office at 4 p.m. They complained to you about the arrest of Sarath Kumara on the 5th July by the Moratuwa police and that he had been repeatedly assaulted since then and held in the custody of the Moratuwa Police.

After listening to them you told them to go to the police station promising that you would go there and for them also to go to the police station. Accordingly they went to the police station and you also arrived there. In the presence of these family members you inquired from a police officer called Damith and several others as to whether one Sarath Kumara Naidos was in the police station. These officers told you something which the family members did not properly hear. After listening to the officers you turned to the family members and told them that he is being kept for stealing things and according to them you also blamed them for trying to pretend to be innocent and trying to protect thieves. You then went away.

The family members thereafter made several complaints to the Inspector General of Police, the National Police Commission and the Human Rights Commission of Sri Lanka repeatedly on the days following up to the 13th July. On that day Mr. Naidos was produced in court and charged with two offenses: a. Case No. 89984 for alleged theft of some gold items; b. Case No. 90215 alleging that on the 12th July at 11:30 p.m. he was arrested, allegedly in possession of 2,300 milligrams of heroin.

You are aware with your own personal knowledge that Sarath Kumara Naidos at the time you visited the station on 9th July. Therefore it is impossible that he could be found in the possession of heroin at 11:30 p.m. on the 12th July. On the very facts known to you personally this is a fabricated charge. You are the supervising officer over this police station and therefore on the facts known to you personally we urge you to act with integrity and conscience to order the Moratuwa police to withdraw the fabricated charge under Case No. 90215 for alleged possession of heroin. Mr. Naidos is in remand now because the magistrate cannot give bail for this particular charge, despite the fact that the charge is fabricated.
We urge you to act in fairness and with integrity on this most gross abuse of power and violation of rights by the officers of the Moratuwa Police Station.

Thank you

Yours sincerely,

Danilo Reyes
Programme Assistant
Asian Human Rights Commission

cc: Inspector General of Police
Deputy Inspector General of Police, Western Province (South).

Press Release by the Asian Human Rights Commission

SRI LANKA: Illegal detention, torture and fabrication of charges for possession of heroin against Sarath Kumara Naidos by the Moratuwa Police

(Hong Kong, July 25, 2007)

The Asian Human Rights Commission today wrote to the UN Special Rapporteur against Torture regarding a case of torture and illegal dentetion for seven days at the Moratuwa Police Station which also filed a charge under illegal possession of drugs to take revenge on the toture victim who made a complaint to the higher police authorities and human rights organisations. The AHRC urged the UN Rapporteur to intervene to request the Sri Lankan government to investigate this matter and to prevent a miscarriage of justice.

Mr. Sarath Kumara Naidos Naidos was arrested by the Moratuwa Police regarding an allegation of theft on July 5 and was detained at the Moratuwa Police Station. During this period from July 5 to July 13, Mr. Naidos was repeatedly tortured and was told to hand over some stolen properties. As he denied the charges and was in no position to return them he was constantly assaulted. When representations were made on his behalf it was said that if he hands over the stolen property he would be released.

The following persons visited Mr. Naidos at the Moratuwa Police Station during his detention: his wife, with their child visited him many times. An attorney-at-Law, Ms. Shamila, visited him twice between the July 5 and July 11. On July 11 at 3 p.m., Ms. Niluka Silva, Attorney-at-law also visited him at the station and she was accompanied by three other persons. On July 11, the Human Rights Commission of Sri Lanka (HRCSL), the National Police Commission, the Inspector General of Police, and a Deputy Inspector General of Police, Western Province were informed about the arrest, detention and torture of Mr. Naidos through facsimile messages. On July 11 the HRCSL was also informed about these matters by telephone and on July 12, during the day, three telephone calls were made to inform the HRCSL about the matter. At around 3:30 p.m. on the 12th Mr. Thangavelu, Attorney-at-Law who was formerly a deputy Inspector General of Police was contacted on this matter and he issued a lawyer's notice to the IGP and other high ranking police officers of the area about the matters mentioned above.

On the July 13 the Moratuwa police produced Mr. Naidos at the Moratuwa Magistrate's Court and filed two cases against him. One was case No. 89984 for alleged theft. A further case bearing No. 90215 was filed alleging that Mr. Naidos was arrested on July 12, 2008 at 11:30 p.m. for alleged possession of 2,300 milligrams of heroin.

The AHRC requested the Special Rapporteur's urgent intervention to ensure the following redress from the Sri Lankan government:

a. To investigate the allegation of torture of Mr. Naidos over this whole period while he was in detention.
b. To immediately take steps to investigate the fabricated charge of possession of heroin which is a charge which is unbailable and can lead to the death sentence. As the suspect, Mr. Naidos was in police custody from July 5 up to July 13 when he was produced in the Magistrate's Court it was simply impossible for him to have been in possession of 2,300 milligrams of heroin on 11:30 p.m. on July 12. The evidence of the persons who visited Mr. Naidos from July 5 to July 13 at the Moratuwa police station can be adduced to demonstrate the falsity of this charge.
c. Investigate into the illegal detention of Mr. Naidos from July 5 to July 13 on a charge of theft where the prescribed period of detention is only 24 hours.

Furthermore, as this victim needs medical treatment for the prolonged torture he has suffered, and also that he could be in serious danger if the fabricated charge of possession of heroin is pursued, prompt intervention on this matter would bring relief to this victim. There were earlier instances when attempts were made to introduce bombs in the possession of torture victims. However, due to timely intervention which lead to inquiries such charges have not been pursued. The case of Palitha Thissa Kumara was one such instance.

Commentary

Silly and cruel at the same time

What is silly and what is cruel may be relative. However, what Sarath Kumara Naidos, his wife, Sriyani, his mother, Asilin, his sister, Mangalike, her husband, Neil and his mother, Nandawathie are going through is certainly both silly and cruel by whatever standards.

On the 5th July, while Nandawathie was watching, Sarath Kumara who helping to mix cement at his neighbour's house was arrested by a policeman in uniform and another in civilian dress. He was assaulted, put on the floor of a three-wheeler and the officers sat on the seat with their feet on his body. Nandawathie called her daughter and rushed to the nearest police station to find whether Sarath had been brought there. As he was not at that station she and the daughter went to the very next police station which was the Moratuwa Police Station and found him there locked in a cell. He had already been thoroughly beaten. She learned that he was suspected of having stolen some gold items. Thus began an agonizing week for Sarath and his family.

Sarath's wife, Sriyani, visited him at the police cell from the 5th July up to the morning of the 13th. Almost every day she visited him three times, carrying morning, noon and evening meals. From the very first day she learned that her husband was being severely assaulted by a group of police officers lead by an officer called Damith. Sometimes he was hung from an overhead beam and beaten. The officers made a simple demand: return the gold you have stolen. Sarath told his wife that after he had been so badly beaten that in order to stop them he admitted to whatever they wanted. But then, they demanded the return of the goods and since he had not stolen anything he was unable to do this. This angered the officers further and they continued to beat him, day in and day out.

The rest of the family members also visited him and, having understood the situation spoke to the officer called Damith and a Superintendent of Police. Their replies were very simple. There is nothing that can be done to a thief but to beat him until he complies with our demands. The only way out was, bring back the gold. The family's repeated question to the officers was, how do we return something we have not taken and is not in our possession. They even suggested a compromise. Sarath's two year-year-old son had a necklace. It was all the gold the family possessed and they were willing to give that. But no, Damith and the other officers said they wanted the stolen goods.

Unable to resolve the problem with the police officers the family made complaints to the Human Rights Commission of Sri Lanka, the National Police Commission, the Inspector General of Police and the Deputy Inspector General of Police of the area. The Human Rights Commission opened a file with the reference number HRC/3552/08 and promised many times that they would intervene. Adding to all this, the family also sent two lawyers to the police station on several occasions to make representations on their behalf. None of this had any impact. The officers repeated their refrain: bring back the goods. The family went to a former Deputy Inspector General of Police, who after retirement is practicing as a lawyer and he also made a written request for Sarath's release, or to produce him in court, which the police are obliged to do within 24 hours of arrest.

After all the pressure the police could not hold him any longer but they found a way to teach Sarath and his family a lesson. When Sarath was produced in court on the 13th the police filed two cases, one for alleged theft and the other for being found with 2,300 milligrams of heroin at 11:30 p.m. on the evening of the 12th. With this second charge the magistrate could not grant Sarath bail and he now also faces the possibility of a death sentence.

The family is faced with two problems. They are being asked to return gold items which they have not taken. Further, Sarath is now charged with the possession of heroin at the very time he was already in the custody of the Moratuwa police, which he was from the 5th to the 13th. It was simply physically impossible on the evening of the 12th for him to be in possession of illegal drugs.

There was no inquiry into whatever allegations that someone might have made about Sarath having stolen some gold items from one of the houses in which he had worked. At the moment of arrest no questions were asked of him. Afterwards also, no questions were asked, but only the demand to give back what he had taken. Of course, what the police officers did is not allowed by the law. The Criminal Procedure Code and the evidence law do not allow this behaviour. Judges hearing many cases before the highest courts of the country have also condemned this kind of behaviour. For example in the case of Angelina Rosanna, a very rich family accused it's part time domestic helper, Angeline, of having stolen a gold watch worth Rs. 500,000/= (US$ 5,000). The girl was beaten throughout the night when two officers kept demanding that she return the watch. Years later the Supreme Court found the two officers to have violated the constitution rights of the girl who was innocent. The High Court of Colombo sentenced the two officers to seven years of rigorous imprisonment for having committed the offense of torture. However, none of these things have had any influence in altering the behaviour of the police who have the institutional habit of torturing alleged thieves demanding that they return what they are suspected of having stolen. The law and judicial decisions do not seem to matter. In Sarath's case did the law matter in the very least to the officers concerned?

What may be even more agonizing to the family is the fact that what they have experienced is nothing really exceptional. To begin and end inquiries with assaults and beat people up demanding stolen goods is now a normal experience. Even the high ranking police officers they approached asked them quite openly, what do you expect us to do with thieves except beat them. Do you expect us to pour ointment on these people?

Though it is physically impossible for Sarath Kumara Naidos to have been in possession of heroin on the night of the 12th July, he is still in remand prison because that matter of the physical impossibility has to be resolved on some day when a trial takes place, which may be four, five or more years afterwards. The representations made by the family and human rights organisations to the higher police authorities to inquire into the matter has had no effect.

The whole affair is both silly and cruel at the same time. However, someone may retort by asking, what is so especially silly or cruel about this particular incident? Similar and worse things happen all the time in all parts of the country. To this retort it is not possible to give any reply except to say that it does not make the situation less silly or less cruel.

RECOMMENDATIONS of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Manfred Nowak, contained in the report dated 26 the February 2008-(A/HRC/7/3/Add.6)

B. Recommendations

94. The Special Rapporteur recommends that the Government:

(a) End impunity for members of the TMVP-Karuna group;

(b) Ensure that detainees are given access to legal counsel within 24 hours of arrest, including persons arrested under the Emergency Regulations;

(c) All detainees should be granted the ability to challenge the lawfulness of the detention before an independent court, e.g. through habeas corpus proceedings;

(d) Ensure that magistrates routinely ask persons brought from police custody how they have been treated and, even in the absence of a formal complaint from the defendant, order an independent medical examination in accordance with the Istanbul Protocol;

(e) Ensure that all allegations of torture and ill-treatment are promptly and thoroughly investigated by an independent authority with no connection to the authority investigating or prosecuting the case against the alleged victim;

(f) Ensure all public officials, in particular prison doctors, prison officials and magistrates who have reasons to suspect an act of torture or ill-treatment, to report ex officio to the relevant authorities for proper investigation in accordance with article 12 of the Convention against Torture;

(g) Ensure that confessions made by persons in custody without the presence of a lawyer and that are not confirmed before a judge should not be admissible as evidence against the persons who made the confession;

(h) The burden of proof should shift to the prosecution to prove beyond reasonable doubt that the confession was not obtained under any kind of duress;

(i) Expedite criminal procedures relating to torture cases by, e.g., establishing special courts dealing with torture and ill-treatment by public officials;

(j) Allow judges to be able to exercise more discretion in sentencing perpetrators of torture under the 1994 Torture Act;

(k) Drastically reduce the period of police custody under the Emergency Regulations and repeal other restrictions of human rights under them;

(l) Develop proper mechanisms for the protection of torture victims and witnesses;

(m) Ensure that the constitution and activities of the NHRC comply with the Paris Principles, including with respect to annual reporting on the human rights situation and follow-up on past cases of violations;

(n) Establish appropriate detention facilities for persons kept in prolonged custody under the Emergency Regulations;

(o) Establish an effective and independent complaints system in prisons for torture and abuse leading to criminal investigations;

(p) Investigate corporal punishment cases at Bogambara Prison as well as torture allegations against TID, mainly in Boosa, aimed at bringing the perpetrators and their commanders to justice;

(q) Design and implement a comprehensive structural reform of the prison system, aimed at reducing the number of detainees, increasing prison capacities and modernizing the prison facilities; A/HRC/7/3/Add.6

(r) Remove non-violent offenders from confinement in pretrial detention facilities, and subject them to non-custodial measures (i.e. guarantees to appear for trial, at any other stage of the judicial proceedings and, should occasion arise, for execution of the judgement);

(s) Ensure separation of remand and convicted prisoners;

(t) Ensure separation of juvenile and adult detainees, and ensure the deprivation of liberty of children to an absolute minimum as required by article 37 (b) of the Convention on the Rights of the Child;

(u) Abolish capital punishment or, at a minimum, commute death sentences into prison sentences;

(v) Establish centres for the rehabilitation of torture victims;

(w) Ratify the Optional Protocol to the Convention against Torture, and establish a truly independent monitoring mechanism to visit all places where persons are deprived of their liberty throughout the country, and carry out private interviews;

(x) Ensure that security personnel undergo extensive and thorough training, using a curriculum that incorporates human rights education throughout and that includes training in effective interrogation techniques and the proper use of policing equipment, and that existing personnel receive continuing education; and;
(y) Establish a field presence of the Office of the United Nations High Commissioner for Human Rights with a mandate for both monitoring the human rights situation in the country, including the right of unimpeded access to all places of detention, and providing technical assistance particularly in the field of judicial, police and prison reform.

95. The Special Rapporteur encourages the international community to assist the Government of Sri Lanka in the follow-up to these recommendations.

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