

New Delhi - A team of leading personalities who met Mohammed Yasin Malik, Chairperson of Jammu-Kashmir Liberation Front (JKLF) in jail, raised their protests against the third degree method of torture inflicted on him by the police and expressed serious concern on his life..

On behalf of the Committee for Initiative on Kashmir (CIK), an informal group of concerned citizens and human rights activists who have been taking up issues of human rights abuse by State security agencies in Jammu and Kashmir since 1989-90, the four-member team also submitted their report on Malik's conditions to the Government. The team members are : Tapan K. Bose, CIK Convenor and leading documentary film-maker as well as Secretary-General of Kathmandu-based South Asian Forum for Human Rights; Rita Manchanda, a prominent journalist; Ashok Agrawal, practicing lawyer in Supreme Court of India; and Ram Narayan Kumar, writer and human rights activist (whose books and reports on State repression received international acclaim).

Yasin Malik's JKLF is one of the major constituents of the 23-body conglomeration, All Party Hurriyat Conference (APHC). He was arrested on March 25, 2002, while addressing a press conference at APHC office, Srinagar.

Allowing the prosecution plea, the Chief Judicial Magistrate (CJM), Udhampur, remanded Malik for one week's police custody. The JKLF leader, however, complained of chest pain and discomfort to the CJM, pointing out his known cardio-vascular and ear condition. The CJM, therefore, directed the Principal of Government Medical College (Jammu), Dr. H. L. Goswami, to immediately constitute a Medical Board to examine the JKLF leader in custody. Accordingly, with Dr. Sheetal Singh as Chairperson, a four-member Medical Board was constituted who examined Yasin Malik.

Quoting newspaper reports, the CIK report said that the Medical Board, upon examination, found Yasin Malik as suffering from Rhino-Pharyngitis (throat and ear infection), and also suffering from high fever. However, "Yasin Malik's subsequent whereabouts were not disclosed to either his counsel or his family".

Concerned over reports about Malik's hunger-strike in custody, the four-member NIK team reached Jammu from Delhi on March 30. Same day they met the JKLF leader's sister, Amina Malik, who was returning from the Police Lines Hospital in Jammu after meeting her brother. "Amina Malik was in tears and broke down completely while describing her brother's condition. She stated that it had taken her three days' of desperate efforts before she was permitted by the Court of the Designated Judge at Central Jail, Jammu, to meet him", the report said.

Amina told the team members that her brother was "in a very critical condition". The report gave the following brief description of her meeting with the JKLF leader : "Yasin Malik was lying in a bed in a very large ward of the hospital. All other beds of the ward were empty. Yasin appeared to be unconscious when Amina Malik first approached him. The police officer accompanying her, however, roused Yasin and informed him that his sister had come to visit. As she approached closer to her brother to embrace him, he winced in pain and motioned her to keep away from the region of his right ear. He also indicated with gestures that he could not hear anything from his right ear and asked her to sit next to his left side to converse with him. Amina Malik then noticed that the entire region around the right ear appeared to be red and

swollen. On asking, she was informed by her brother that he had been severely assaulted by one Mr. Manohar Singh, Superintendent of Police (Special Operations Group -- SOG), Jammu, and some other police officers. Yasin further told her that after his medical examination he was taken to some place, probably a "Safe House" controlled by the SOG. Soon after reaching there, Mr. Manohar Singh entered the room along with some other officers and, hurling filthy abuses, demanded he confess that he was to have been the recipient of the money recovered from Ms. Shazia/Shamima and Mr. Mushtaw Ahmed Dar. Saying that he knew nothing about the money, Yasin refused to do so. The police officers accompanying him also joined in to beat up Yasin Malik. The assault was so severe that Yasin became unconscious. As a protest against the beating, Yasin Malik refused all food and water." According to Amina Malik, her brother was so weak and ill that, while talking to her, he kept losing consciousness.

After talking to Amina Mali, the Committee sought permission from J & K Government to meet Yasin Malik so as to find out a way "out of a life-threatening situation in which he appeared to be". With permission of the Home Secretary, three members of the Committee met Yasin Malik on April 01, 2002, at 3.00 pm, at the police hospital Jammu. They found Malik buddled in a bed with no bed sheet, pressing the right side of his head into a stained and filthy pillow. The Medical Superintendent of the hospital, Dr. (Mrs.) Madhu Khullar, changed the pillow when the Committee members pointed out the dangers of life-threatening filthy stained pillow and the unhygienic conditions to which Malik is susceptible due to his ear conditions.

When the Committee members inquired from Dr. Khullar and the attending physicial, Dr. Saraf, whether they were aware of Malik's medical history and treatment regime prior to his arrest, both expressed ignorance and said that they had only the report of the medical examination conducted by the Medical Board on March 26. Yasin Malik, on the other hand, informed the Committee members that he had requested the arresting officials at Srinagar that hie medical records and prescriptions be collected from his house. "The request was ignored", the CIK report said while recalling that "Yasin Malik is on life-saving drugs, which he has to take on a daily basis".

The Committee report said : "Yasin Malik said that he went on a hunger strike in protest against the efforts of the police officials to extract a confession from him by using third degree methods. He also said he would not break his fast till the conditions of his custody conform to the minimum rights of prisoners, guaranteed by both the domestic and international law."

Recalling the Rule of Law and expecting that the "Indian State will abide by its Consitutional and International obligations with respect to the rights of the people within its territorial jurisdiction", the Committee's report said : "Irrespective of the case made out by the State against Yasin Malik, he has a right to be treated in a lawful and humane manner. He cannot be forced to confess, or incriminate himself. Nor can he be subjected to abuse or assault of any kind, while in custody. The conditions of his custody must conform to the standards stipulated under the domestic and international law."

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"By their brutal, inhuman and grossly illegal conduct, the J & K Police, particularly Mr. Manohar

Singh, SSP (SOG), and his associates, have put Yasin Malik's life in jeopardy. The government and its agencies are duty bound to uphold the Indian Constitution and to enforce the guarantees contained therein --- assuring justice, fair and humane treatment and protection from violation of the rights inhering all human beings", the CIK report said.

Asserting that the "legality of Yasin Malik's arrest and detention have been vitiated by the aforementioned abuses", the report said : "His fundamental rights stand grossly violated. The attempt to coerce a confession from him im violative of Section 32 of the POTO. No lawful purpose can, therefore, be served by his continued detention in police custody. Imperatives of justice and rule of law as also the necessity to alleviate the present dangers to his health and life require that he be sent to judicial custody forthwith."

The CIK report recommended Malik's immediate transfer to judicial custody; to get copy of his medical record and prescriptions from his family; to shift him to Government Medical College, Jammu, for proper treatment for the injuries caused by the police; to reconvene the Medical Board constituted on the orders of CJM, Udhampur, for immediate medical examination of Malik and for report on his deteriorated condition in the intervening period since the previous medical examination by the Board; to co-opt an ENK specialist onto the reconvened Medical Board to discover the nature and extent of the damage cause to Malik's right ear due to police beating and to suggest immediate treatment to be given to him so as to prevent further deterioration of his ear condition; the desirability of bringing in his personal physician to monitor the treatment and his progress; to initiate legal inquiries into Malik's complaints on abuse of his right and physical injuries caused to him; and to instruct the detaining authorities to ensure that Malik's family, friends and legal counsel are permitted to meet him without let or hindrance.

On April 2, the day the CIK report was submitted to the J & K Minister for Home, Najeeb Suharwardy, the police remand of Malik was extended by the Court for another five days. Notably, this extension was granted by CJM, Jammu city, while the earlier remand was granted by the CJM, Udhampur, on the ground that Malik was in a weakened condition and, therefore, could not be moved to Udhampur from Jammu.

On April 3, the CIK committee members met J & K Principal Home Secretary, Phunsog, and at whose suggestion also met the J & K Director General of Police (DGP), Ashok Suri. Unwilling to concede to any of their requests, the DGP not only rejected the suggestion to send Malik to judicial custody but also refused to order an inquiry into the allegation of physical abuse in custody. "The complaint was a false one and Malik had gone on hunger strike in order to avoid being question by police", the DGP told the Committee.

"We pointed out that Mr Yasin Malik who suffered from a known heart condition and depended on daily medication would not put himself to risk, lightly. Jammu and Kashmir police knew that he was required to take prescription drugs every day. We also pointed out that Mr Malik had recently undergone extensive surgery on his right ear in the United States as he was afflicted by a life threatening infection. His medical reports and prescriptions were available at his home in Srinagar. We drew the DG P's attention to the fact that the police did not have a copy of his medical history even after Mr Malik on March 25 requested them to collect a copy of his medical records, prescriptions and medicines as he depended on them for his very survival", the report

said.

The DGP finally agreed to get Malik's medical records from his house in Srinagar and forward them to the doctors attending on him at the Government Medical College in Jammu. He also agreed that Dr. Jai Paul, the Chief of ENT section of the Government Medical College, Jammu, would examine Malik to check whether he had suffered any loss in his hearing during his arrest and detention. It was agreed that Dr Jai Paul would compare his test reports with the reports of ENT surgeon who had treated Yasin in the United States in 2001, in order to determine any impairment in his ear condition. This could be cited as evidence of willful physical abuse in custody.

The CIK team went back to the Government Medical College, Jammu, where Malik was being held and informed him about the DGP's decision. They requested him to give up hunger strike on DGP's assurance that if evidence of ill-treatment and abuse was established by Dr Paul's investigation an inquiry would be ordered. And, at their request, Malik broke his hunger strike at 7.40 p.m. on April 3, 2002 -- his birthday.

Subsequently, on April 8, the CJM, Jammu, has ordered that Malik be shifted to judicial custody for 15 days. He is, thus, lodged in Central Jail, Jammu, now.

The CIK report also said : "We believe that the government of Jammu & Kashmir does not endorse invidious abuse of law, particularly in cases within a draconian regime of POTO that has been justified as a necessary evil to curb cynical terrorist violence. We also hope that the government will expand the recommended inquiry to ascertain the officials responsible for apparent abuse of POTO in the present case."

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