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If pregnant undertrial is to remain in detention, she must have adequate health care

Amnesty International India asks authorities in the state of Maharashtra to ensure that if Sheetal Sathe, an arrested theatre activist, is to continue to be detained pending trial, she receives access to adequate pre-natal and post-natal care.

Sheetal Sathe is a member of Kabir Kala Manch, a group which uses protest music and theatre to campaign on human rights issues, including Dalit rights and caste-based violence and discrimination. She and her husband Sachin Mali were two of 15 people charged on 17 April 2011 of being members of, and supporting and recruiting for, the Communist Party of India (Maoist), a banned armed group, among other charges.

Sathe could not be traced by the police until 2 April 2013, when she and Mali appeared before the legislative assembly in Maharashtra in what they said was a protest against the charges made against them. Both were arrested, and Sathe is at present in judicial custody in a jail in Byculla, Mumbai. Her applications for bail have been rejected by trial courts in Mumbai.

Sheetal Sathe is eight months pregnant, and Amnesty International India is concerned about her health needs, in particular her need for adequate nutrition and pre-natal and post-natal care. A rights activist who has met Sathe after her arrest, told Amnesty International India that Sathe does not receive adequately nutritious food or appropriate health care.

Amnesty International reminds authorities that both Indian and international law make a presumption in favour of pre-trial release for all persons accused of penal offences. As specified in article 9(3) of the International Covenant on Civil and Political Rights, to which India is a state party, it must not be the general rule to hold people in custody pending trial. The right to liberty of the person requires that deprivation of liberty should always be the exception, and imposed only if it is justified, necessary, reasonable and proportionate in the circumstances of the case. All possible non-custodial measures, such as bail or undertaking to appear, must be explored by the judicial authority before making a decision to remand in custody, and such detention must be regularly reviewed by a judicial authority.

The Supreme Court of India has said in several cases, including recently in *Sanjay Chandra versus CBI* in 2011, that bail should be the rule and detention in jail the exception, and that refusal of bail can be a restriction on the right to personal liberty guaranteed under Article 21 of the Constitution of India.

With regard to pregnant women in particular, the UN General Assembly, in adopting the UN Rules for the Treatment of Women Prisoners (“Bangkok Rules”), has emphasized that non-custodial measures should be preferred when deciding on pre-trial measures for pregnant women.

States have an obligation under international law to respect and ensure the right to health of prisoners. Specifically with regard to pregnant women, international standards require that if pregnant women are detained, the authorities must ensure that they receive regular health check-ups, adequate nutrition and proper pre-natal and post-natal care, including advice on their health and diet under a programme drawn up and monitored by a qualified health practitioner. Pregnant women must not be detained unless such facilities are provided.

Whenever possible, arrangements should be made for children to be born in a hospital outside the place of detention. Thereafter, special provision must be made for detained women with infants, taking full account of the best interests of the child.

These measures were also issued as directions by the Supreme Court of India in the case of *RD Upadhyay versus State of Andhra Pradesh*, and are included in the Model Prison Manual for the Superintendence and Management of Prisons in India.

Amnesty International India urges authorities in Maharashtra to ensure that Sheetal Sathe is provided with appropriate pre-natal and post-natal care, including adequate nutrition, as required by national and international law and standards. If authorities cannot ensure that she is provided with adequate care, then alternatives to custody, such as release on bail or personal bond, should be used.

Background Information

In April 2011, the Anti-Terror Squad of the Maharashtra Police arrested Angela Sontakke, who they claim is a senior member of the Communist Party of India (Maoist). Subsequently they arrested six other persons. On 20 July 2011, the police filed charges against all seven arrested persons, and eight others who could not be located, including Sheetal Sathe and Sachin Mali, under India’s principal anti-terror legislation, the Unlawful Activities Prevention Act (UAPA).

In October 2012, the Bombay High Court granted bail to two of the seven arrested activists. The same court granted bail to four other arrested activists in January 2013, observing, “the membership of a terrorist gang or organization as contemplated by (the UAPA) has to be treated as an active membership which results in participation of the acts of the terrorist gang or organization which are performed for carrying out the aims and objects of such gang or organization by use of violence or other unlawful means.” The court also observed that “speaking about corruption, social inequality, exploitation of the poor, etc. and desiring that a better society should come in existence is not banned in our country...even the expression of views to the effect that a change in the social order can be brought about only by a revolution would not amount to an offence.”

The UAPA, under which Sheetal Sathe and Sachin Mali have been charged, uses sweeping and overbroad definitions of ‘acts of terrorism’ and ‘membership’ of ‘unlawful’ organizations, and does not comply with India’s international legal obligations.

Amendments to the UAPA in 2008 extended the minimum period of detention of suspects from 15 to 30 days and the maximum period of such detention from 90 to 180 days, avoided adequate pre-trial safeguards against torture and other cruel, inhuman or degrading treatment or punishment of detainees and reversed certain evidential burdens of grave crimes and required, in certain circumstances, the accused persons to prove their innocence.

Human rights groups in India have highlighted several instances where the UAPA has been abused, with the use of fabricated evidence and false charges to detain activists defending the rights of Adivasi and Dalit communities and peacefully exercising their rights to freedom of expression and association.