

AMNESTY INTERNATIONAL PUBLIC STATEMENT

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India: Child Arbitrarily Detained in Srinagar

Amnesty International is deeply concerned that authorities in Jammu and Kashmir have arbitrarily detained 16 year-old, Danish Farooq, and are treating him as an adult rather than a child.

Farooq was first arrested on 19 November under sections 152, 138, 148, and 147 of the Ranbir Penal Code (RPC). All charges relate to incidents of “stone-pelting.” After three days of arbitrary detention in police custody without any legal grounds, he was produced in court, which ordered his release on bail. Before any release Farooq was re-arrested on 23 November under sections 307, 285, 336 of the RPC for “attempt to murder” for his alleged involvement in a petrol bomb attack. According to latest reports, he remains in police custody and it is unclear when he will appear before the local court in Srinagar.

Farooq’s family has been denied the right to communicate with him or see him, and is currently unaware of his condition. A police representative has told Farooq’s family that Farooq will not be presented in court within the required time period set by law, but will keep him in custody for two months. He has not had access to a lawyer during this time.

India is legally obliged, under the UN Convention on the Rights of the Child (UN CRC), which it ratified in 1992, to establish laws and procedures specifically applicable to children, and to define minors as all individuals younger than 18. This means that India must ensure no individual younger than 18 years of age is arrested, detained, or tried under ordinary criminal law without the safeguards meant to protect children. However, J&K Juvenile Justice Act, 1997, treats boys over the age of 16 as adults, in violation of the UN CRC and international human rights law. Amendments to the Juvenile Justice Act are currently being discussed by the J&K Legislative Assembly. If these amendments are successful, all children below 18 years of age will be treated as juveniles.

Farooq is a child under an international treaty that is binding on India, and so the manner of his arrest and detention must be compatible with this treaty.

Further, the International Covenant on Civil and Political Rights, which India has also ratified, prohibits the arbitrary deprivation of liberty and among other things provides that states party – including India – must ensure that any person being arrested is brought promptly before a judge or other officer authorized by law to exercise judicial power.

Amnesty International calls on the J&K police to end Farooq’s arbitrary and unlawful detention, and either release him or produce him immediately before a magistrate. If a court decides that he has to remain in detention, Farooq must be moved to a juvenile detention home and be granted all the safeguards and protections guaranteed to children by the CRC and for judicial proceedings to go forward in accordance with international human rights law. He should also be granted, without delay, access to his family, and they should be kept informed of his whereabouts and condition, as well as access to a lawyer of his or his family’s choice.

Amnesty International also urges the J&K authorities to halt the practice of arbitrary detentions in the state, in particular of children.

Amnesty International reiterates its call to the J&K government to amend the Juvenile Justice Act to bring it into line with the CRC.

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