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THE DETENTION PENDING DEPORTATION OF RAGHBIR SINGH

Amnesty International is concerned about the possible deportation of Raghbir Singh to India where there is a substantial risk that he would be subject to torture or ill-treatment. The organization is also concerned about his detention without charge since 29 March 1995.

On 29 March 1995 Raghbir Singh, an editor of the Awaze Quam Punjabi Weekly and General Secretary of the International Sikh Youth Federation, was detained after being questioned by the police about the murder of a Punjabi newspaper editor in London in January 1995. Although he was not charged, he continues to be held in custody at Winson Green Prison pending his deportation from the United Kingdom on national security grounds. His lawyers lodged an application for political asylum on 3 April 1995. Seven other people who were questioned about the same murder were released without charge.

Raghbir Singh has lived in the United Kingdom since 1980 and is married to a British national. In April 1982 he was granted indefinite leave to remain in the United Kingdom and lived near Walsall with their two British-born children.

The United Kingdom Government's claim that Raghbir Singh is a security risk, that his "continued presence in the United Kingdom would not be conducive to the public good" and that he should be deported "for reasons of national security and other reasons of a political nature, namely the fight against international terrorism", implies that he is a "terrorist" without providing any evidence to substantiate that claim. Should he be returned to India, Raghbir Singh may face imprisonment, either on criminal charges or as an administrative measure under special powers now in force in the Punjab.

In December 1993 the organization issued a report on India: 'An Unnatural Fate', 'Disappearances' and impunity in the Indian States of Jammu and Kashmir and Punjab (AI Index: ASA 20/42/93) which sets out in some detail the human rights violations perpetrated against Sikhs in India, including torture, extrajudicial execution, "disappearance" and indefinite detention without trial.

Although the Home Office has stated that Raghbir Singh will "be required to leave the United Kingdom" and will be prohibited from returning, they have not specifically stated that he will be forcibly returned to India. The onus, however, is on Raghbir Singh to prove that another country would be willing to accept him.

Under United Kingdom law, the government does not have to give specific reasons why detainees are considered a threat to national security. International treaties and standards, however, require that anyone who is detained must be told the specific reasons for the detention and must have the right to challenge this before a court with legal representation.

In their 29 March 1995 notice of intention to serve a deportation order, the Home Office stated that Raghbir Singh, by virtue of Section 15(3) of the Immigration Act 1971, is not entitled to appeal against the decision to

deport him, but would be allowed "to make representations to an independent advisory panel" without legal representation. The advisory panel consists of three people, who are appointed by the Home Secretary. It makes non-binding recommendations to the Home Secretary after a closed hearing. Raghbir Singh would not be allowed to have a lawyer present while being cross-examined by the panel. Nor would he be given the details of the "evidence" against him.

The advisory panel does not satisfy the requirement of a judicial hearing. The unavailability in advance of the particulars of the reasons for detention and deportation, as well as the lack of legal representation, obstructs the detainee from preparing a proper defence. Neither is the detainee allowed to cross examine evidence against him/her, which means that the detainee is unable to effectively challenge possible untruths, inaccuracies, or distortions in intelligence information.

Although the detainees have the right to apply for a habeus corpus writ, the courts have stated that they are not in a position to question the specific reasons for the detention, once the government cites national security.

The United Nations Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, adopted by the UN General Assembly on 9 December 1988, stresses the importance of judicial control of detention. The Principles apply to anyone in any form of detention or imprisonment, including those like Raghbir Singh who are held in administrative detention without charge or trial.

Principle 4 provides that: "Any form of detention or imprisonment and all measure affecting the human rights of a person under any form of detention or imprisonment shall be ordered by, or be subject to the effective control of, a judicial or other authority." The words "judicial or other authority" are defined as "a judicial or other authority under the law whose status and tenure should afford the strongest possible guarantees of competence, impartiality and independence".

Principle 11 provides that "a person shall not be kept in detention without being given an effective opportunity to be heard promptly by a judicial or other authority". Each detainee (and his/her counsel) "shall receive prompt and full communication of any order of detention, together with the reasons therefore" and shall have the right "to defend himself or to be assisted by counsel as prescribed by law".

To satisfy the elements of Principle 11, the authorities must provide specific, detailed and individualized reasons for arrest, and the hearing must comprise a genuine and searching review -- a review involving the active participation of the detainee and his/her counsel, and aimed at determining whether there is sufficient evidence of the specific allegations to justify arrest and continued detention. In the case of Raghbir Singh, he was initially detained in connection with a murder investigation but was never charged due to a lack of evidence.

While Amnesty International fully appreciates that governments must take security measures where necessary, provided that they are strictly in accordance with international standards, it believes that the procedures applied in this case may have resulted in the wrongful detention of Raghbir Singh. The failure to provide Raghbir Singh with specific reasons has led to allegations that he may have been singled out on the basis of inaccurate or misinterpreted

information. The organization is also concerned that although Raghbir Singh has not used or advocated violence, he may be detained because of his non-violent political views or activities and/or his nationality, and not because he is a genuine security risk. The procedure of the advisory panel is inadequate to ensure that no one will be labelled unfairly as a security risk or "terrorist".