

UNITED KINGDOM

Wrongful Detention of Asylum-Seeker Raghbir Singh

INTRODUCTION

Amnesty International fears that Raghbir Singh Johal (Raghbir Singh), an asylum-seeker currently detained in the United Kingdom, would face possible torture or ill-treatment, extrajudicial execution or “disappearance” were he to be forcibly returned to India. He has been held in Winson Green Prison in Birmingham without charge or trial since 29 March 1995 pending the outcome of his application for political asylum which was lodged when a notice of intention to deport was issued against him, for unspecified reasons of “national security”. Amnesty International believes that Raghbir Singh may be a prisoner of conscience and members of the organization from around the world have been campaigning on his behalf over the past ten months.

In a 12 December 1995 letter to Home Secretary Michael Howard Amnesty International specifically called upon the Home Office to adhere to international standards which require that a detainee be provided with the exact reasons for their detention. The 29 January 1996 reply from the Home Secretary did not address the central issue of a faulty judicial review procedure and did not provide detailed reasons why Raghbir Singh’s deportation “would be conducive to the public good for reasons of national security”. The Home Office has not substantiated their allegations that Raghbir Singh “has been involved in terrorism” nor have they afforded him the opportunity to defend himself, with legal representation, against such claims¹. Moreover, the secret proceedings before the three-person “independent advisory panel” to which Raghbir Singh is allowed to appeal do not satisfy international standards. He is permitted to appear before this panel only if his political-asylum application is refused, without legal representation, and does not have the right to know what the allegations are against him nor is he permitted to see any of the evidence upon which the Home Office has based their decision. The conclusions of the panel are confidential and not binding on the Home Secretary.

¹ Although Michael Howard states in his 29 January 1996 letter to Amnesty International that Raghbir Singh “has been given as full an account of these reasons which is compatible with national security and the protection of sources of intelligence”, Raghbir Singh has not been provided with any explanation of the allegations made against him other than the following: “The Secretary of State has decided that for reasons of national security and other reasons of a political nature, namely the fight against international terrorism, your continued presence in the United Kingdom would not be conducive to the public good.” [29 March 1995 Immigration Service notice of intention to deport]

Under United Kingdom law, the government does not, at any point, have to give specific justification of why detainees are considered to be a threat to national security; the Immigration Act 1971 permits the Home Secretary to detain any person not already in custody that has been served with a notice of intention to deport². 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 competent, independent and impartial court with legal representation. Amnesty International is concerned that the Government of the United Kingdom is acting in violation of its solemn treaty obligations by refusing to provide specific reasons why Raghbir Singh is considered to be a threat to national security. In further violation of international law, Raghbir Singh, held in purely-administrative detention for over ten months, has not been permitted to appear before a court of law regarding the claim that he is a threat to “national security”.

IMPRISONED WITHOUT CHARGE OR TRIAL

Raghbir Singh was an editor of the Awaze Quam Punjabi Weekly and General Secretary of the International Sikh Youth Federation. He 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 and lived near Walsall with his wife and their two British-born children until his arrest on 29 March 1995. He was questioned by the police about the January 1995 murder in London of a newspaper editor from Punjab; the local police found no reason to detain him. That same day the Home Office issued a notice of intention to deport Raghbir Singh under Section 3(5)(b) of the Immigration Act 1971 stating that the Home Secretary “has decided [Raghbir Singh] should be detained” pending his deportation “for reasons of national security and other reasons of a political nature, namely the fight against international terrorism”. He was subsequently incarcerated in Winson Green Prison and continues to be held there while the Home Office considers his application for political asylum.

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, labels him as a “terrorist” without providing any precise

² Paragraph 2(2) of Schedule 3 to the Immigration Act 1971 states:

“Where notice has been given to a person in accordance with regulations under Section 18 of this Act of a decision to make a deportation order against him, and he is neither detained in pursuance of the sentence or order of a court nor for the time being released on bail by a court having power so to release him, he may be detained under the authority of the Secretary of State pending the making of the deportation order.”

evidence to substantiate that claim. Furthermore, the Home Office's labelling of Raghbir Singh as a security risk only serves to heighten the risk that Indian authorities would target him were he to be forcibly returned to India. 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. However the United Kingdom has repeatedly deported persons denied asylum to countries where they are at risk of extrajudicial execution, "disappearance" or torture³. The onus is on Raghbir Singh to prove that another country would be willing to accept him and provide him effective and durable protection against *refoulement*.

In the 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, was not entitled to any right of judicial appeal, but would be allowed "to make representations to an independent advisory panel" without legal representation once a decision has been made on his asylum claim. The non-statutory advisory panel consists of three people (none of whom are judges) 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 opportunity to examine the details of the "evidence" against him. No part of the hearing is open to the public and the recommendations of the panel are secret as well.

The advisory panel does not satisfy the requirement of a judicial hearing before a competent, independent and impartial court. The unavailability, in advance, of the particulars of the reasons for detention and deportation, as well as the lack of legal representation, prevents a detainee from preparing a proper defence. Neither is the detainee allowed to cross-examine evidence against him or her, which means that the detainee is unable effectively to challenge possible untruths, inaccuracies, or distortions in intelligence information. The procedure of the advisory panel is inadequate to ensure that a person will not be unfairly labelled as a security risk or "terrorist". Although detainees have the right to

³ It would appear that Raghbir Singh's case is similar, in some aspects, to that of Karamjit Singh Chahal who has been detained, without charge or trial since 1990, while he awaits the outcome of his application for political asylum which was filed when a deportation order was issued against him in the name of the "international fight against terrorism" and for "national security" reasons. The European Commission of Human Rights, in its ruling of June 1995, criticized the Government of the United Kingdom, stating that the United Kingdom had breached articles 3, 5 para. 1, 8 and 13 of the European Convention on Human Rights in its treatment of Karamjit Singh Chahal. The Commission further stated that he would be "***exposed to a real risk of ill-treatment...if deported to India***". The European Court of Human Rights will now hear this case in March 1996. Amnesty International has repeatedly voiced its concerns to the Home Office regarding the possible deportation of Karamjit Singh Chahal and has been permitted by the European Court of Human Rights to submit written comments expressing the organization's concerns. For further information, consult *United Kingdom: Summary of Human Rights Concerns* (AI Index: EUR 45/06/95).

apply for *habeas corpus*, 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 as the justification for the deportation order. In April 1995 the High Court refused Raghbir Singh's application for judicial review. His solicitors will appear before the Court of Appeal on 16 February 1996 for a hearing to review the renewed application for judicial review and *habeas corpus*. The Court of Appeal consists of three judges who will hear the appeal to grant further consideration of the decision by the Home Office to deport Raghbir Singh and also to review the ground for detention. The Court will then either grant leave to consider the case for a full hearing in the future (if the case is determined to be arguable and merit further consideration) or refuse to grant leave for further proceedings. In the latter case, the solicitors acting on behalf of Raghbir Singh would then petition the House of Lords, usually without success, and then turn to the European Commission of Human Rights as the final forum for judicial review.

While Amnesty International fully appreciates that governments must take security measures where necessary, provided that they are strictly in accordance with international standards, the organization 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. India has been included on the "white list" of "safe countries" drawn up by the government. The inclusion of a country in the "white list" usually indicates that asylum claims made by its citizens are "likely to be refused", according to an internal Foreign Office guidance document signed by the Foreign Secretary. Inclusion in the "white list" is not based on a country's human rights record but on the number of asylum claims generated and the subsequent rate of refusal by the Home Office⁴.

Since 1983, thousands of suspected members and supporters of Sikh opposition groups advocating the creation of a separate Sikh state ("Khalistan") in Punjab have been arrested by the Indian security forces and detained under special legislation suspending normal legal safeguards. In many cases the arrest of the detainee has remained unacknowledged for weeks or months, and there have been numerous reports of torture during interrogation. Scores of those arrested have been tortured to death or have otherwise been deliberately and unlawfully killed in custody (although official reports sometimes say they died in "encounters" with the police or while "trying to escape"), while others have simply "disappeared", the security forces refusing to acknowledge that they had ever even been arrested. Amnesty International is concerned that because of his known political views and activities in the public life of the United Kingdom's Sikh community, Raghbir Singh's safety and well-being would be jeopardized if he were forcibly returned to India.

⁴ As quoted in *The Guardian* of 8 February 1996 which also states that the Home Secretary has announced that asylum claims from "white list" countries would be "presumed to be bogus unless proved otherwise".

Raghbir Singh has campaigned for an independent Sikh homeland in India and has stated that he has never used, nor advocated the use of, violence and that he seeks to achieve these political goals in a democratic manner. Amnesty International is fearful that he is being detained solely because of these non-violent political views or activities, and not because he is a genuine risk to national security⁵. On 19 October 1995 the Home Secretary stated, in response to a parliamentary question, that he was “satisfied that Raghbir Singh’s deportation would be conducive to the public good for reasons of national security and would contribute to the fight against international terrorism”. He also suggested that information available to him supported this statement and that he was taking into account material “which would not be admissible in a court of law”⁶. In his 29 January 1996 letter to Amnesty International, the Home Secretary reiterates his conviction that Raghbir Singh “has been involved in terrorism” without offering to provide evidence to support such allegations.

Because he has spoken vociferously on the subject of an independent Sikh homeland, and has now been labelled as a “security risk” and a “threat to [the] national security” of the United Kingdom, Amnesty International is concerned that Raghbir Singh could suffer torture, or other human rights violations, at the hands of the authorities in India were he to be forced to return to his native country. The organization has provided the Government of the United Kingdom with documents that substantiate these concerns about the torture and ill-treatment of suspected activists and other detainees in India.⁷

INTERNATIONAL STANDARDS

⁵ Amnesty International has studied Raghbir Singh’s writings, samples of the magazine he edits, and has received a detailed statement, dated 22 September 1995, from Raghbir Singh stating his condemnation, without qualification, of the use of violence: “...being a Sikh I am a staunch supporter of an independent homeland Khalistan which I believe should be achieved in a democratic manner. To date, I have condemned violence regardless of the perpetrator”. The organization has yet to see any evidence which indicates that Raghbir Singh is, or ever was, involved in any violent activities.

⁶ 19 October 1995 Hansard record of the Home Secretary’s oral answer to a question posed by David Winnick, MP, page 470.

⁷ Amnesty International has issued numerous reports that set out in extensive detail the human rights violations perpetrated against Sikhs in India, including torture, extrajudicial execution, “disappearance” and indefinite detention without trial. Amongst them are: *An Unnatural Fate: “Disappearances” and impunity in the Indian states of Jammu and Kashmir and Punjab* (AI Index: ASA 20/42/93); *Deaths in custody in 1994* (AI Index: ASA 20/18/95); *Determining the fate of the “disappeared” in Punjab* (AI Index: ASA 20/28/95). Another report, *Punjab police: beyond the bounds of the law* (AI Index: ASA 20/08/95), documents a series of incidents in recent years in which Punjab police have illegally transgressed their operational jurisdiction to carry out under-cover operations in other Indian states which resulted in serious human rights violations.

TREATY OBLIGATIONS

The deportation procedure followed in Raghbir Singh's case violates international treaties, which the United Kingdom has ratified, and contravenes other international standards. The International Covenant on Civil and Political Rights (ICCPR), the European Convention on for the Protection of Human Rights and Fundamental Freedoms (European Convention) and the United Nations Body of Principals for the Protection of All Persons under Any Form of Detention or Imprisonment (UN Body of Principles), amongst other legal standards, require that all persons under any form of detention be told the specific reasons for their detention and have the right to challenge the legality of their detention before a court, with legal representation at the hearing⁸.

All persons who have been detained for any reason are entitled to be informed of the reasons for their detention as set out in Article 9(2) of the ICCPR, Article 5(2) of the European Convention and Principle 11(2) of the UN Body of Principles. Furthermore, all detainees are entitled to challenge the lawfulness of their detention before a court, as outlined in Article 9(4) of the ICCPR and Article 5(4) of the European Convention. This court must be competent, independent and impartial if the guideline set out in the Principle 4 of the UN Body of Principles is to be properly followed. The detainee also has a right to be represented by counsel as outlined in Article 11(1) and Article 18 of the UN Body of Principles and Article 8 of the UN Basic Principles on the Role of Lawyers.

ACCESS TO JUDGE AND NOTICE OF REASONS FOR DETENTION

The UN Body of 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 of the UN Body of Principles provides that:

"Any form of detention or imprisonment and all measures 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".

⁸ For more information on the detention of asylum-seekers in the United Kingdom and the relevant international legal standards, see *Prisoners Without A Voice: Asylum-Seekers Detained in the United Kingdom*, Second Revised and Updated Edition, May 1995, Amnesty International, British Section.

The three-person “independent advisory panel” to which Raghbir Singh is allowed to appeal, without legal representation and only after a decision has been made on his application for political asylum, does not satisfy Principle 4 of the UN Body of Principles. It is not a competent, independent and impartial as its members are appointed by the Home Secretary to review his decisions.

Principle 11(1) of the UN Body of Principles states further 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 or her counsel) “shall receive prompt and full communication of any order of detention, together with the reasons therefor” [Principle 11(2)] and shall have the right “to defend himself or to be assisted by counsel as prescribed by law” [Principle 11(1)].

RIGHT TO COUNSEL

To satisfy the elements of Principle 11 of the UN Body of Principles, the authorities must provide specific, detailed and individualized reasons for arrest, and the hearing must comprise a genuine and searching review aimed at determining whether there is sufficient evidence of the specific allegations to justify arrest and continued detention. The review should involve the active participation of both Raghbir Singh and his legal counsel. Article 9(2) of the ICCPR also requires that anyone who is arrested shall be informed, at the time of arrest, of the reasons for the arrest, as does Article 5(2) of the European Convention.

The right of all detainees to challenge the lawfulness of their detention before a court at any time during their detention is a strict requirement of international law. Article 9(4) of the ICCPR states that:

“Anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order that that court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful.”

Article 5(4) of the European Convention and Principle 32 of the UN Body of Principles set forth similar requirements.

PROTECTION AGAINST NON-REFOULEMENT

Other established international standards include Article 3 (1) of the UN Convention against Torture. That article provides expressly:

“No State Party shall expel, return (“*refouler*”) or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture”.

Additionally, Article 7 of the ICCPR states that “no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment”.⁹

The prohibition of *refoulement* of persons to States where they are in danger of torture is consistent with international principles prohibiting *refoulement* in cases where the person would be at risk of other human rights violations within the scope of Article 3 of the UN Convention against Torture and Article 7 of the ICCPR. Principle 5 of the UN Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions prohibits *refoulement* of anyone to a country where he or she risks extrajudicial execution:

“No one shall be involuntarily returned or extradited to a country where there are substantial grounds for believing that he or she may become a victim of extra-legal, arbitrary or summary execution in that country.”

⁹ Article 7 of the ICCPR has been authoritatively construed by the Human Rights Committee to contain the same prohibition:

“In view of the Committee, States Parties must not expose individuals to the danger of torture or cruel, inhuman or degrading punishment upon return to another country by way of their extradition, expulsion or *refoulement*.” [General Comment 20 (44), para. 9, Report of the Human Rights Committee following consideration in July 1995 of the fourth periodic report of the United Kingdom]

For further information on the Committee’s Comments, see *United Kingdom: Summary of Human Rights Concerns* (AI Index: EUR 45/06/95).

CONCLUSIONS AND RECOMMENDATIONS

Amnesty International believes that the administrative detention of people for national security reasons must be subject to the following safeguards to ensure that the detainee's treatment is in accordance with international standards by means of a prompt, fair individual hearing before a judicial or other similar authority:

- All persons arrested under administrative detention provisions should be provided, immediately at the time of arrest, with a written statement clearly indicating that they are being placed in administrative detention and containing specific and individualized reasons for the arrest in the detail necessary to enable them to exercise effectively the right to challenge the lawfulness and necessity of their detention;
- All detainees should have the right to appear before a competent, independent and impartial court, with legal assistance of their choice, during the first hours or days of detention in order to have assessed the legality and necessity of their detention, as well as their treatment;
- In reviewing the lawfulness of the detention, the court should carefully examine the available evidence, particularly the factual basis of the detention order and the challenge by the detainee to the allegations of fact, and determine whether on that basis there are sufficient grounds for the exceptional measure of administrative detention;
- All detainees should have the right to be present at all stages of the review proceedings with legal assistance of their choice. During the proceedings detainees should normally have the right to examine or have examined the evidence and any witnesses produced against them, as well as the right to introduce evidence and to call witnesses;
- Evidence used as the basis for the administrative order should normally be made fully available to the detainees, their lawyers and the court; one must have full knowledge of the case against oneself if the right to challenge the legality of the detention is to be valid. If for exceptional reasons it is proposed that a part of the evidence should be withheld, there should be a vigorous assessment by the court of the necessity of such withholding. In this context additional safeguards should be implemented to protect against abuse, such as a prompt and automatic review by a higher tribunal of any decision by the court to withhold evidence which has a bearing on the case.

Raghbir Singh is about to enter his twelfth month in custody, nearly two months of which were passed in solitary confinement, and Amnesty International is concerned that this father of two young children faces an indeterminate period of detention while

his application for political asylum is considered. The organization urges the Home Office to either release Raghbir Singh if he is not to be charged with a recognizably criminal offence and brought to trial in accordance with international standards of fair trial or provide detailed reasons, and a judicial examination of, why he has thus far been detained. The organization also urges the Home Office to withdraw the threat of the forcible deportation of Raghbir Singh to India where he would be at risk of torture, “disappearance” or extrajudicial execution on account of his political views and activities.