

**Ms Deeya Barik**  
**Army institute of Law**  
**Sector 68**  
**Mohali 160062**

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**Sri Rajnath Singh**  
**Hon'ble Defence Minister**

**Shri Amit Shah**  
**Hon'ble Home Minister**

**Criminal justice system skewed against two trained Army personnel languishing in Jalpaiguri Jail (West Bengal) for the last 10 months due to legal and administrative oversights**

**Respected Mantri Ji,**

I take this privilege of writing to you with regard to a case framed against two Army personnel including an officer and who are languishing in jail for last 10 months. Details of the case are as under. I seek your blessing and indulgence in having the politico-smuggling case investigated by central government authorities, ensure the guilty bought to books and innocent Army personnel be released at the earliest.

On 14 Sep 18, Lt Col Pawan Brahma and Hav Dasrath Singh of Army alongwith three police personnel were arrested by West Bengal Police for illegal possession of smuggled gold bars. A complaint and FIR were filed on 14 Sep 18 by a police officer based on a secret source information about the incident which occurred on 10 Sep 18 at Out Post Jaigoan under PS Hasimara (west Bengal). In para 3 of the FIR the police officer clearly mentioned that SI Satyendra Nath Roy recovered the car in question (RJ14C 2846) from the custody of Army personnel on 10 Sep 18. Thereafter police officers SI Kamalendra Nath, SDPO Aniruddha Thakur and SI Satyendra Nath Roy searched the car and found 25 Kg smuggled gold bars. Even in the forwarding letter to ACJM Alipurduar Court by the IO of West Bengal Police in para 2, it is mentioned that the Army personnel came to PS and handed over the car bearing Regn No RJ14C 2846 to the police on 10 Sep 18. The State police kept the car without any seizure list in their custody and allowed the Army personnel to leave for their barracks.

As per the source all the accused hatched out criminal conspiracy to obtain illegal gratification in lieu of saving the said **smugglers** from lawful action under the law of land. The **source neither mentioned about the Army personnel's involvement about the illegal gratification nor criminal conspiracy nor these Army personnel had any jurisdiction/powers in the police station to let off the smugglers** from the lawful action. The Army personnel handed over the car in question to State police authorities

(as per complain FIR and Forwarding letter) voluntarily to fulfill their service ethos and thus **dominion** of the car was transferred to the State police authorities before the recovery of the smuggled gold took place from the car. As per law the Army personnel do not have the right or powers to arrest or seize but shall report and handover the information and apprehended person/ article to the State police. Hence section 409 of IPC is not applicable to the Army personnel (ref citation: Wolfgang Reim Vs State, 2012 VI AD (Delhi) 568 2 Jul 2012).

In the seizure memo produced of West Bengal police, it is seen that the smuggled gold bars were recovered from the Army personnel on 14/09/18 i.e. after four days of the incident from Jaigaon OP, Hasimara PS which is neither the habitat nor working place of the Army personnel. How the Army personnel voluntarily reached the Jaigaon OP alongwith the smuggled gold bars from the Army barracks Hasimara after four days? Was it a trap or conspiracy by State authorities? The State Police has neither investigated nor highlighted this serious gap about the happenings between 10 Sep to 14 Sep 18. . In the complaint, FIR and charge sheet, it has not been not mentioned about the movement of six Kg smuggled gold possessed by the Army personnel from the OP Jaigaon to Army Barrack Hasimara and back to OP Jaigaon from 10 to 14 Sep 18 . The state investigation agency have neither investigated the incident in detail nor have produced any digital or physical evidences like CDR of Army personnel, CCTV footage of PS Jaigaon, route and gate of Army Station Hasimara and movement details of Army car used by Army personnel on 10 and 14 Sep 18 to the Ld Court Jalpaiguri.

**Order No 20 dt. 09 April 2019.** DRI (central agency) filed a prayer to re-seize the seized gold for commencement of investigation under the Customs Act as there is no provision to deal with smuggled gold under IPC. However, the Ld PP vehemently opposed in granting the prayer and the prayer of DRI was rejected by the Ld Court Jalpaiguri.

**Order No 20 dt. 09 April 2019.** On the same day, the Ld PP submitted that the State vigilance commission / State Anti Corruption Unit be granted permission for holding open examination of one accused and the permission was granted by Ld Court Jalpaiguri.

**As the matter is now Sub – Judice, the Army authorities or their family members have to deal the case in the Courts. I am highlighting some departmental oversights, mistakes by Army personnel so that such arrest of Army personnel can be avoided in future and the case can taken over by Central Investigation authorities to rule out any International smuggling/ black funding conspiracy .**

**Legal and Departmental oversights.**

- The case should have been taken over by the Army authorities under Section 45 CrPc 1973 and arrest of the Army personnel could have been prevented.
- Legal assistance should have been provided to the Army personnel by the Army authorities before the charge sheet was framed by the IO of case and contested the wrong application of Section 409 of IPC against the Army personnel.
- The matter should have been investigated by army intelligence/ vigilance dept, DRI, CBI and NIA within a fortnight.
- The Ld Court should have asked for digital evidences like call details of the accused Govt servants, CCTV footage of OP Jaigaon and Hasimara Army Station and Army car (used by accused) movement dairy of 10 and 14 Sep 18.
- The Ld Court should have handed over the investigation of the case to DRI/Customs and NIA as the gold was smuggled into the country from foreign country in contravention of Foreign Regulation Act 1947 and should have been tried under Customs Act.

### **Mistakes/ faults by Army Personnel**

- The Army personnel should have handed over the intercepted car to the police authorities with proper handing over documentation on 10 Sep 18.
- They should have intimated about the incident to higher authorities on 10 Sep and 14 Sep 18.
- The Station Commander or Commanding Officer should have approached the police or the Court to take over the custody of accused Army personnel under Section 104 of Army Act 1950 and Section 45 CrPc 1973.

### **Police Actions**

**Refer National police commissioner Third report:** The quality of arrests the police in India misused the power of arrest as one of the source of corruption in the police. The report suggests that by and large 60% of the arrests are either unnecessary or unjustified police action which accounted for 43.2% of the expenditure of the jails.

- Page 32- An arrest during the investigation of a cognizable case may be considered justified in one or other of the following circumstances:

- case involves grave offence like murder, dacoity, rape etc and it is necessary to arrest the accused and bring his movement under restraint to infuse confidence among terror stricken victims.
  - The accused likely to abscond or evade the processes of law.
  - The accused has violent behavior.
  - The accused is a habitual offender.
- In this case the State police cannot justify the arrest and detention of such trained Central govt personnel in jail for such a long time.

### **Assessment of the case**

- State Police authorities took advantage of this procedural lapse of the Army personnel and framed them as accused under Sec 409, 201, 213, 120B, 34 of IPC and Sec 7,8,12 of prevention of corruption act.
- State Police intentionally with conspiracy booked the Army personnel in the case to drive out a lesson to the central govt agencies that no dutiful officer in future would dare to detain any doubtful vehicle in this route – Bhutan to NJP and also silence the confession of Central govt officers as witness.
- State Politico-gold smuggler nexus from China-Bhutan-North Bengal cannot be negated. Such unchecked activities to pump in yellow metal in the State of West Bengal from Bhutan may be an action to destabilize the nation by an interested lobby within the nation or outside.
- This arrest and detention has caused incalculable harm to the reputation of the Army personnel as this arrest was done merely on suspicion of complicity in an offence as this was not a heinous offence. Ref observation held in supreme court of India in Joginder Kumar VS State of UP on 25 April 1994.

### **Recommendations**

- Central IB, NIA and Customs/DRI should be approached to investigate the case.
- The accused Army personnel languishing in jail and all Army staffs associated with the accused officer and soldier at Hasimara Army Station should be interrogated by Army intelligence and central intelligence agencies.
- All digital and physical evidences like call details of the accused Army personnel, CCTV footage of OP Jaigaon and Hasimara Army Station and army car (used by

accused) movement diary of 10 and 14 Sep 18 be analyzed by the Army vigilance and central intelligence authorities. All these must be kept in secured custody for production upon the Ld Court to show that there was no leakage or transfer of data/ docu to any third party of inimical agency endangering safety and security of the country.

- All Army personnel dealing with State police / agencies should be imparted with basic legal training.

The whole nation has tremendous faith on your government and is looking upto you ensure that justice is done.

With profound regards,

Yours sincerely

Deeya Barik  
5 th year LLB Student

## **There is a need to establish Central Forensic Science University in Kalyani or Ranaghat**

1. There is no Central University - Centre of Excellence in the field of Forensic Science to undertake World Class Research and Referral Centre in our Country. Gujarat Forensic Science University is a State Govt. run institution with lot of limitations.
2. Crimes and Criminals are ahead of Law Enforcement Agencies due to Abysmal use of latest Forensic Methods.
3. There is no database of DNA of convicts, Poison Reference Centre, Database of Service and civilian bore Firearms, No institution is there which can report cases related to Comparison of Voice, Photo and Video beyond reasonable doubt. No validated institution of Forensic Accounting, Nursing and Vast and Robust Cyber Crime detection, Forensic Psychology and several such unexplored and most important areas. As a result many simple and complex crimes go infected.
3. There is an acute shortage of highly knowledgeable, trained and skilled scientists across the nation.
4. Lack of such an institution, the Central and State Forensic Science Laboratories, having limited capacity to examine cases beyond their reach in a highly unprofessional manner and at the same time there is no Centers of Excellence, where exhibits of such nature can be sent.
5. There is no Central Forensic Library which may be linked to other establishments of the country. At present there is no sharing of forensic knowledge in India.
6. Such Centres of Excellence has become backbone of all the advanced countries of the world. We are lagging behind in this respect.

7. Hon'ble Prime Minister is very keen to develop the Eastern Region of the nation and addition of such an institution will mark the beginning of his great idea to make the pillar of the nation strong. This will promote scope of employment, knowledge base and significant contributions to improve the overall quality of the criminal justice delivery system of the Country and also improve the quality of Forensic Science services manifolds.

9. I feel Kalyani or Ranaghat as an ideal location for establishing a Central University of Forensic Science due its proximity to Medical College, Bio Genomics institute, IISER, IIIT, Engineering Colleges and University in Kalyani.

#### Infiltration from Bangladesh to West Bengal

- (a) Large scale infiltration from Bangladesh is taking place in West Bengal.
- (b) These infiltrators have obtained AADHAR, voter cards and PAN cards with the help of local touts.
- (c) Due to such infiltration, the demography of the border area is changing.
- (d) Is there any plan to raise Territorial Army (Home and Hearth) Battalion in the 2<sup>nd</sup> tier of the IB for better sharing of intelligence with BSF and Army.