



Preliminary Report:
The Continued Detention of Student Volunteer
Safoora Zargar in New Delhi
(June 2020)

On December 13, 2019, Delhi police responded with force to a reportedly non-violent protest that was occurring at Jamia Millia Islamia University in New Delhi, India. At the end of February 2020, the Indian police charged Ms. Safoora Zargar, a protest volunteer and research scholar at the university, with causing disturbances during the protests.¹ Ms. Zargar has been detained pre-trial for seven months despite the fact that she is pregnant and therefore at higher risk of contracting COVID-19 in the crowded prison in which she is detained. Based on a preliminary review of the proceedings to date, the ABA Center for Human Rights (the Center) has determined that her detention does not appear to meet international human rights standards.

The Center monitors trials around the world concerning human rights defenders to encourage compliance with fair trial standards.² This preliminary report on the arrest of Ms. Zargar will be updated as the trial progresses.

Background

Protests erupted across India last year in response to the enactment of the Citizenship Amendment Act (CAA) due to concerns that the Act could wrongfully strip citizenship from religious minorities.³ Sadly some of the protests turned violent.⁴ In response, authorities charged several protest leaders and coordination volunteers under India's Unlawful Acts Prevention Act in the Spring of 2020.⁵ In the case of Ms. Zargar, she was originally charged

¹ Geeta Pandey, *India Coronavirus: Pregnant Student Safoora Zargar at Risk in Jail*, BBC, (May 12, 2020), available at <https://www.bbc.com/news/world-asia-india-52608589>.

² This report was prepared by staff of the ABA Center for Human Rights. This report has not been reviewed by the ABA Board of Governors or House of Delegates and therefore should not be construed as representing ABA policy.

³ Arshad Zargar, *Backlash over India's New Citizenship Law Sees 100 Injured as Police Raid a College*, CBS NEWS, (Dec. 16, 2019), available at <https://www.cbsnews.com/news/india-citizenship-law-protests-police-raid-jamia-millia-islamia-injuring-students-unrest-today-2019-12-16/>.

⁴ Niha Masih, *India's First-Time Protesters: Mothers and Grandmothers Stage Weeks-Long Sit-in Against Citizenship Law*, WASH. POST (Jan. 13, 2020), available at https://www.washingtonpost.com/world/asia_pacific/indias-first-time-protesters-mothers-and-grandmothers-stage-weeks-long-sit-in-against-citizenship-law/2020/01/12/431ae9c6-30d5-11ea-971b-43bec3ff9860_story.html.

⁵ Akash Bisht, *Indian Police Accused of Targeting Muslims Over Anti-CAA Protests*, AL JAZEERA, (Apr. 22, 2020), available at <https://www.aljazeera.com/news/2020/04/india-hindu-nationalist-gov-targeting-anti-caa-protesters-200422122213197.html>.

with blocking a roadway and granted pre-trial bail.⁶ Immediately thereafter, she was rearrested on UAPA charges, which are non-bailable if the police have proven a *prima facie* case against the defendant.

Around the time of her arrest, India, like many countries, enforced a strict lock-down procedure in response to the spread of the novel coronavirus.⁷ To address the pandemic, the Indian Supreme Court ordered state governments to consider the release of prisoners on parole to reduce overcrowding.⁸ India has recently made modifications to the Delhi Prison Rules (2018) to introduce “emergency parole.”⁹

Zargar’s Detention

Yet Ms. Zargar remains in jail after her original arrest on April 10, 2020, when Indian police detained her for her alleged participation in the Delhi protests.¹⁰ Her attorney challenged her detention on the grounds that the charging document, or First Information Report (FIR), failed to mention her by name.¹¹ Additionally, given her pregnancy and concerns that her arrest was undertaken in retaliation for exercising her right to freedom of association, her lawyer requested she be released under Section 437 of the Code of Criminal Procedure which creates a process for defendants to seek bail when charged with an otherwise non-bailable offence.¹²

On April 13, a magistrate granted Ms. Zargar’s bail request citing “her pregnancy, health condition, and the directives issued by the Indian Supreme Court on decongestion of prisons during COVID-19” as reasons for the decision.¹³ Immediately thereafter, however, she was rearrested on new charges¹⁴ which eventually included non-bailable UAPA offenses, and was

⁶ Seemi Pasha, *Safoora Zargar Denied Bail*, THE WIRE (June 5, 2020), available at <https://thewire.in/law/safoora-zargar-denied-bail>.

⁷ U.N. NEWS, *COVID-19: Lockdown Across India, in Line with WHO Guidance* (Mar. 24, 2020), available at <https://news.un.org/en/story/2020/03/1060132>.

⁸ Aviral Agrawal & Priyansh Mishra, *Legal Aid in India Amid the Covid-19 Lockdown*, THE JURIST (May 2, 2020), <https://www.jurist.org/commentary/2020/05/agrawal-mishra-india-legalaid/>.

⁹ INDIA LEGAL, *The Problem of Prisoners* (May 1, 2020), available at <https://www.indialegalive.com/special/the-problem-of-prisoners-97966>.

¹⁰ Adnan Bhat, Muslim, *Pregnant and in Jail as Coronavirus Sweeps Through: India Says This Woman is ‘Key Conspirator’ in Citizenship Act Riots*, SOUTH CHINA MORNING POST, (May 14, 2020), available at <https://www.scmp.com/week-asia/politics/article/3084447/muslim-pregnant-and-jail-coronavirus-sweeps-through-india-says>.

¹¹ Seema Pasha, *The Delhi Violence FIR’s Are Like Blank Cheques to be Cashed by Police at Any Time*, THE WIRE (Apr. 30, 2020), available at <https://thewire.in/communalism/the-delhi-violence-firs-are-like-blank-cheques-to-be-encashed-by-the-police-any-time>.

¹² CODE OF CRIM. PROC., Central Government Act, § 437 (1973), available at <https://indiankanoon.org/doc/848468/>.

¹³ FRONT LINE DEFENDERS, *False Charges Against and Persecution of Student Human Rights Defenders and Those Involved in Peaceful Protests* (May 8, 2020), available at <https://www.frontlinedefenders.org/en/statement-report/false-charges-against-and-persecution-student-human-rights-defenders-and-those>.

¹⁴ “FIR number 59/2020 was registered by the Crime Branch police station in Delhi on March 6, 2020, on the complaint of Sub-Inspector Arvind Kumar. According to the FIR, “the SI has learnt through his sources that the communal riot incidents in Delhi that took place on February 23, 24 and 25, were part of a preplanned conspiracy.” Pasha, *supra* note 11.

sent back to prison where she remains today.¹⁵ A subsequent request from Ms. Zargar's counsel for bail was rejected on April 21 without providing justification for her continued detention. Further, Ms. Zargar was denied bail once more on June 4 in an order made public by the court.¹⁶ Noted constitutional scholars, including Gautam Bhatia, have critiqued the reasoning in that order for Ms. Zargar's continued detention.¹⁷

International Law

International law, including treaties to which India is a State party, only permit pre-trial detention under narrow circumstances which do not appear to have been met in Ms. Zargar's case. The International Covenant on Civil and Political Rights (ICCPR) states that "it should not be the general rule that persons awaiting trial shall be detained in custody."¹⁸ The UN Human Rights Council, the body charged with authoritative interpretation of the ICCPR, has clarified that "detention pending trial must be based on an individual determination that it is reasonable and necessary taking into account all the circumstances, for such purposes as to prevent flight, interference with evidence, or the recurrence of the crime."¹⁹

It has further clarified that "pretrial detention should not be mandatory for all defendants charged with a particular crime without regard for individual circumstances"²⁰ The UN Working Group on Arbitrary Detention has also interpreted the ICCPR to hold that "any detention must be exceptional and of short duration and a release may be accompanied by measures intended only to ensure representation of the defendant in judicial proceedings."²¹ Given the lack of evidence in the FIR linking Ms. Zargar to acts of violence, it is unclear why alternatives to pre-trial detention were not considered adequate by the court in this case.

Regardless of whether Ms. Zargar's detention was properly justified under normal circumstances, it is likely unreasonable in light of her pregnancy and the risk of contracting the novel coronavirus. The United Nations Rules for the Treatment of Women Prisoners and Non-Custodial Measures for Women Offenders (also known as the Bangkok Rules) concludes that non-custodial means should be preferred for pregnant women during the pre-trial phase wherever that is possible or appropriate.²² The World Health Organization continues to warn

¹⁵ *Id.*

¹⁶ Bail Application, State v. Safoora Zargar (No. 1119/2020), 2020, available at https://www.livelaw.in/pdf_upload/pdf_upload-375920.pdf.

¹⁷ Gautam Bhatia, *In Denying Bail to Safoora Zargar Delhi Court Stretches Facts and Uses Metaphors in Place of Law*, THE SCROLL, (June 5, 2020), available at <https://scroll.in/article/963871/in-denying-bail-to-safoora-zargar-delhi-court-stretches-facts-and-uses-metaphors-in-place-of-law>.

¹⁸ The International Covenant on Civil and Political Rights, art. 9(3), *opened for signature* Dec. 19, 1966, 999 U.N.T.S. 171, 1057 U.N.T.S. 407 (entered into force Mar. 23, 1976), available at <https://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>.

¹⁹ U.N. Hum. Rts. Comm., General Comment No. 35 – Article 9: Liberty and Security of Person, ¶ 38, U.N. Doc. CCPR/C/GC/35 (2014).

²⁰ *Id.*

²¹ U.N. Working Group on Arbitrary Detention, Report of Working Group on Arbitrary Detention, ¶ 56, U.N. Doc. A/HRC/19/57 (2011), available at <https://undocs.org/en/A/HRC/19/57>.

²² U.N. Office on Drugs and Crime, U.N. Rules for the Treatment of Women Prisoners and Non-Custodial Measures, U.N. Doc. A/RES/65/229 (2011), available at https://www.unodc.org/documents/justice-and-prison-reform/Bangkok_Rules_ENG_22032015.pdf.

countries that prison populations are at significant risk for contracting Covid-19 given the close proximity of inmate populations and lack of appropriate health care to handle the virus.²³ It has further recommended that “[p]riority should be given to non-custodial measures for alleged offenders and prisoners with low-risk profiles and caring responsibilities, with preference given to pregnant women and women with dependent children.”²⁴

Ms. Zargar is currently detained in Tihar Jail, which is over capacity.²⁵ It is unclear whether there is widespread testing in jails across India, or if sufficient testing is being conducted in Tihar jail. However, the assistant superintendent of the jail tested positive for the virus,²⁶ three inmates were quarantined due to potential exposure to the virus,²⁷ and several inmates facing health challenges like cancer have been released by authorities at Tihar.²⁸ Ms. Zargar’s sister has also stated in an interview that Ms. Zargar has polycystic ovary syndrome,²⁹ of which one of the health effects is high blood pressure.³⁰ High blood pressure patients are one of the populations at greater risk for contracting Covid-19.³¹

In addition to her legal issues, Ms. Zargar has also been the victim of a slanderous online campaign, including falsified and explicit images of her being shared online and through

²³ Press Release, World Health Organization, UNODC, WHO, UNAIDS and OHCHR Joint Statement on COVID-19 in Prisons and Other Closed Settings (May 13, 2020), available at <https://www.who.int/news-room/detail/13-05-2020-unodc-who-unaid-and-ohchr-joint-statement-on-covid-19-in-prisons-and-other-closed-settings>.

²⁴ WHO EUROPE, PREPAREDNESS, PREVENTION AND CONTROL OF COVID 19 IN PRISONS AND OTHER PLACES OF DETENTION (2020), available at http://www.euro.who.int/__data/assets/pdf_file/0019/434026/Preparedness-prevention-and-control-of-COVID-19-in-prisons.pdf?ua=1.

²⁵ HINDUSTAN TIMES, *Tihar Releases Over 400 Inmates to ‘Reduce Overcrowding’ in Light of Covid-19* (Mar. 29, 2020), available at <https://www.hindustantimes.com/delhi-news/over-400-inmates-released-from-tihar-jail-to-reduce-overcrowding-in-light-of-covid-19/story-SXSHk7J5wLL7IS1KYMg8cJ.htm>; Abishek Sharan, *Overcrowded Tihar Jail to Get Space Breather Soon*, HINDUSTAN TIMES, (Feb. 21, 2020), available at <https://www.hindustantimes.com/delhi/overcrowded-tihar-jail-to-get-space-breather-soon/story-yvcuqf040gJad4dHONpdGJ.html> (stating that “Tihar has 10 sub-jails, including one in Rohini, which can accommodate 6,250 inmates. But till December 31, 2011, the sub-jails housed 12, 124 inmates, including 526 women”).

²⁶ PRESS TRUST OF INDIA, *Assistant Superintendent At Delhi’s Tihar Jail Tests Coronavirus Positive* (May 24, 2020), available at <https://www.ndtv.com/india-news/assistant-superintendent-at-delhis-tihar-jail-tests-coronavirus-positive-2234456>.

²⁷ TRIBUNE INDIA, *COVID-19: 3 Tihar Jail Inmates Quarantined*, (May 11, 2020), <https://www.tribuneindia.com/news/nation/covid-19-3-tihar-jail-inmates-quarantined-83444>.

²⁸ Pritam Pal Sing, *Coronavirus: To Decongest Jail, Tihar Releasing Inmates with Cancer, Asthma, TB*, THE INDIAN EXPRESS (April 19, 2020), available at <https://indianexpress.com/article/cities/delhi/coronavirus-to-decongest-jail-tihar-releasing-inmates-with-cancer-asthma-tb-6369660/>.

²⁹ Jeevan Prakash Sharma, *Allow Us To Talk To Her Once A Day: Sister Of Arrested And Pregnant Jamia Student*, OUTLOOK INDIA (May 5, 2020), available at <https://www.outlookindia.com/website/story/india-news-allow-us-to-talk-to-her-once-a-day-sister-of-arrested-and-pregnant-jamia-student-safoora-zargar/352115>.

³⁰ Yale Medicine, *Polycystic Ovary Syndrome*, available at <https://www.yalemedicine.org/conditions/polycystic-ovary-syndrome/> (last visited May 30, 2020).

³¹ Ryan Prior, *Those with High Blood Pressure Are at a Greater Risk for Covid-19. Here’s What You Need to Know to Protect Yourself*, CNN (Apr. 17, 2020), available at <https://www.cnn.com/2020/04/17/health/blood-pressure-coronavirus-wellness/index.html>.

WhatsApp messenger.³² The Delhi Commission for Women has demanded that the Delhi Police Cyber Cell take immediate action to file charges against Ms. Zargar's online attackers and bring them to justice in accordance with Indian law.³³

Given the lack of clear evidence of criminal conduct, her pregnant condition, and the failure of prosecutors to specifically explain how Ms. Zargar poses a threat if granted bail, Ms. Zargar should be given the opportunity to furnish a bail bond and be in her home with her family until the appropriate time for her legal hearings. The Center urges the Court to uphold India's moral and legal obligations given the pandemic and order the immediate release of Mrs. Zargar.

³² Rahiba R. Parveen, *Jailed Anti-CAA Activist Safoora Zargar Trolled, Delhi Police Take No Action*, The New India Express (May 8, 2020), available at <https://www.newindianexpress.com/cities/delhi/2020/may/08/jailed-anti-cao-activist-safoora-zargar-trolled-delhi-police-take-no-action-2140654.html>.

³³ THE STATESMAN, *DCW Notice to Delhi Police Over Trolling of Arrested Pregnant Activist Safoora Zargar, Campaign* (May 6, 2020), available at <https://www.thestatesman.com/india/dcw-notice-to-delhi-police-over-online-trolling-of-arrested-pregnant-activist-safoora-zargar-1502884823.html>.