

NO RESPITE FOR PEOPLE BOOKED UNDER UAPA

Relevant for: Indian Polity | Topic: Judiciary in India: its Structure, Organization & Functioning, Judges of SC & High Courts, Judgments and related Issues

The Supreme Court's freeze on sedition proceedings under the colonial Section 124A of the Indian Penal Code seems to have not yet made a ripple on the ground for persons who have also been charged under the draconian Unlawful Activities (Prevention) Act (UAPA) of 1967 in the same case or separately.

The effect of the apex court's May 11 order to keep in abeyance the use of the colonial provision of Section 124A has not transformed into bail for journalist Siddique Kappan and activists Umar Khalid and Sharjeel Imam, who also face charges under the UAPA.

The Supreme Court, while suspending criminal trials and court proceedings under Section 124A, had made it clear that adjudication with respect to other sections of law, if any, would proceed if the court concerned was "of the opinion that no prejudice would be caused to the accused".

53% arrested are youths

Imam had recently approached the Delhi High Court for bail in a case involving his speeches against the controversial Citizenship (Amendment) Act on the strength of the Supreme Court order. He was advised to approach the trial court. He had recently moved the lower court. Kappan was arrested by the U.P. Police on October 5, 2020, *en route* to Hathras where a Dalit woman was allegedly killed. He was booked for sedition, promoting enmity, and later under the UAPA. Khalid faces charges under both Section 124A and UAPA in a case connected to the Delhi riots.

The Home Ministry is reported to have said in Parliament last year that nearly 53% of persons arrested under the UAPA in 2018, 2019 and 2020 were below the age of 30.

An amendment made in 2019 has made the Act even more powerful. Now it can designate individuals, and not just associations, as 'terrorists'. The Supreme Court's judgment in National Investigation Agency versus Zahoor Ahmad Shah Watali in 2019 has also made bail in a UAPA case a virtually insurmountable task.

The judgment has confirmed the "high burden" placed by Section 43D(5) of UAPA on an accused to demonstrate that the prosecution's charges against him were not based on "reasonable grounds". It has held that a trial court could reject bail on finding that the relevant material produced by the investigating agency was "indicative of the fact that there are reasonable grounds for believing that the accusation is *prima facie* true".

So, as far as persons facing both Section 124A and UAPA charges in the same case or variously, the suspension of the Section 124A, though a great relief, would hardly lead to freedom. Continued incarceration under the post-colonial UAPA may be their reality.

This is when the almost non-existent chance of bail under UAPA seems to violate the principle of the SC's own 1977 judgment in State Of Rajasthan vs Balchand, which had held that bail, and not jail, should be the norm.

END

Downloaded from crackIAS.com

© **Zuccess App** by crackIAS.com

CrackIAS.com