

ORDER HAS EFFECT OF MAKING BAIL THE RULE IN SECTION 124A CASES

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The Supreme Court order on Wednesday to keep court proceedings under Section 124A of the Indian Penal Code in abeyance has the effect of temporarily erasing the colonial provision from the statute book while the Union re-examines it.

The court has made it clear that it has suspended Section 124A in its present form until further orders. Persons against whom fresh cases are filed under Section 124A while the provision is being re-examined by the Union can seek bail using the Supreme Court's order.

With this order, bail in Section 124A cases has become the rule. A person cannot be incarcerated or charged under a currently non-existent penal provision.

"The court has made its intent clear. It does not want a single person booked under Section 124 to be kept in prison while the reconsideration of the law is happening," advocate Kaleeswaram Raj, who represents senior journalist Shashi Kumar in the case, said.

Trial lawyers like Madhuvan Dutt Chaturvedi and Tanvir Ahmed Mir, speaking to *The Hindu*, agreed the order would throw open the door to freedom for accused charged with Section 124A and languishing behind bars without hope for bail.

However, they also pointed out that for many like activist Umar Khalid, student leader Sharjeel Imam and journalist Siddique Kappan, who face other serious charges, including under the draconian Unlawful Activities (Prevention) Act, alongside sedition, the court order may hardly pave a way out of prison.

Senior advocate Kapil Sibal informed the court that about 13,000 persons are in jail under Section 124A alone.

Even the Centre, represented by Solicitor-General Tushar Mehta, had proposed expeditious bail hearings for people who have been victims of the abuse of the sedition law by local police and authorities.

Attorney-General K.K. Venugopal, appearing in the capacity of his constitutional office to assist the court, had specifically cited instances of misuse of the sedition law by State governments.

Chief Justice Ramana's Bench has, in a quick and deft stroke, protected civil liberties from local police and civil authorities who may continue to use Section 124A regardless of the Union's "re-examination process".

'Prone to misuse'

An anomalous situation would have arisen where people continue to suffer deprivations even as both the Supreme Court and the Centre agree that the sedition law was prone to misuse. In this context, the court has also rejected the government's suggestions to frame guidelines to stop the misuse.

The court had orally observed that guidelines hardly work at the “ground level” with local police officers and civil authorities.

Wednesday’s order resembles a January 2021 order passed by the Supreme Court in the farm laws case.

In that order, the court stayed the three controversial farm laws and allowed deliberations on the laws to start while making sure that “no farmer shall be dispossessed or deprived of his titles as a result of any action taken under the farm laws.”

If the court had protected the farmers rights against laws debated in and enacted by Parliament, it has now protected individual rights against Section 124A, a provision which pre-dates the Constitution itself.

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