

"After Sharjeel Imam, Mumbai student has been booked for sedition for slogans in Sharjeel's support. A look at what courts and the Maharashtra govt have said about the validity and applicability of Section 124A IPC."

On Wednesday, a sessions court in Mumbai rejected the anticipatory bail application of a 22-year-old student booked under Section 124A (sedition) of the Indian Penal Code (IPC) along with 50 others. The sedition charge was filed on the basis of slogans that the student had raised in favour of another student who has already been booked for sedition. The court said the slogan "attracts the ingredients of sedition".

Sedition law: The grounds, the arguments

The FIR filed by the Azad Maidan police on February 3 claims that Urvashi Chudawala is seen raising the slogan, "Sharjeel tere sapnoko hum manzil tak pahuchaenge," at the LGBTQ Solidarity Gathering on February 1. Sharjeel Imam, a JNU student, was booked for sedition and on other charges for an anti-CAA speech in which he is reported to have spoken about "cutting off the Northeast from India" by blocking roads and railway tracks. He is in custody.

Chudawala's lawyer, Vijay Hiremath, argued that "in the intensity of sloganeering", certain names were mentioned. He said Imam's name was said only once, "for two seconds". "It was raised against Imam's arrest, whose sedition itself is not proved yet. To say that his arrest is wrong, cannot be considered sedition. We may disagree with what she has said, but it still does not attract sedition," Hiremath said.

Chief public prosecutor Jaising Desai, on the other hand, submitted that the slogan "was in support of a person who is an enemy of the country". He said the police had also found that Chudawala had shared and liked a Facebook post that said, "Release Sharjeel Imam Unconditionally."

The court, while rejecting the application, said the offences registered against Chudawala were "serious". "The court is required to keep in mind the effect of the order on the public at large," the judge said.

Hiremath has filed an appeal against the sessions court order in the Bombay High Court. The appeal is likely to come up for hearing on Friday.

The sedition law and its validity

Section 124A IPC states: "Whoever, by words, either spoken or written, or by signs, or by visible representation, or otherwise, brings or attempts to bring into hatred or contempt, or excites or attempts to excite disaffection towards, the Government established by law in India, shall be punished with imprisonment for life, to which a fine may be added; or, with imprisonment which may extend to three years, to which a fine may be added; or, with fine."

Section 124A has been challenged in various courts in specific cases. The validity of the provision itself was upheld by a Constitution Bench in 1962, in *Kedarnath Singh vs State of Bihar*.

That judgment went into the issue of whether the law on sedition is consistent with the fundamental right under Article 19 (1) (a) which guarantees each citizen's freedom of speech and expression. The Supreme Court laid down that every citizen has a right to say or write about the government, by way of criticism or comment, as long as it does not "incite people to violence" against the government established by law or with the intention of creating public disorder.

In the current Mumbai case, Chudawala's lawyer submitted that the slogan was not raised with the intent of inciting violence, nor had it led to any public disorder.

The Maharashtra circular

During his arguments, Hiremath also referred to preconditions laid down in a 2015 circular issued by the Maharashtra government to its police personnel before invoking sedition. Hiremath claimed that police did not adhere to these while slapping the sedition charge on Chudawala. This was, however, was not accepted by the court.

The 2015 circular came during the hearing of a public interest litigation in the Bombay High Court, after cartoonist Aseem Trivedi was booked for sedition. Trivedi had been arrested in 2012 for cartoons during the anti-corruption protests by Anna Hazare, on charges including sedition as it was claimed that they defamed Parliament and the Constitution. The sedition charge was subsequently dropped by the police; a PIL was filed in 2015 on the alleged "arbitrary" application of the charge.

What the High Court said

The High Court in 2015 referred to the *Kedarnath* judgment and said there was a need to lay down parameters for the invocation of Section 124A. "Otherwise a situation would result in which an unrestricted recourse to Section 124A would result in a serious encroachment of guarantee of personal liberty conferred upon every citizen of a free society," the court had said.

Apart from the *Kedarnath* judgment, the High Court referred to five other judgments, including a Supreme Court judgment (*Balwant Singh vs State of Punjab*) regarding raising of slogans by three men after former Prime Minister Indira Gandhi was assassinated. The SC then ruled that "casual raising of slogans, once or twice by two individuals alone cannot be said to be aimed at exciting or attempt to excite hatred or disaffection by the government".

The court observed, "It is clear that the provisions of Section 124A of IPC cannot be invoked to penalise criticism of the persons for the time being engaged in carrying on administration or strong words used to express disapprobation of the measures of the government with a view to their improvement or alteration by lawful means."

The court, however, said it did not feel the need to dwell on the subject further as the state government at the time had proposed that it would issue guidelines in the form of a circular to all its police personnel, as submitted before the court by the then Advocate General. The AG had said the circular would indicate the parameters to be followed for invocation of Section 124A.

The state guidelines

The circular was issued, and its guidelines included preconditions to be kept in mind while invocation of 124A. These were that the words, signs or representations in question must bring the government into hatred or contempt or must cause or attempt to cause disaffection, enmity or disloyalty to the government, and must also be an incitement to violence or must be intended or tend to create public disorder or a reasonable apprehension of public disorder. "Comments expressing disapproval or criticism of the government with a view to obtaining a change of government by lawful means without any of the above are not seditious under section 124A," stated one of the preconditions.

To ensure that the section is not raised arbitrarily, the circular also directed that a legal opinion from the district law officer should be taken by the public prosecutor addressing fulfilment of these conditions. Within a few months of the High Court order in 2015, the state government also informed the court that it was issuing a Government Resolution based on the circular.

On Thursday, The Indian Express asked retired and current bureaucrats and police officials if the GR was issued, but they said they were not aware of it.

Expected Questions (Prelims Exams)

Q. Consider the following statements.

1. Section 124 'A' of the Indian Penal Code (IPC) deals with sedition.
2. Citizens also have the right to criticize the government under article 19 (1) (a) of the Indian Constitution.

Which of the above statements is / are correct?

- (a) Only 1 (b) Only 2
(c) Both 1 and 2 (d) None of these

Note: Answer of Prelims Expected Question given on 6 Feb., is 1 (b)

Expected Questions (Mains Exams)

'The sedition law can be called a colonial law, but its need for unity and integrity of the country cannot be denied.' Critically examine this statement. (250 words)

Note: - The question of the main examination given for practice is designed keeping in mind the upcoming UPSC main examination. Therefore, to get an answer to this question, you can take the help of this source as well as other sources related to this topic.