

Ajay

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CRIMINAL APPELLATE JURISDICTION**

**INTERIM APPLICATION NO. 4134 OF 2024  
IN  
CRIMINAL REVISION APPLICATION NO. 547 OF 2024**

|                            |               |
|----------------------------|---------------|
| Dnyaneshwar Sitaram Karale | .. Applicant  |
| <b>Versus</b>              |               |
| The State of Maharashtra   | .. Respondent |

**WITH  
CRIMINAL REVISION APPLICATION NO. 547 OF 2024**

|                            |               |
|----------------------------|---------------|
| Dnyaneshwar Sitaram Karale | .. Applicant  |
| <b>Versus</b>              |               |
| The State of Maharashtra   | .. Respondent |

- .....
- Mr. Qureshi Zaid Anwar, Advocate for Applicant.
  - Ms. Dhanalakshmi Krishnaiyer, APP for the State.
- .....

**CORAM : MILIND N. JADHAV, J.**  
**DATE : NOVEMBER 12, 2024.**

**P.C.:**

- 1.** Heard Mr. Qureshi, learned Advocate for Applicant and Ms. Krishnaiyer, learned APP for the State.
- 2.** Perused the record of Criminal Revision Application No.547 of 2024 alongwith Interim Application No.4134 of 2024.
- 3.** Criminal Revision Application (for short “**CRA**”) No.547 of 2024 is filed by the Revision Applicant taking exception to the impugned judgment passed by the learned Sessions Judge, Pune dated

30.09.2024, *inter alia*, dismissing Criminal Appeal No.1 of 2013 and partially allowing Criminal Appeal No.518 of 2015. Both Criminal Appeals maintained a challenge to the judgment of the learned Trial Court in Summary Criminal Case No.3263 of 2010 dated 05.12.2012, *inter alia*, leading to conviction of the Revision Applicant by the learned Trial Court for offence under Section 500 of the Indian Penal Code, 1860 (for short “**IPC**”) and sentencing the Revision Applicant to undergo imprisonment till rising of the Court and also pay fine of Rs.10,000/- or in default to undergo simple imprisonment for six months. The decision dated 05.12.2012 was stayed and the Revision Applicant was enlarged on bail on the same day itself on complying with the direction of payment of fine amount which is endorsed by the Assistant Superintendent of the learned Trial Court on the face of the operative order at page No.45 of the paper book. Resultantly, Revision Applicant has been on bail since 05.12.2012 until the impugned judgment came to be passed by the learned Trial Court on 30.09.2024, on which date he was apprehended in the Court itself. Since then, the Revision Applicant is incarcerated.

**4.** Interim Application No.4134 of 2024 is filed seeking enlargement on bail by the Revision Applicant. Interim Application and CRA were heard by me on 15.10.2024. On which date, the following order was passed:-

*"1. Heard Mr. Qureshi, learned Advocate for Applicant; Ms. Krishnaiyar, learned APP for Respondent No.1 - State of Maharashtra and Mr. Phalke, learned Advocate for Respondent No.2.*

*2. The Criminal Revision Application copy has not been served on Respondent No.2 who is Complainant and whose Appeal has been allowed by the Sessions Court.*

*3. I direct Mr. Qureshi, learned Advocate for Applicant to serve copy of Criminal Revision Application on Respondents and ensure that they receive a copy. Respondent No.1 is represented by learned APP. Respondents are directed to file Affidavit-in-Reply to the Interim Application which has been filed for suspension of sentence. I am informed that Applicant has been apprehended on 30.09.2024 and is in jail.*

*4. Mr. Qureshi, learned Advocate for Revision Applicant would further inform the Court that by virtue of the order of Trial Court, the Applicant was sentenced to confinement until the rising of the Court inside the Court. However that decision of the Trial Court has been enhanced by the learned Sessions Court to six months. He would urge the Court that considering the personal liberty involved of the Applicant and decision of the Trial Court this Court be pleased to hear the present Appeal peremptorily.*

*5. I see substance in the submission made by Mr. Qureshi, learned Advocate for Applicant. Hence, I direct Respondents to file Affidavit-in-Reply before the next adjourned date. I propose to hear the present Criminal Revision Application finally on the next adjourned date.*

*6. Stand over to **22<sup>nd</sup> October, 2024**. To be placed under the caption **'First on Board'.**"*

**5.** Without delineating and opining on any merits of the matter, as observed by me in paragraph No.4, it is seen that the decision of the Trial Court has been enhanced by the learned Sessions Court resultantly leading to the arrest of the Revision Applicant.

**6.** The issues and grounds on merits are required to be *prima facie* considered for considering the Interim Application for bail as this

is a conviction under Section 500 of IPC with respect to publication of a news article by the Revision Applicant who was the Editor of a weekly newspaper called “Swarvihar”.

**7.** It is the prosecution’s case that the news article pertains to the complainant who was working as a Hawaldar in the Indian Army and on the date of publication of the said news article on 22.08.2010, a reference is made to the complainant in Marathi language. In the said news article which is in Marathi language and the word “माथेफिरू” (*emphasis supplied*) was attributed to the complainant. This is the soul of the entire case before me. The learned Trial Court as also the learned Sessions Court in Appeal have construed, constructed and understood the meaning of the aforementioned terminology as “mad” while delivering their respective decisions and judgments. The reasons given by the learned Trial Court are in paragraph No.7 onwards in the Trial Court’s decision dated 05.12.2012. Resultantly the Trial Court interpreting the imputation for using the said word with the determinants of the provisions of Section 500 of IPC has convicted the Revision Applicant, but sentenced him upto rising of the Court.

**8.** There is attribution of the aforesaid terminology to the complainant as per the prosecution’s case with respect to his serving in the Indian Army also.

**9.** Mr. Qureshi, learned Advocate at the outset draws my attention to paragraph No.14 of the impugned judgment wherein the issue before the learned Trial Court agitated by the defence was with respect to the admissibility of the subject news article in question, unless the original record was produced and proved in accordance with law. He would submit that the learned Trial Court despite holding that the newspaper is at the most secondary evidence of its contents and not admissible in evidence under the Indian Evidence Act, 1872 without proper proof of its contents has proceeded to hold that the said newspaper as produced by the prosecution in evidence has been properly proved by the complainant in view of the complainant's deposition.

**10.** He would therefore draw my attention to the production and marking of the said subject document before the Trial Court by the complainant. On reading of paragraph No.1 of his examination-in-chief which is appended at page No.9 of the paper book, it is seen that he has produced on record a xerox copy of the weekly newspaper. He has also deposed before the Court that he has placed on record the xerox copy of the page on which the said news article was published. Apart from this legal issue, interpreting the imputation as caused by virtue of using the said word in the news article is questioned by the defence before me. The learned Sessions Court while passing the impugned judgment dated 30.09.2024 has infact gone one step further. While

upholding the decision of convicting the Revision Applicant, the learned Sessions Court has enhanced the sentence, reasons for which are given in paragraph No.7 onwards in the impugned judgment. An essential attribute to the subject word which has been used in the news article has been translated in English language. Both the lower Courts attribute the meaning of the word as “mad soldier” to the complainant. *Prima facie*, whether the said subject word if translated in English language would essentially mean “mad” is something which does not appeal to the conscience of this Court on reading both the judgments of the Courts below. It would be attributable to the temperament of the complainant. This will have to be therefore seen, understood and decided as to whether it has any imputation.

**11.** Hence, in view of the above observations and findings, I am inclined to admit the CRA and allow the Interim Application.

**12.** Interim Application No.4134 of 2024 is allowed in terms of prayer clause ‘b’ which reads thus:-

*“(b) The applicant may kindly be released on bail and sentence passed by the Ld. Sessions Court, Pune in its judgment dated 30/09/2024 in Cri. Appeal No. 01/2013 and Cri. Appeal No. 518/2015 arising out of the SCC No. 3263 of 2010 may kindly be suspended, pending the hearing and final disposal of the Revision.”*

**13.** Needless to state that, in view of the aforementioned dichotomy seen by this Court, both the decisions passed by the learned

Trial Court as also learned Sessions Court would require a re-visit.

**14.** In compliance of directions contained in my order dated 15.10.2024, Respondent No.1 is directed to file Affidavit-in-Reply. Respondent No.2 is at liberty to file Affidavit-in-Reply, if so desired.

**15.** Issue notice to Respondent No.2. Humdast permitted.

**16.** In addition to Court notice, Applicant is permitted to serve a copy of the CRA and this order on Respondent No.2 and inform him about the next date of hearing by any permissible mode of service and file appropriate Affidavit of service with tangible proof thereof on or before the next date.

**17.** After receiving notice, Respondent No.2 is directed to take cognizance of this order and file Affidavit-in-Reply on or before the next date, if so desired.

**18.** In view of the above, following order is passed:

- (i) Revision Applicant is directed to be immediately released from prison and his further sentence stands immediately suspended subject to the final decision in the present CRA;
- (ii) Revision Applicant is incarcerated in Yerwada Central Prison, Pune. Jail Superintendent / In-charge of Yerwada Central Prison is directed to

act on a server copy of this order and immediately release the Applicant on bail today itself;

- (iii) Applicant is directed to be released on bail on his furnishing P.R. Bond of Rs.10,000/- with one or more solvent sureties in the like amount;
- (iv) Registry of this Court is directed to forward a copy of this order immediately to the Jail Authorities / Superintendent of Yerwada Central Prison, Pune; and
- (v) Revision Applicant is directed to remain present as and when called by the concerned police station.

**19.** I.A. No.4134 of 2024 is allowed and disposed.

**20.** List the CRA on board on **14<sup>th</sup> January 2025**.

**[ MILIND N. JADHAV, J. ]**

Ajay

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