

**HIGH COURT OF TRIPURA  
AGARTALA**

**AB No.18 of 2025**

**Shri Koshik Pal,**

Aged about 20 years,

Son of Shri Basudeb Pal,

Resident of Manu Bankul,

P.O. South Manu Bankul,

P.S. Manu Bazar,

District: South Tripura, PIN:799 143

---Applicant

-Vs-

**The State of Tripura**

---Respondent

|                   |   |                                                    |
|-------------------|---|----------------------------------------------------|
| For Applicant(s)  | : | Mr. Sankar Lodh, Adv.<br>Mr. Subham Majumder, Adv. |
| For Respondent(s) | : | Mr. Rajib Saha, Addl. P.P.                         |

**HON'BLE MR. JUSTICE BISWAJIT PALIT**

**Order**

**25/04/2025**

Learned Counsel Mr. Sankar Lodh is present for the applicant.

Learned Addl. P.P. Mr. Rajib Saha is present along with Forensic Digital Analyst Mr. Bapi Saha. Today Learned Addl. P.P. again produced the CD along with the report of the Forensic Digital Analyst.

The matter is taken up for hearing. In course of hearing the Forensic Digital Analyst explained the contents of the report submitted by him to S.D.P.O., Santirbazar. As per order dated 05.03.2025 the report was supposed to be submitted to the court. However, Learned Addl. P.P. in course of hearing submitted that through bonafide mistake the Director, SFSL submitted the report to the S.D.P.O., Santirbazar. Learned Addl. P.P. further submitted before the court drawing the contents of the FIR and the statement of the victim girl and submitted that although the

interim bail was granted to the accused subject to verification of obtaining report about the obscene pictures, but since the report of digital analyst speaks about storage of obscene nude pictures of the victim girl through screen recorder by the accused-applicant. So it appears that he is involved with the alleged offence punishable under Section 14 of POCSO Act read with Section 67 B of IT Act, 2000. So he urged before the court to cancel the pre-arrest bail application of the accused-applicant.

On the other hand, Learned Counsel Mr. S. Lodh appearing for the accused-applicant has drawn the attention of the court that the pictures were transmitted by the victim to the accused-applicant. For that the accused-applicant cannot be held liable for the offence punishable under Section 14 of POCSO Act and also under Section 67B of IT Act. He also referred the aforesaid provisions of POCSO Act and IT Act and submitted that in nowhere the accused comes under the purview of aforesaid provisions of law and as such he urged before the court for confirmation of pre-arrest bail to the accused-applicant.

Considered.

I have heard detailed submissions of both the sides and perused the FIR and the case diary and also the report of Digital Analyst. The gist of the FIR in short is that on 15.02.2025 one Sanjoy Datta being the father of the victim girl laid an FIR to O/C, Baikhora P.S., South Tripura, Santirbazar Sub-Division alleging inter alia that he is the resident of village: Ashrampara, Jolaibari under PS: Baikhora. Since last one and half years her minor daughter aged about 12 years (name withheld) started to talk

with the accused-applicant through his mobile phone No.9862641224. He further stated that probably she used to talk through Whatsapp, Facebook and Instagram. The accused gave commitment to marry his daughter. The mobile which was used by her was owned by him and the number was 8974583432. The accused behind his back used to provoke his daughter to make pornography film and also used to send her naked pictures to his mobile. He also used to teach searching of pornography films in Google and used to teach her how to make pornography films. Due to provocation she had sent 15/16 naked videos to the mobile of the accused persons through whatsapp. Few days back the accused made the naked pictures of his daughter viral which were sent to him and due to that his daughters and family members were defamed. One Radharani Roy of their locality told him and his wife about the naked pictures of his daughter. When they inquired the matter they came to know about the incident. Hence he laid the FIR.

On the basis of the FIR the Baikhora PS Case No.2025 BKR 006 under Section 67B of IT Act and under Section 14(1) of the POCSO Act was registered against the accused and in course of investigation the accused-applicant prayed for granting anticipatory bail. Thereafter by order dated 05.03.2025 on the ground of examination of the accused-applicant he was granted interim bail since he was a student of B.SC Mathematics, 3<sup>rd</sup> Year (Basic Science) till 13.03.2025. After that subject to verification of mobile and laptop about the naked photographs and videographs his prayer for interim bail was further extended till 19.03.2025 as

the report could not be submitted so the period of interim bail was extended time to time till today.

Today I have heard the detailed submission of both the sides as stated above. For the sake of convenience I would like to refer herein below the relevant provision of Section 14 of the POCSO Act and also the provision of Section 67B of the IT Act which provides as under respectively:

**POCSO Act**

**"14. Punishment for using child for pornographic purposes.- (1) Whoever uses a child or children for pornographic purposes shall be punished with imprisonment for a term which shall not be less than five years and shall also be liable to fine, and in the event of second or subsequent conviction with imprisonment for a term which shall not be less than seven years and also be liable to fine.**

**(2) Whoever using a child or children for pornographic purposes under sub-section (1), commits an offence referred to in Section 3 or Section 5 or Section 7 or Section 9 by directly participating in such pornographic acts, shall be punished for the said offences also under Section 4, Section 6, Section 8 and Section 10, respectively, in addition to the punishment provided in sub-section(1)."**

**I.T. Act**

**"67B. Punishment for publishing or transmitting of material depicting children in sexually explicit act, etc., in electronic form. -**

**Whoever-**

**(a) publishes or transmits or causes to be published or transmitted material in any electronic form which depicts children engaged in sexually explicit act or conduct; or**

**(b) creates text or digital images, collects, seeks, browses, downloads, advertises, promotes, exchanges or distributes material in any electronic form depicting children in obscene or indecent or sexually explicit manner; or**

**(c) cultivates, entices or induces children to online relationship with one or more children for and on sexually explicit act or in a manner that may offend a reasonable adult on the computer resource; or**

**(d) facilitates abusing children online, or**

**(e) records in any electronic form own abuse or that of others pertaining to sexually explicit act with children,**

**shall be punished on first conviction with imprisonment of either description for a term which may extend to five years and with fine which may extend to ten lakh rupees and in the event of second or subsequent conviction with imprisonment of either description for a term which may extend to seven years and also with fine which may extend to ten lakh rupees:**

**Provided that provisions of section 67, section 67A and this section does not extend to any book, pamphlet, paper,**

**writing, drawing, painting representation or figure in electronic form-**

**(i)the publication of which is proved to be justified as being for the public good on the ground that such book, pamphlet, paper, writing drawing, painting representation or figure is in the interest of science, literature, art or learning or other objects of general concern; or**

**(ii)which is kept or used for bona fide heritage or religious purposes.**

**Explanation. -For the purposes of this section "children" means a person who has not completed the age of 18 years."**

In course of hearing of argument Learned counsel for the accused-applicant drawn the attention of the court referring the provision of Section-13 of the POCSO Act and submitted that the purpose of legislature for using the term "use of child for pornographic purposes" and further submitted that on perusal of the aforesaid provision of law it is clear that by the alleged prosecution story the accused cannot be held liable for commission of offence punishable under Section 14 of the said Act and also under Section 67B of the IT Act. For the sake of convenience, I would like to refer herein below the relevant provision of Section-13 of the POCSO Act which provides as under:

**"13. Use of child for pornographic purposes.-Whoever, uses a child in any form of media (including programme or advertisement telecast by television channels or internet or any other electronic form or printed form, whether or not such programme or advertisement is intended for personal use or for distribution), for the purposes of sexual gratification, which includes-**

**(a)representation of the sexual organs of a child;**

**(b)usage of a child engaged in real or simulated sexual acts (with or without penetration);**

**(c) the indecent or obscene representation of a child,**

**Shall be guilty of the offence of using a child for pornographic purposes.**

**Explanation.-For the purposes of this section, the expression "use a child" shall include involving a child through any medium like print, electronic, computer or any other technology for preparation, production, offering, transmitting, publishing, facilitation and distribution of the pornographic material."**

From the explanation it appears that use a child means involving a child through any medium like print, electronic, computer or any other technology for preparation, production, offering, transmitting, publishing, facilitation and distribution of the pornographic material. Here in the case at hand from the report of the Digital Analyst it is clear that the accused-applicant by using the electronic apparatus recorded the naked pictures of the victim girl through screen recorder which attracts the provision of Section-13 of the POCSO Act. In this regard I would like to refer one judgment of the Hon'ble Supreme Court of India in **Just Rights for Children Alliance and Another vs. S. Harish and Others** reported in **2024 SCC OnLine SC 2611** wherein in para No.222(I-IX) Hon'ble the Apex Court has been pleased to discuss about the provision of Section 15 and also Section 67B of the IT Act which provides as under:

**"222. We summarize our final conclusion as under:—**

**(I) Section 15 of the POCSO provides for three distinct offences that penalize either the storage or the possession of any child pornographic material when done with any particular intention specified under subsection(s) (1), (2) or (3) respectively. It is in the nature and form of an inchoate offence which penalizes the mere storage or possession of any pornographic material involving a child when done with a specific intent prescribed thereunder, without requiring any actual transmission, dissemination etc.**

**(II) Sub-section (1) of Section 15 penalizes the failure to delete, destroy or report any child pornographic material that has been found to be stored or in possession of any person with an intention to share or transmit the same. The mens-rea or the intention required under this provision is to be gathered from the actus reus itself i.e., it must be determined from the manner in which such material is stored or possessed and the circumstances in which the same was not deleted, destroyed or reported. To constitute an offence under this provision the circumstances must sufficiently indicate the intention on the part of the accused to share or transmit such material.**

**(III) Section 15 sub-section (2) penalizes both the actual transmission, propagation, display or distribution of any child pornography as-well as the facilitation of any of the abovementioned acts. To constitute an offence under Section 15 sub-section (2) apart from the storage or more to show i.e., either (I) the actual transmission, propagation, display or distribution of such material OR**

(II) the facilitation of any transmission, propagation, display or distribution of such material, such as any form of preparation or setup done that would enable that person to transmit it or to display it. The mens rea is to be gathered from the manner in which the pornographic material was found to be stored or in possession and any other material apart from such possession or storage that is indicative of any facilitation or actual transmission, propagation, display or distribution of such material.

(IV) Section 15 sub-section (3) penalizes the storage or possession of any child pornographic material when done for any commercial purpose. To establish an offence under Section 15 sub-section (3), besides the storage or possession of the pornographic material involving a child, there must be some additional material or attending circumstances that may sufficiently indicate that the said storage or possession was done with the intent to derive any gain or benefit. To constitute an offence under sub-section (3) there is no requirement to establish that such gain or benefit had been actually realized.

(V) Sub-section(s) (1), (2) and (3) respectively of Section 15 constitute independent and distinct offences. The three offences cannot coexist simultaneously in the same set of facts. They are distinct from each other and are not intertwined. This is because, the underlying distinction between the three sub-sections of Section 15 lies in the varying degree of culpable mens rea that is required under each of the three provisions.

(VI) The police as well as the courts while examining any matter involving the storage or possession of any child pornography, finds that a particular sub-section of Section 15 is not attracted, then it must not jump to the conclusion that no offence at all is made out under Section 15 of the POCSO. If the offence does not fall within one particular subsection of Section 15, then it must try to ascertain whether the same falls within the other sub-sections or not.

(VII) Any act of viewing, distributing or displaying etc., of any child pornographic material by a person over the internet without any actual or physical possession or storage of such material in any device or in any form or manner would also amount to 'possession' in terms of Section 15 of the POCSO, provided the said person exercised an invariable degree of control over such material, by virtue of the doctrine of constructive possession.

(VIII) Any visual depiction of a sexually explicit act which any ordinary person of a prudent mind would reasonably believe to prima facie depict a child or appear to involve a child, would be deemed as 'child pornography' and the courts are only required to form a prima facie opinion to arrive at the subjective satisfaction that the material appears to depict a child from the perspective of any ordinary prudent person for any offence under the POCSO that relates to child pornographic material, such as Section 15. Such satisfaction may be arrived at from any authoritative opinion like a forensic science laboratory (FSL) report of such material or opinion of any expert on the material in question, or by the assessment of such material by the courts themselves.

**(IX) Section 67B of the IT Act is a comprehensive provision designed to address and penalize the various electronic forms of exploitation and abuse of children online. It not only punishes the electronic dissemination of child pornographic material, but also the creation, possession, propagation and consumption of such material as-well as the different types of direct and indirect acts of online sexual denigration and exploitation of the vulnerable age of children. Section (s) 67, 67A and 67B respectively of the IT Act being a complete code, ought to be interpreted in a purposive manner that suppresses the mischief and advances the remedy and ensures that the legislative intent of penalizing the various forms of cyber-offences relating to children and the use of obscene/pornographic material through electronic means is not defeated by a narrow construction of these provisions."**

Here in the given case at hand the para No.222(VIII and IX) are relevant for decision of the appeal.

From the case diary and also from the statement of the victim girl and also the statement of the victim recorded by Learned Magistrate the prima facie involvement of the accused punishable under Section 14 of the POCSO Act and also under Section 67B of the IT Act cannot be ruled out. So considering the facts and circumstances of the case, I do not find any scope to consider the extension of the period of interim bail granted to the accused by a Coordinate Bench of this High Court by order dated 05.03. 2025 which was extended time to time till today and as such his pre-arrest bail application stands rejected.

The statement of the victim girl be kept in a sealed cover and be sent to the I.O. of this case along with the CD through P.P.

Return back the CD to I.O. through Learned P.P. along with a copy of this order. Send down the LCR, if any, called for along with a copy of this order.

With this observation, this bail application stands disposed of.

**MOUMITA DATTA**

Digitally signed by MOUMITA

DATTA

Date: 2025.04.25 07:52:56 +05'30'

**JUDGE**