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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ W.P.(CRL) 1590/2025, CRL.M.A. 14915/2025 & CRL.M.A.
14916/2025

KULJEET SINGH MAKAN Petitioner

Through: Ms. Sumati Sharma, Advocate

versus

CBI Respondent

Through: Ms. Anubha Bhardwaj, SPP for CBI
with Ms. Mehak Arora, Ms. Astha
Dwivedi, Ms. Muskan Narang,
Advocates

CORAM:
HON'BLE MR. JUSTICE SANJEEV NARULA

ORDER
14.05.2025

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1. The present writ petition under Article 226 of the Constitution of India read with Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023¹ (corresponding to Section 482 of the Code of Criminal Procedure, 1973²) seeks quashing of the FIR No. RC-07(S)/2020/SC-III/ND under Section 14 of the Protection of Children from Sexual Offences Act, 2012³ and Section 67-B of Information Technology Act, 2000⁴.
2. A chargesheet has also been filed against the Petitioner by the Respondent – Central Bureau of Investigation⁵ and the case has advanced to

¹ “BNSS”

² “Cr.P.C.”

³ “POCSO Act”

⁴ “IT Act”

⁵ “CBI”



the stage of trial. Charges have also been framed against the Petitioner under Sections 419 and 120-B of the Indian Penal Code, 1860⁶, Sections 67-A and 67-B of the IT Act and Sections 14 and 15 of the POCSO Act. Despite this progression, the Petitioner seeks to invoke the writ jurisdiction of this Court to challenge the very registration of the FIR.

3. At the outset it is considered appropriate to clarify that in line with the directions of the Supreme Court in *Just Rights for Children Alliance & Anr. v. S. Harish & Ors.*⁷, the term “Child Sexual Exploitative and Abuse Material⁸” is to be used to refer to pictures and videos of children in sexually explicit and exploitative scenarios. The broad factual background of the case is as follows:

3.1. On 16th September, 2020, the subject FIR was registered by the CBI against one Mr. Neeraj Kumar Yadav, under Section 67-B of IT Act and Sections 14 & 15 of POCSO Act. The FIR contains allegations against him pertaining to his involvement in selling/sharing of CSEAM over the internet through social media. It is alleged that he had also been indulging in the use of children for pornographic purposes; publishing or transmitting of material depicting children in sexually explicit acts; creating text or digital images of such kind, collecting, advertising, promoting, exchanging and distributing material in electronic form depicting children in obscene or indecent or sexually explicit manner, etc. Accordingly, the subject FIR was registered and investigation was taken up.

3.2 Anticipating that the accused may attempt to destroy or conceal digital evidence, the CBI seized his mobile phone and other electronic

⁶ “IPC”

⁷ 2024 SCC OnLine SC 2611



devices from his permanent address.

3.3 During custodial interrogation, Neeraj Kumar Yadav admitted to operating multiple Instagram accounts, through which he identified and interacted with other users engaged in the sale of CSEAM. He disclosed that, after observing advertisements and content highlights promoting the sale of such material on Instagram, he familiarised himself with the methods of purchase and distribution on the platform. Thereafter, he began uploading similar promotional content on his own Instagram accounts, inviting interested buyers to contact him. Payments were received *via* his Paytm account, following which he would share download links hosted on cloud-based storage platforms, thereby enabling direct access to CSEAM.

3.4 Neeraj Kumar Yadav further disclosed that in or around December 2019, the Petitioner – Mr. Kuljeet Singh Makan – had contacted him *via* Instagram and offered access to a vast repository of illicit digital content, including adult movies, adult comics, videos depicting sexual violence, and CSEAM. Neeraj stated that the Petitioner shared with him a link containing approximately 500–600 albums comprising such material. In return, Neeraj made multiple payments through Paytm to the Petitioner’s account.

3.5 Pursuant to this lead, the Petitioner was summoned and examined by the CBI. During his interrogation, the Petitioner allegedly admitted to being engaged in the sale and purchase of objectionable content, including CSEAM, using multiple Instagram accounts. His mobile phone was thereafter seized and taken into custody for forensic examination.

3.6 Upon forensic scrutiny of the Petitioner’s phone and Instagram communications, the investigating agency allegedly uncovered evidence

⁸ “CSEAM”



indicating the Petitioner's active role in selling and distributing CSEAM. Further corroboration was reportedly obtained from Paytm transaction records linking the Petitioner and co-accused Neeraj Kumar Yadav.

3.7 In light of the above, a case was registered against the Petitioner and the co-accused Neeraj Kumar Yadav for the offences punishable under Section 120-B of IPC read with Section 67-A, 67-B of the IT Act and Section 14 and 15 of the POCSO Act. After completion of the investigation was completed, the chargesheet was filed on 11th January, 2021 and subsequently, charges were framed by the Trial Court.

4. Ms. Sumati Sharma, counsel for the Petitioner, urges the following grounds for seeking quashing of the subject FIR:

4.1 There is no allegation made in the FIR against the Petitioner. His involvement was purportedly brought to light only during the course of investigation, based solely on the disclosure statement of co-accused Neeraj Kumar Yadav. It is argued that such disclosure, uncorroborated by any independent material, cannot form the basis for initiating proceedings against the Petitioner.

4.2 The allegations levelled in the chargesheet are not only unsubstantiated but also motivated and *mala fide*. The Petitioner has been falsely implicated without any credible evidence linking him to the alleged offence. The narrative against the Petitioner appears to have been constructed post facto, and as such, the continuation of proceedings against him amounts to an abuse of the process of law. The Petitioner has neither met the co-accused in person nor communicated with him telephonically.

4.3 The data received from Google confirms only three email IDs as being associated with the Petitioner. It is argued that the Cyber Tipline



Reports, as relied upon by the CBI, do not attribute any specific actionable content to the Petitioner and thus fails to support the prosecution's version.

4.4 On the applicability of POCSO Act, it is submitted that no evidence has been found indicating that the Petitioner used or engaged any child for pornographic purposes. There is neither any child discovered in the custody of the Petitioner nor any complaint filed by an alleged victim or their guardian. Accordingly, it is argued that the essential ingredients of the offence under Section 14 of the POCSO Act are not made out.

4.5 It is further urged that, in the absence of any reliable mechanism or conclusive determination of the age of persons depicted in the allegedly objectionable digital material recovered from the Petitioner, the invocation of Section 15 of the POCSO Act is wholly untenable. Even assuming, without admitting, that the Petitioner viewed such content, such conduct, absent any proof of involvement in its creation or distribution, does not attract penal liability under Sections 14 or 15 of the POCSO Act.

4.6 There is no documentary evidence adduced by the investigating authorities to establish that there were payments/trade of CSEAM between Petitioner and co-accused or any other person. Therefore, the entire case of the prosecution is unsustainable and ill motivated.

5. The Court has considered the aforementioned contentions. The prosecution's case against the Petitioner does not rest solely on the disclosure statement made by him during custodial interrogation, which the Petitioner now disputes, but is fortified by substantial electronic and documentary evidence gathered during the course of investigation. As recorded in the chargesheet dated 11th January, 2021, multiple digital identifiers including email IDs, Instagram accounts, cloud storage links, and



associated mobile numbers were traced to the Petitioner. These accounts bore usernames overtly suggestive of their illicit purpose, such as “picseller2021” and “promotion.of.girlsss” and were found to have been actively used for trafficking CSEAM. To this effect, the chargesheet dated 11th January, 2021, notes as follows:

“16.12. That during investigation, it has been established that accused Kuljeet Singh Makan is the user of email IDs (i) kxxxxxxxxx82@gmail.com; (ii) kxxxxxxxxx13@gmail.com; (iii) kxxxxxxxxxxxx11@gmail.com; (iv) txxxxxxxxx1@gmail.com; (v) axxxxxxxxx20@gmail.com; and (vi) kxxxxxxxxx82@gmail.com and mobile number i.e. +919xxxxxxxx1.

16.13. That during investigation, it has been established that accused Kuljeet Singh Makan was having 09 Instagram Accounts which he created by giving the details of his email IDs i.e. (i) kxxxxxxxxx82@gmail.com; (ii) kxxxxxxxxx13@gmail.com; (iii) kxxxxxxxxxxxx11@gmail.com; and mobile number i.e. +919xxxxxxxx1. The detail of those 09 accounts is attached as Annexure-P/2. It is pertinent to mention here that the names of some of the accounts itself reveals that these accounts were specifically created for purpose of selling the pictures/ videos only for e.g. picseller2021 and promotion.of.girlsss.

16.14. That during investigation, it has been established that out of the 09 Instagram Accounts of accused Kuljeet Singh Makan, Cyber Tipline Reports were found to be generated in respect of 02 accounts.

16.15. That during investigation, evidence in the form of Cyber Tipline Reports, established that both accused Neeraj Kumar Yadav and Kuljeet Singh were involved in advertising and publishing the advertisements through their Instagram Accounts pertaining to child pornography.

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16.18. That during investigation, it has been established that accused Kuljeet Singh Makan is having 02 accounts at www.mega.nz which were created by him with email IDs i.e. kxxxxxxxxx82@gmail.com and kxxxxxxxxxxxx11@gmail.com, where he used to store all objectionable / obscene material including the child pornography material.

16.19. That during investigation, it has been established that accused Kuljeet Singh Makan, in his above mentioned accounts at www.mega.nz,



has stored objectionable material including the child sexual abusive material. There is sufficient evidence, both oral and documentary, establishing that the videos / photos found in the possession of accused Kuljeet Singh Makan contains adult pornography as well child pornography material.

16.20. That during investigation, the scrutiny of the data of the mobile phone of accused Neeraj Kumar Yadav established the availability of incriminating material i.e. material pertaining to child sexual abuse / child pornography material. It is evident through the advertisements available in the mobile phone of accused Neeraj Kumar Yadav that he was indulging in sale of objectionable material including the child pornography material.

16.21. That during investigation, the scrutiny of the data established availability of pornography material in the handset of accused Kuljeet Singh Makan. It has also been established through the Instagram chats available in the mobile phone of accused Kuljeet Singh Makan that he was indulging in sale/purchase of objectionable material.

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16.23. That investigation has established that mobile number 9xxxxxxx1 is being used by accused Kuljeet Singh Makan s/o Late Daljit Singh Makan r/o xxxxxxxxxxxx New Delhi. Evidence in the form replies received from Google, Facebook, Pay-Tm, NCRB and Mega.nz establishes that in every account created by accused Kuljeet Singh Makan, he has given mobile 9xxxxxxx1 while creating/registering the accounts”

[Emphasis supplied]

6. The evidentiary trail includes not only metadata and user credentials but also communication logs, Cyber Tipline Reports, and storage data from the cloud platform www.mega.nz, which confirm that the Petitioner maintained multiple repositories of objectionable content. The material seized from his mobile device, including Instagram chats, further corroborates his role in the circulation and sale of CSEAM. This is not a case of passive possession; the digital footprint unmistakably indicates that the Petitioner operated as a conduit in an online network dealing with the



commercial dissemination of sexually explicit content involving minors.

7. It is also relevant that the mobile phones of both the Petitioner and co-accused Neeraj Kumar Yadav were subjected to forensic analysis, the results of which substantiate the presence of the incriminating material forming the basis of the prosecution's case. In light of such findings, the contention that the Petitioner's prosecution is premised only on the co-accused's confession is plainly incorrect and contrary to the record.

8. Turning to the statutory argument raised with respect to Section 14 of the POCSO Act, the Court finds no merit in the contention that the offence for "using a child for pornographic purposes" must necessarily mean direct participation of the accused in the creation of CSEAM. Section 2(da) of the Act defines "child pornography" expansively, to mean "*any visual depiction of sexually explicit conduct involving a child which include photograph, video, digital or computer generated image indistinguishable from an actual child and image created, adapted, or modified, but appear to depict a child.*" Thus, it is clear that the definition itself includes not only real depictions but also digitally altered images of a child engaged in sexually explicit conduct.

9. Moreover, the explanation to Section 13 of the Act clarifies the meaning of the phrase "use a child", as follows:

"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.”

[Emphasis supplied]

10. Thus, the phrase “use of child” as mentioned in Section 13 and Section 14 of the Act includes activities such as offering, transmitting, publishing, and distributing pornographic material involving children, through any medium or technology. The legislative intent is manifest—to criminalise every link in the chain of child exploitation, including those who knowingly circulate such content for sexual gratification or commercial gain.

11. Similarly, the argument regarding the absence of a complaint by any victim or guardian is also wholly misconceived. The offence under Section 14 is a substantive offence independent of any victim’s complaint and is cognizable once the investigating agency comes into possession of material indicating circulation of CSEAM. Section 14 of the Act, which prescribes the punishment for using a child for pornographic purposes, reads as follows:

*“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).”

[Emphasis supplied]

12. It is clear from the words used by the legislature, that under sub-section (1) of Section 14, the emphasis is on the expression, “*whoever uses a child or children for pornographic purposes*”, whereas the offence envisaged in terms of sub-section (2) is in relation to scenarios where a person directly participates in the sexual acts with a child and also commits offences under Section 3, 5, 7 or 9 of the POCSO Act. As such, for the offence under Section 14 to be attracted, it is immaterial whether a victim or their guardian has come forward or not.

13. As to the argument that the prosecution has failed to determine the precise age of the children depicted in the material, it must be noted that where the content itself, whether images or videos, visibly portrays individuals who appear to be children, the statutory presumption under Section 29 of the POCSO Act operates against the accused. This presumption, coupled with digital markers and metadata, provides the investigative agency with a legitimate foundation to proceed against the accused. The legislature has consciously adopted a broad and inclusive definition of CSEAM to forestall precisely the kind of evidentiary gaps that traffickers might exploit.

14. In light of the above, at this stage, the Court finds no basis to quash the ongoing criminal proceedings against the Applicant. Rather, there is material on record which justifies the proceedings against the Petitioner, particularly when he has been found to not only possess large amounts of CSEAM, but the evidence uncovered during investigation also reveals that he was actively involved in distribution/supply/sale of CSEAM over the



internet.

15. In light of the above, in the opinion of the Court, no ground is made out to grant the relief sought in the present petition.

16. Accordingly, the present petition is dismissed along with pending applications.

SANJEEV NARULA, J

MAY 14, 2025/ab