

# Yogesh vs State (G.N.C.T. Of Delhi) on 16 October, 2020

**Author: Anup Jairam Bhambhani**

**Bench: Anup Jairam Bhambhani**

via Video-conferencing

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\* IN THE HIGH COURT OF DELHI AT NEW DELHI  
+ BAIL APPLN. 1816/2020  
YOGESH

..... Applicant

Through: Mr. Abhijat Bal and Mr. Mukesh  
Vatsa, Advocates with Mr. Manish  
Kumar, Advocate.  
Mr. Ram Kishore Singh Yadav,  
Advocate alongwith Mr. Ajay Kumar,  
paikar of the applicant.

versus

STATE (G.N.C.T. OF DELHI) ..... Respondent  
Through: Mr. Tarang Srivastava, APP for the  
State.

CORAM:  
HON'BLE MR. JUSTICE ANUP JAIRAM BHAMBHANI  
ORDER

% 16.10.2020 Written submissions dated 21.07.2020 and 01.09.2020 have been filed on behalf of the applicant. Written submissions dated 14.10.2020 have been filed on behalf of the State.

2. When this bail application was initially filed, certain photographs of the minor prosecutrix were filed alongwith therewith, which were, to say the least, wholly inappropriate. In fact prima-facie the filing of the photographs appears to be an offence under section 15 of the POCSO Act and section 228A of IPC.

3. When this was brought to its notice, vide order dated 21.07.2020 this court directed that the photographs filed be forthwith removed from the electronic file and be retained in a separate pass-code locked folder.

4. Vide order dated 21.07.2020, this court also issued notice to the applicant's paikar, who is his father, and who had filed the affidavit in support of the application, to show cause as to why proceedings be not initiated against him inter alia under section 15 of the POCSO Act and section 228A of IPC for filing such photographs in the matter.

5. At that stage Mr. Manish Kumar, learned counsel who was then representing the applicant in the matter had also explained the circumstances in which the offending photographs had come to be filed alongwith the bail application.

6. Subsequently, Mr. Manish Kumar sought discharge from the matter and Mr. Ram Kishore Singh Yadav, learned counsel appeared for the applicant in his stead. Vidé order dated 03.09.2020 however, it was recorded that the issue of Mr. Manish Kumar's discharge would be considered subsequently.

7. Today Mr. Abhijat Bal, learned counsel has appeared on behalf of Mr. Manish Kumar and submits that the offending photographs were contained in the applicant's cell phone, which was handed-over to the Investigating Officer (I.O.) subsequently in the course of investigation; but before that, print-outs of the photographs were taken only for purposes of filing alongwith the present bail application but no other copies of such photographs, whether physical or electronic, are available with Mr. Manish Kumar.

8. Mr. Abhijat further submits that the applicant's cell-phone containing the photographs was given to Mr. Manish Kumar by the applicant's pairokar Mr. Ajay Kumar, who took print-outs only for use in these proceedings under the bona fidé, though as it turns-out a misconceived, belief that such photographs could be relied upon for purposes of the present proceedings in view of section 15(2) of the POCSO Act, namely 'for use as evidence in court', which sub-section carves-out an exception to the prohibition on storage and possession of pornographic material involving a child with intention to share or transmit.

9. It is submitted that Mr. Manish Kumar, though enrolled at the bar in 1998 initially worked for a company as in-house counsel and started independent practice only in 2013; and did not comprehend that the filing of the offending photographs in bail proceedings may not fall within the exception contained in section 15(2) of the POCSO Act. Mr. Abhijat further explains that it would also appear on a bare reading that section 228A IPC is not applicable to the present case since the FIR in the present case has been filed under sections 354A/ 354D/506 IPC and section 12 of the POCSO Act but section 228A IPC does not apply to any of those offences.

10. Be that as it may, and legality apart, Mr. Manish Kumar, who has also joined the video-conference hearing in-person, submits that obviously, he came into possession of the offending photographs when they were handed-over to him by the pairokar; furthermore, he was under a wholly mistaken, though bona fidé, impression that filing of the photographs in court in bail proceedings would not amount to an offence; and the photographs came to be filed at the instance and on the instructions of the pairokar. Mr. Kumar also submits that since the bail application was filed electronically, he was not aware as to how the documents could be filed confidentially in 'sealed cover' or in a pass-code locked folder.

11. All else notwithstanding, Mr. Manish Kumar tenders an absolute and unconditional apology and expresses the deepest contrition in having placed the photographs in the present proceedings at all; and in any case without ensuring that they were in sealed cover/ pass-code locked folder. Mr. Kumar further submits that any adverse view of his professional conduct taken in this case would have a devastating effect on his fledgling private practice for an inadvertent, though grave, error of understanding the legal position. Mr. Kumar states, that regardless of instructions received from clients, he would never repeat such conduct and that would be extremely circumspect in all his

professional work in the future.

12. While not condoning the recklessness with which the offending photographs have come to be filed in the present proceedings but forbearing from taking a harsh view in light of the apology tendered and contrition expressed by Mr. Kumar, which this court believes to be genuine and bona fide, this court deems it appropriate not to initiate any proceedings against Mr. Manish Kumar, Advocate. This court believes that the filing of the offending photographs was a bona- fide error of professional judgement on Mr. Manish Kumar's part that he was only using the photographs as evidence in the bail proceedings. This court however cautions Mr. Manish Kumar to exercise full circumspection and care in his professional conduct and dealings in the future.

13. Accordingly, Mr. Manish Kumar is discharged from the present proceedings.

14. List for further consideration on 9th November 2020, at the end of Board, via individual web-link.

15. Let the pairor Mr. Ajay Kumar remain present on the next date of hearing as well.

ANUP JAIRAM BHAMBHANI, J.

OCTOBER 16, 2020/Ne