

NAFR

**HIGH COURT OF CHHATTISGARH, BILASPUR**

**CRR No. 139 of 2023**

- Shubham Sahu, S/o Dwarika Prasad, Aged About 22 Years, R/o House No. 129, Arjun Nagar, Camp- 1, Bhilai, Police Station Vishali Nagar, District : Durg, Chhattisgarh.

**---- Applicant**

**Versus**

- State of Chhattisgarh, Through - The Station House Officer, Police Station Vishali Nagar, District : Durg, Chhattisgarh.

**---- Non-Applicant**

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For Applicant : Mr. Rajeev Shrivastava, Learned Senior Advocate with  
Ms. Monika Singh, Advocate

For Non-Applicant : Mr. Lalit Jangde, Deputy Government Advocate

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**Hon'ble Shri Justice Rakesh Mohan Pandey**

**Order on Board**

**08.02.2023**

Heard.

1. This criminal revision has been filed against the order of framing of charge against the present applicant for the offence punishable under Section 67 (B) of the Information Technology Act (for short, 'I.T. Act') and Sections 13 and 15 of the Protection of Children from Sexual Offences Act (for short, 'POCSO Act'), dated 09.01.2023, in Special Criminal Case No. 03/2023, whereby, learned Additional Sessions Judge Fourth FTSC, POCSO, District – Durg, Chhattisgarh, in connection with Crime No. 260/2022, registered at Police Station Vaishali Nagar, Durg, Chhattisgarh.
2. The case, in nutshell, is that National Center for Missing &

Exploited Children (for short, 'NCMEC'), detected transmission of child pornography by mobile phone No. 8602316255, which was sent to mobile No.+918269367602. Thereafter, a report was sent to the National Crime Records Bureau (for short, 'NCRB'), and in an enquiry, it was found that a meme containing child pornography, has been transmitted by the present applicant by using his mobile phone to someone. Consequently, information was given to the police of territorial jurisdiction and Crime No. 260/2022, was registered on 03.11.2022, against the present applicant.

3. Learned counsel for the applicant would submit that the investigating agency has shown International Mobile Equipment Identity Number (for short, 'IMEI') of the mobile phone of the applicant in 16 digits, whereas according to the standard operating procedure, issued by the Government of India, it cannot be more than 15 digits. He would further submit that the the prosecution agency has not seized mobile set of the applicant, and only sim card has been seized and there are no contents of child pornography. Mere on suspicion, FIR has been registered and charges have been framed by the trial Court as the offence has not deliberately been committed by him. He would further submit that the applicant is a student, therefore, charges framed against him may be set-aside.
4. Learned counsel for the State would submit that NCRB after due enquiry, sent a report to the police station for registration of an FIR against the present applicant and there is sufficient material against him. Internet Protocol address (for short, 'IP address') has been verified by the NCMEC as well as NCRB and it reflects from the charge-sheet that one meme of child pornography was transmitted by the present applicant by using his mobile.
5. I have heard learned counsel for the parties and perused the

charge-sheet.

6. Section 67 B of the IT Act reads as under:-

“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.]

7. Section 13 of the POCSO Act reads 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.”

8. These both provisions have been enacted to punish a person, who is involved in transmitting the material depicting the children in sexually explicit act. From the charge-sheet, it appears that a meme of child pornography was transmitted by the present applicant and his sim was seized. I. P. address of the mobile phone of the present applicant has also been verified by the NCRB as well as NCMEC. Prima-facie, charge framed by the trial Court is made out, consequently, the instant Criminal Revision is dismissed.

9. Observations made hereinabove are only for the purpose of deciding this Criminal Revision, the learned trial Court shall decide the case on its own merits.

Sd/-  
**(Rakesh Mohan Pandey)**  
**Judge**