

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**  
**NAGPUR BENCH, NAGPUR.**

**CRIMINAL WRIT PETITION (WP) NO.479 OF 2022**

Lakshya S/o. Pankaj Sahgal and ors.

.VS.

State of Maharashtra & Anr.

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Office Notes, Office Memoranda of Coram,  
appearances, Court's orders of directions      Court's or Judge's orders.  
and Registrar's Orders.

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Mr R. S. Kurekar, Advocate for the petitioners

Mr H. D. Dubey, APP for the State/respondent No.1

**CORAM : G.A. SANAP, J.**

**DATE : JANUARY 04, 2023.**

In this writ petition, challenge is to the order dated 31.03.2022, passed by the learned Special Judge, (POCSO Court), Nagpur, whereby the application (Exh. 16), made by the accused persons for their discharge from Crime No. 454 of 2020, Charge-sheet No. 42 of 2021 registered by Police Inspector of Cyber Police Station, Nagpur for commission of the offence under Section 67-B of the Information Technology Act, 2000 (For Short "I.T. Act") and Section 15(1) and (3) of the Protection of Children From Sexual Offences Act, 2012 (For Short "POCSO Act"), came to be rejected.

2. It is the case of the prosecution against the accused persons that they committed the offences between 03.02.2020 and 11.12.2020 at Mankapur, Nagpur. It is stated that accused No.1 aired pornographic video on his instagram account from his mobile No. 7288906313. The investigation conducted by the Cyber Cell and Forensic Team revealed that the said porn video was aired by accused

No.1 to his friends, accused Nos. 2 and 3. The accused persons not only watched, but also stored the porn video in their mobile phones and aired the same to their friends. The porn video stored and aired was of one lady, who was dancing and one small child was doing indecent act with her. The evidence further revealed that in the video the lady was seen provoking the child for doing indecent acts by removing the pant of the child and displaying his private part. The information of the crime was received by Cyber Police Station, Nagpur from the officer of Maharashtra Cyber Cell, Mumbai. Based on the said information, the crime came to be registered and resulted into filing of charge-sheet against the accused persons.

3. After filing of the charge-sheet, on the above allegations, the petitioners applied for discharge. According to them, there is no evidence to frame charge against them. They are the students. They are young. They don't have any criminal antecedents. They are from reputed family. It is further stated that they are not the creator of the alleged porn video. Accused No.1 received video from other sources and in turn, he forwarded the same to his friends i.e. accused Nos. 2 and 3. According to them, they are not directly or indirectly concerned with the porn video. The offences alleged to have been committed by them have not been made out against them. The case in question is not a fit case to frame charge against them.

4. The State has opposed this petition. The State has mainly relied upon the porn video and other documents compiled in the charge-sheet. According to the respondents, the

material collected during the course of investigation disclosed the involvement of accused persons in commission of crime. The acts committed by them squarely fall within the ambit of Section 67-B of the I. T. Act and Section 15(1) and (3) of the POCSO Act.

5. Learned Special Judge, on going through the material placed on record, for the limited purpose, opined that the material on record is sufficient to reject the prayer made by the accused persons for their discharge. In short, the learned Special Judge has come to the conclusion that the material is sufficient to frame the charge for the above mentioned offences. Being aggrieved by this order, the petitioners are before this Court.

6. I have heard learned Advocate Shri R. S. Kurekar for the petitioners and learned APP Shri H. D. Dubey for the State. Perused the record and proceedings.

7. Perusal of the order passed by the learned Special Judge would show that the learned Special Judge on the basis of *prima facie* analysis of the case of prosecution and the material compiled in the charge-sheet came to the conclusion that the offences are *prima facie* made out. Learned Advocate for the accused persons submits that the accused Nos.1 to 3 are not the creator or manufacturer of the porn video. It is submitted that the accused persons cannot be made to face the ordeal of criminal trial for forwarding the porn video created by third person. Learned APP submitted that the act of the accused persons to

store and forward the porn video is itself an offence under Section 67-B of the I. T. Act and Section 15(1) and (3) of the POCSO Act. Learned APP submitted that at this stage, on the basis of the material placed on record, no case has been made out for discharge.

8. With the assistance of the learned Advocate for the accused and the learned APP for the State, I have gone through the provisions of Section 67-B of the I. T. Act and Section 15 of the POCSO Act. The main allegation against the accused is that they stored, forwarded and shared with each other porn video. Even if it is assumed for the sake of argument that they are not creators of the porn video, in my view, the benefit of discharge cannot be granted to them. Section 15 of the POCSO Act reads thus:

*“15 Punishment for storage of pornographic material involving child – (1) Any person, who stores or possesses pornographic material in any form involving a child, but fails to delete or destroy or report the same to the designated authority, as may be prescribed, with an intention to share or transmit child pornography, shall be liable to fine not less than five thousand rupees, and in the event of second or subsequent offence, with fine which shall not be less than ten thousand rupees.*

*(2) Any person, who stores or possesses pornographic material in any form involving a child for transmitting or propagating or displaying or distributing in any manner at any time except for the purpose of reporting, as may be prescribed, or for use as evidence in court, shall be punished with imprisonment of either description which may extend to three years, or with fine, or with both.*

*(3) Any person, who stores or possesses pornographic*

***material in any form involving a child for commercial purpose shall be punished on the first conviction with imprisonment of either description which shall not be less than three years which may extend to five years, or with fine, or with both, and in the event of second or subsequent conviction, with imprisonment of either description which shall not be less than five years which may extend to seven years and shall also be liable to fine.”***

9. In my view, perusal of Section 15 of the POCSO Act in entirety would show that the act of the accused persons to store, forward and possess pornographic material involving a child is squarely covered under Section 15(1) and (2) of the POCSO Act. They failed to delete or destroy or report the same to the designated authority. As per the case of the prosecution, they stored, possessed and circulated the said porn video. Therefore, in my view, at this stage, it is very difficult for the accused to come out of the tentacles of Section 15(1) and (2) of the POCSO Act.

10. Section 67-B of the I. T. Act provides a punishment for publishing or transmitting the material depicting children in Sexually explicit act, etc., in an electronic form. If the basic ingredient of Section 67-B, *prima facie*, are applied to the facts of the case on hand, it would show beyond doubt that the act of the accused is squarely covered within the ambit of Section 67-B of the I. T. Act. In my view, in the teeth of the allegations against the accused and the material collected during the course of investigation and compiled in the charge-sheet, it would be very

difficult to accept the contention of the accused persons. It is true that the applicants are young. They are students. They are from reputed family. However, while deciding the discharge application this could not be the consideration. If this submission is accepted on this ground then this would be nothing short of showing misplaced sympathy to the persons who are *prima facie* accused of the commission of offence.

11. It will not be out of place to mention that the Hon'ble Supreme Court of India in the case of **Tarun Jit Tejpal .v/s. State of Goa and Anr**<sup>1</sup> has settled the legal position on this issue. In this case the Hon'ble Supreme Court has considered the earlier decisions on the same point in the cases of *Sajjan Kumar .v/s. Central Bureau of Investigation*<sup>2</sup> and *Vikram Johar .v/s. State of Uttar Pradesh and Anr*<sup>3</sup>. It is held that at the stage of framing of charge or deciding the application for discharge, the Court is not expected to go deep into the matter and hold that the material would not warrant a conviction. It is held that what needs to be considered is whether there is a ground of presuming that the offence has been committed and not whether a ground for convicting accused has been made out. It is held that if the Courts think that accused might have committed the offence on the basis of materials on record on its probative value, it can frame the charge; though for conviction, Court has to come to the conclusion that accused has committed the offence. It is held that the law does not permit a mini trial while deciding the matter

1 (2020)17SCC 556

2 2010 (9) SCC 368

3 (2019)14 SCC 207

at the stage of discharge application or at the stage of framing of charge. In my view, this settled legal position is squarely applicable to the case on hand and it is against the accused persons. In view of this, I do not see any substance in the petition.

12. The petition stands dismissed.

(G. A. SANAP, J.)

*Namrata*