ITEM NO.34 COURT NO.5 SECTION II-C

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

MISCELLANEOUS APPLICATION Diary No(s).41028/2026

IN

CRIMINAL APPEAL NOS. 2161-2162 OF 2024

JUST RIGHTS FOR CHILDREN ALLIANCE & ANR. **Applicant(s)/Petitioner(s)**

VERSUS

S. HARISH & ORS. **Respondent(s)**

IA No. 196488/2026 - APPROPRIATE ORDERS/DIRECTIONS
IA No. 218386/2026 - CONDONATION OF DELAY IN FILING

Date: 14-08-2026 This matter was called on for hearing today.

CORAM :
HON'BLE MR. JUSTICE J.B. PARDIWALA
HON'BLE MR. JUSTICE K. VINOD CHANDRAN

For Petitioner(s) :Mr. H.S. Phoolka, Sr. Adv.
Mr. Bhuwan Ribhu, Adv.
Ms. Rachna Tyagi, Adv.
Mr. Saksham Maheshwari, AOR
Ms. Shashi, Adv.
Ms. Taruna Panwar, Adv.
Ms. Surabhi Katyal, Adv.
Ms. Surpreet Kaur, Adv.
Mr. Kartik Goyal, Adv.
Mr. Jasraj Singh Chhabra, Adv.

For Respondent(s) :Mr. Prashant S Kenjale, Adv.
Ms. Damini Vishwakarma, Adv.
M/s Juristrust Law Offices, AOR

UPON hearing the counsel the Court made the following

Signature Not Verified
Digitally signed by HARPREET KAUR
Date: 2026.08.17 10:02:21 IST
Reason:

O R D E R

1. **Delay condoned.**

2. In this Miscellaneous Application, the applicants have brought to our attention certain serious concerns regarding lapses on the part of social media intermediaries in complying with: (i) the due diligence obligations cast upon them under the Information Technology Act, 2000; and (ii) the mandatory reporting obligations under Section(s) 19, 20 and 21 of the Protection of Children from Sexual Offences Act, 2012 (“POCSO Act”) read with Rule 11 of the Protection of Children from Sexual Offences Rules, 2020 (“POCSO Rules”).

3. The learned counsel for the applicants submitted that there are news reports flagging alleged incidents of paid advertisements promoting Child Sexual Exploitation and Abuse Material (“CSEAM”) on social media platforms, whereby users are redirected to other websites or social media platforms, where such material is offered for monetary consideration. It is alleged that such incidents have been on the rise, despite certain advertising review mechanisms in place by the intermediaries. Further, he submitted that the social media intermediaries are reporting the incidents of CSEAM to the National Centre for Missing & Exploited Children, United States of America, but are failing to report to the authorities specified under Section 19 of the POCSO Act, i.e.,

the Special Juvenile Police Unit (SJPU) or the local police.

4. In lieu of the same, the applicants have prayed for the following reliefs:

> ***"(a) Issue an appropriate direction directing the Union of India to formulate and notify a Standard Operating Procedure (SOP) prescribing a uniform protocol to be followed by all intermediaries covering the end-to-end process of user interface or content uploading inter alia including detection or reporting of CSEAM, mandatory reporting to the competent law enforcement agency, reporting formats and timelines for compliance, preservation of electronic evidence, identification and preservation of IP address information, sharing of such information with investigating agencies, inter-agency coordination, and victim-centric safeguards;***
>
> ***(b) Issue an appropriate direction directing the Union of India to ensure that, upon identification of any person involved in the creation, uploading, publishing, transmitting, storing, accessing, viewing, downloading, advertising, promoting, or dissemination of CSEAM, the particulars of such person are promptly uploaded to the National Database of Sexual Offenders (NDSO), in accordance with law, to facilitate investigation, inter-agency coordination, and prosecution.***
>
> ***(c) Issue an appropriate direction directing the Union of India to ensure that every report received from an intermediary is promptly acted upon by the designated law enforcement agency by way of registration, investigation and all other necessary legal action in accordance with law;***
>
> ***(d) Issue appropriate directions to the Union of India to ensure that, where any social media***

intermediary or online platform fails to comply with the mandatory reporting obligations under Sections 19 and 20 of the Protection of Children from Sexual Offences Act,2012, read with Rule 11 of the Protection of Children from Sexual Offences Rules, 2020, immediate appropriate criminal proceedings are initiated against such intermediary in accordance with law; and

(e) Issue an appropriate directions directing the Union of India to establish, operationalise and maintain a secure centralised online reporting portal for mandatory reporting by all intermediaries, including Social Media Intermediaries, of every identified or detected instance of Child Sexual Exploitation and Abuse Material(CSEAM) and other digital child sexual abuse offences, enabling the submission of, inter alia, the details of the offending account, URL, date and time of upload, action taken by the intermediary, IP address(es), device identifiers (where available), account identifiers, upload logs, metadata, algorithm, and all other relevant electronic evidence necessary to facilitate timely investigation and prosecution, inter-agency coordination and prosecution.

(f) Pass such further direction(s) as this Hon'ble Court may deem fit and proper for securing effective implementation of the judgment dated 23.09.2024 and for ensuring protection of children from online sexual exploitation and abuse."

5. **What has been brought to our notice is a matter of serious concern and merits our full and anxious consideration.**

6. **By judgment dated 23.09.2024, rendered in the main matter, this Court had observed as follows:**

"254. The role of "intermediaries" as defined

under Section 2(w) of the IT Act in checking the proliferation of child pornography is significant. Section 79 of the IT Act, 2000 which relates to due diligence that is to be observed by an intermediary, provides an exemption from liability to such intermediaries in certain cases if they are in compliance with the due-diligence requirements prescribed under the said provision, more particularly sub-section (3)(b), this is known as the "safe harbour" protection or provision. "Safe Harbour" protection means that an intermediary will not be held liable for any third-party information, data, or communication link made available or hosted by him. As per sub-section (2), in order to avail such protection, the intermediary foremost must not in any manner be involved in either initiating the transmission, or the receipt or the modification of the third-party data or information in question, and further is required to observe due diligence while discharging his duties under the IT Act and to also observe such other guidelines as the Central Government may prescribe in his behalf. Subsection (3)(b) of the above-mentioned provision stipulates that if an intermediary receives actual knowledge or is notified by the appropriate government or its agency that any information, data, or communication link residing in or connected to a computer resource controlled by the intermediary is being used to commit an unlawful act, the intermediary must expeditiously remove or disable access to that material on that resource without compromising the evidence in any manner. It further states that the protection under Section 79 lapses and does not apply if the intermediary has conspired or abetted or aided or induced, whether by threats or promise or otherwise in the commission of the unlawful act, or if upon receiving "actual knowledge", or if the intermediary fails to expeditiously remove or disable access to that material on that resource without vitiating the evidence in any manner on being notified by the appropriate Government or its agency that any information, data or communication link residing in or connected to a computer resource controlled by the intermediary is being used to commit the unlawful act. The relevant provision reads as under:—

> ***"79. Exemption from liability of intermediary in certain cases.—***
>
> ***(1) Notwithstanding anything contained in***

any law for the time being in force but subject to the provisions of sub-sections (2) and (3), an intermediary shall not be liable for any third-party information, data, or communication link made available or hosted by him.

(2) The provisions of sub-section (1) shall apply if—

(a) the function of the intermediary is limited to providing access to a communication system over which information made available by third parties is transmitted or temporarily stored or hosted; or

(b) the intermediary does not—

(i) initiate the transmission;

(ii) select the receiver of the transmission; and

(iii) select or modify the information contained in the transmission;

(c) the intermediary observes due diligence while discharging his duties under this Act and also observes such other guidelines as the Central Government may prescribe in this behalf.

(3) The provisions of sub-section (1) shall not apply if—

(a) the intermediary has conspired or abetted or aided or induced, whether by threats or promise or otherwise in the commission of the unlawful act;

(b) upon receiving actual knowledge, or on being notified by the appropriate Government or its agency that any information, data or communication link residing in or connected to a computer resource controlled by the intermediary is being used to commit the unlawful act, the intermediary fails to expeditiously remove or disable access to that material on that resource without vitiating the evidence in any manner.

Explanation.—For the purposes of this section, the expression 'third-party information' means any information dealt with by an intermediary in his capacity as an intermediary."

255. Rule 11 of the Protection of Children from Sexual Offences Rules, 2020 (for short, the "POCSO Rules"), places an obligation on the intermediaries to not only report offences under POCSO but also to hand over the necessary material including the source from which such material may have originated to the Special Juvenile Police Unit or the local police, or the cyber-crime portal. As per a MOU between the National Crime Records Bureau (NCRB) under the Ministry of Home Affairs (MHA) and the National Centre for Missing & Exploited Children (NCMEC), a US based NGO, all social media intermediaries are required to report cases of child abuse and exploitation to the NCMEC, which in turn reports these cases to the NCRB and the NCRB forwards this to the concerned State authorities in India through the national cybercrime reporting portal.

256. It has been brought to the notice of this Court that social media intermediaries do not report such cases of child abuse and exploitation to the local authorities specified under POCSO and rather only comply with the requirements stipulated in the MOU. In view of the salutary object and the mandatory character of the provisions of Sections 19 and 20 of the POCSO read with Rule 11 of the POCSO Rules, we are of the considered view, that an intermediary cannot claim exemption from the liability under Section 79 of the IT Act for any third-party information, data, or communication link made available or hosted by it, unless due diligence is conducted by it and compliance is made of these provisions of the POCSO. We are also of the view that such due diligence includes not only removal of child pornographic content but also making an immediate report of such content to the concerned police units in the manner specified under the POCSO Act and the Rules thereunder.

257. Section 42A of the POCSO provides that the Act shall be in addition to and not in derogation of the provisions of any other law and further provides that it shall have overriding effect on the provisions of any such law to the extent of the inconsistency. The relevant provision reads

as under:—

> *"42A. Act not in derogation of any other law.—*
> *The provisions of this Act shall be in addition to and not in derogation of the provisions of any other law for the time being in force and, in case of any inconsistency, the provisions of this Act shall have overriding effect on the provisions of any such law to the extent of the inconsistency."*

258. In view of the overriding effect of the POCSO Act and the rules thereunder, merely because an intermediary is in compliance of the requirements specified under Section 79 of the IT Act, will not absolve it of any liability under the POCSO, unless it duly complies with the requirements and procedure set out under it, particularly Section 20 of POCSO Act and Rule 11 of the POCSO Rules. It is a settled position of law, that when a statute describes or requires a thing to be done in a particular manner; it should be done in that manner or not at all. Thus, social media intermediaries in addition to reporting the commission or the likely apprehension of commission of any offence under POCSO to the National Centre for Missing & Exploited Children (NCMEC) is also obligated to report the same to authorities specified under Section 19 of POCSO i.e., the Special Juvenile Police Unit (SJPU) or the local police."

7. The above observations should leave no manner of doubt in the minds of social media intermediaries as to their obligations under the law. That said, given the valid concerns raised regarding alleged violations of these obligations, it is necessary that the Union of India through the Ministry of Electronics and Information Technology and the Ministry of Law and Justice be called upon to respond to the issues arising in the present matter.

8. **Therefore, we permit the learned counsel appearing for the applicants to implead the Union of India through the Ministry of Electronics and Information Technology and the Ministry of Law and Justice as party respondent in the present application. Cause title be amended accordingly.**

9. **Issue notice only to the Union of India through the Ministry of Electronics and Information Technology and the Ministry of Law and Justice, respectively, returnable on 24.09.2026.**

10. **By the next date of hearing, we expect the Union of India through the Ministry of Electronics and Information Technology and the Ministry of Law and Justice, to file their counter affidavits, copies of which shall be served to the applicants two weeks in advance.**

11. **Dasti service, in addition, is permitted.**

(HARPREET KAUR)
COURT MASTER (SH)

(POOJA SHARMA)
COURT MASTER (NSH)