

IN THE COURT OF MR. HARGURVARINDER SINGH JAGGI,
ADDL. SESSIONS JUDGE (FTC– 01), SOUTH DISTRICT, SAKET
COURTS, NEW DELHI

Cr. Rev. No.: 80/2026 [Arising out of CR Case No. 2298/2024]	
CNR No.: DLST01-001789-2026	
FIR No.: 106/2022	
Police Station: Cyber, South	
u/Section: 438, 440 BNSS, 2023; 67B IT Act, 2000	

IN THE MATTER OF:

ADITYA BISWAS,

... Petitioner

Through – Ms. Nandita Rao, Sr. Advocate
i/b Mr. Abhinandan Gautam
and Mr. Harsh Rana, Advocates
for the Petitioner.

v.

STATE OF NCT OF DELHI

... Respondent

Through – Mr. Santosh Kumar, Additional
Public Prosecutor for the
Respondent.

Date of filing of petition:	13.02.2026
Date of reserving order:	11.07.2026
Date of pronouncement of order:	27.07.2026

ORDER

27.07.2026

1. A revision petition has been moved by the petitioner, Aditya Biswas under Section 438 read with Section 440 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS) (corresponding to Section 397/399 of the Code of Criminal Procedure, 1973 (CrPC)) challenging the order dated 05.02.2026 (impugned order) passed by the Court of Ms. Niharika Kumar Sharma, Ld. Chief Judicial Magistrate, South District, Saket Courts, New Delhi (Trial Court) in a case titled as ***State v. Aditya Biswas – CR Case No. 2298/2024*** arising out of FIR No. 106/2022 dated 03.12.2022 (subject FIR) registered at Cyber Police Station South, New Delhi under Section 67B of the Information Technology Act, 2000 (IT Act).

2. The petitioner is aggrieved by the impugned order dated 05.02.2026 whereby the Trial Court, finding a *prima facie* case and grave suspicion, directed the framing of a charge against the petitioner/accused for the commission of the offence punishable under Section 67B of the IT Act.

3. The petitioner, Aditya Biswas, is the accused and State of NCT of Delhi is the prosecuting agency in the subject FIR before the Trial Court.

4. For the sake of clarity, convenience and avoidance of confusion, the parties are interchangeably referred to as by their rank and status before the Trial Court.

Facts of the case

5. The alleged facts of the case as traced from the subject FIR and the charge-sheet are that a complaint was received by the Cyber Police Station South from the National Crime Records Bureau (NCRB). As per the complaint, the National Center for Missing & Exploited Children (NCMEC), USA generated a CyberTipline Report No. 125072813 stating that a Facebook user with the ID "Neem Biswas" transmitted a 17-second video depicting a child engaged in a sexually explicit act on 14.05.2022.

6. During the investigation, the IP address and the mobile number (+91 9582738607) linked to the Facebook ID were traced. The Customer Application Form (CAF) revealed that the subscriber was one, Nand Kishor Shaha. In his statement, Nand Kishor Shaha disclosed that his friend, the petitioner Aditya Biswas, had used his phone to create the "Neem Biswas" Facebook ID and operated it.

7. The petitioner joined the investigation pursuant to a notice and allegedly admitted in his disclosure statement that he downloaded the child pornographic video, uploaded it via the said Facebook ID, and

subsequently threw away the mobile phone after it broke. Upon completion of the investigation, a charge-sheet was filed against the petitioner under Section 67B of the IT Act.

Grounds for revision

8. The petitioner by way of the present revision petition seeks setting aside of the impugned order on specific grounds as below:

9. Hearsay Evidence: The entire prosecution case rests on the CyberTipline Report No. 125072813. The petitioner contends that no official from Facebook or NCMEC was made to join the investigation or listed as a witness to prove the report's contents. Therefore, the report is inadmissible hearsay and cannot form the basis for framing a charge.

10. Non-Recovery of Device and Violation of Article 20(3): No mobile device was recovered from the accused. Placing reliance solely on the disclosure statement of the accused—that he threw the phone away—violates his fundamental rights against self-incrimination under Article 20(3) of the Constitution of India.

11. Nature of the Video Content: The petitioner asserts that the video in question does not depict a female child as alleged, nor is it sexually explicit in a manner that falls within the stringent definitions of child pornography. Thus, the charge under Section 67B IT Act is baseless.

Reply/Objections by Respondent

12. The respondent, State of NCT of Delhi, robustly defended the impugned order. The key objections cited by the respondent to the revision petition are firstly, the electronic material placed on record, including the video uploaded on the Facebook ID “Neem Biswas”, *prima facie* attracts the ingredients of Section 67B of the IT Act. The video was perused by the Trial Court and found to depict sexually explicit content involving a child.

13. The second objection flagged by the State is that the linkage of the Facebook ID with the accused is well-established through the IP address, CAF details, and the statement of the actual subscriber, Nand Kishor Shaha under Section 161 CrPC :: Section 180 BNSS.

14. The third objection to the revision petition being that the non-recovery of the mobile phone is attributable to the petitioner’s own conduct and cannot enure to his benefit at the threshold stage of framing the charge. The defences raised by the petitioner pertain to the appreciation of evidence, which is a matter for trial.

Submissions by Counsel for the parties

15. Ms. Nandita Rao, learned senior counsel unleashed her attack on the impugned order by advancing submissions in tandem with the averments made in the revision petition. The learned counsel submitted that the impugned order passed by the Trial Court suffers from non-application of judicial mind and allows a criminal trial to proceed on a mere fishing and roving enquiry.

16. Ms. Rao, learned senior counsel, urged that the investigation is fundamentally defective because no independent verification of the CyberTipline Report was conducted. Without calling Facebook officials as witnesses, the electronic evidence remains unproved. The learned counsel vehemently argued that putting the petitioner through the rigours of a trial based on unverified, hearsay electronic data is a travesty of justice.

17. Ms. Rao, learned senior counsel, urged that the impugned order suffers from material irregularity, as the Trial Court failed to consider a key aspect that the police did not conduct fair investigation in the subject FIR. The learned senior counsel further urged that neither Facebook was contacted to verify the impugned video nor any contact was made with National Center for Missing and Exploited Children (NCMEC).

18. The learned counsel after reading out the paragraph No. 5 of the impugned order submitted that the same is factually incorrect, as there is no dispute at this stage that the impugned video was present on the Facebook ID with the name, Neem Biswas.

19. *Per contra*, Mr. Santosh Kumar, learned Additional Public Prosecutor (APP) for the State, valiantly contended the arguments advanced by the learned senior counsel for the petitioner. The learned APP submitted that the scope of interference at the stage of framing of charge is extremely narrow and the Trial Court had passed a well-reasoned, speaking order.

20. Mr. Kumar, learned APP, submitted that at the stage of framing of charge, the Court has to *prima facie* ascertain that there exists grave suspicion against the accused. The learned APP further submitted that the contentions lodged by the learned senior counsel for the petitioner run counter to the settled position of law that no mini trial be conducted at the time of framing of charge.

21. Mr. Kumar, learned APP for the State submitted that the impugned video undoubtedly has content of child pornography and doctrine of constructive possession as culled out by the Hon'ble Supreme Court of India in ***Just Rights for Children Alliance v. S. Harish (2024 INSC 716)*** ticks in and upheavals the argument advanced by the learned senior counsel that there is and was no incriminating material against the petitioner before the Trial Court,

22. Mr. Kumar, learned APP for the State submitted that Section 67B of the IT Act is a comprehensive code designed to penalize the proliferation of child pornography. The digital footprints *viz.*, the IP address and the subscriber's statement, clearly point toward the petitioner's exclusive control over the Facebook ID. He further submitted that arguments regarding the admissibility of the CyberTipline Report or the non-recovery of the physical device are quintessential trial defences that cannot be evaluated to throttle the prosecution at this nascent stage.

23. Ms. Rao, learned senior counsel for the petitioner rejoined her submissions and stated that it seems prosecution is on a bloodlust voyage to implicate the petitioner/accused under all means possible.

The learned senior counsel urged that the Courts must not forget that the presumption of innocence rules in favor of the petitioner and that the accusations levelled against the petitioner are baseless and there is no material evidence to fasten any guilt on the petitioner.

24. The learned senior counsel for the petitioner submitted that the Trial Court fell in grave error because no witness has been cited by the prosecution from Facebook, NCMEC. The Trial Court failed to consider that the CDR collected by the IO revealed that the mobile phone number in question belonged to one, Meena Saha. The learned counsel further submitted that the possession of incriminating material was not proved and also the IO proceeded on the photocopy of documents.

25. Ms. Nandita Rao, learned senior counsel concluded her arguments on the note that the impugned order ought to be set aside by the Revisionary Court as the same suffers not only from patent illegality, perversity but also jurisdictional error, with the petition moved by the petitioner be allowed and the petitioner be discharged from the false accusations.

Legal provisions and legal principles

26. With close examination of the trial court record (TCR), weighty and lengthy arguments advanced by the learned counsel for the parties, it is imperative that the relevant legal provisions and legal principles are discussed before analysing the impugned order passed by the Trial Court.

27. Section 438 of the BNSS, 2023 (corresponding to Section 397 of the CrPC, 1973) which deals with the revisionary power of Hon'ble High Court or Court of Sessions reads as under:

“438. Calling for records to exercise powers of revision
—(1) The High Court or any Sessions Judge may call for and examine the record of any proceeding before any inferior Criminal Court situate within its or his local jurisdiction for the purpose of satisfying itself or himself; to the correctness, legality or propriety of any finding, sentence or order, recorded or passed, and as to the regularity of any proceedings of such inferior Court, and may, when calling, for such record, direct that the execution of any sentence or order be suspended, and if the accused is in confinement that he be released on bail or on his own bond pending the examination of the record.

Explanation.—All Magistrates, whether Executive or Judicial, and whether exercising original or appellate jurisdiction, shall be deemed to be inferior to the Sessions Judge for the purposes of this sub-section and of section 439.

(2) The powers of revision conferred by sub-section (1) shall not be exercised in relation to any interlocutory order passed in any appeal, inquiry, trial or other proceeding.
(3) If an application under this section has been made by any person either to the High Court or to the Sessions Judge, no further application by the same person shall be entertained by the other of them.”

28. Hon'ble High Court of Delhi in ***Taron Mohan v. State & Anr. – 2021 DHC 281*** discussed and culled out the scope of revision jurisdiction and observed as under:

“9. The scope of interference in a revision petition is extremely narrow. It is well settled that Section 397 CrPC gives the High Courts or the Sessions Courts jurisdiction to consider the correctness, legality or propriety of any finding inter se an order and as to the regularity of the

proceedings of any inferior court. It is also well settled that while considering the legality, propriety or correctness of a finding or a conclusion, normally the revising court does not dwell at length upon the facts and evidence of the case. A court in revision considers the material only to satisfy itself about the legality and propriety of the findings, sentence and order and refrains from substituting its own conclusion on an elaborate consideration of evidence ”

[Emphasis added by highlighting and underlining the text]

29. In view of the aforesaid legal proposition, it is thus a settled law that the scope of interference in the revision petition is very limited and can be invoked only if the order passed by the Trial Court suffers from jurisdictional error or any patent illegality, infirmity or perversity. It is also settled that the Revisionary Court cannot re-appreciate the evidence and cannot substitute the view of the learned Trial Court with its own merely because another view is possible.

30. The law concerning the framing of charge is authoritatively settled. In ***Amit Kapoor v. Ramesh Chander (2012) 7 SCR 988***, the Hon’ble Supreme Court elucidated that at the initial stage of framing of a charge, the court is concerned not with proof but with a *strong suspicion* that the accused has committed an offence. The court is not required to conduct a meticulous examination of the evidence or evaluate the probable defence of the accused. If the uncontroverted allegations and the documentary material *prima facie* establish the ingredients of the offence, the charge must be framed.

31. The applicable legal provisions to the case at hand are Section 67B of the Information Technology Act, 2000, which reads as below:

“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 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.”

32. Furthermore, regarding offences of child pornography under the IT Act and the Protection of Children from Sexual Offences Act, 2012 (POCSO), the Hon’ble Supreme Court in its recent landmark judgment, ***Just Rights for Children Alliance v. S. Harish (2024 INSC 716)***, has laid down strict parameters. The Apex Court held that Section 67B of the IT Act is a comprehensive code that penalizes not just the electronic dissemination of child sexual exploitation and abuse material (CSEAM), but also its creation, downloading, browsing, and propagation.

33. In ***Just Rights for Children Alliance’s case***, the Hon’ble Supreme Court also recognized the doctrine of “constructive possession” in cyberspace. An individual having control over a social media account where CSEAM is uploaded falls squarely within the ambit of the IT Act.

34. Furthermore, regarding the subjective assessment of the video content, the Apex Court held that the strict definition of a child is satisfied if the visual depiction even “*appears to depict a child*”, leaving the evaluation to the subjective satisfaction of the judge based on the visual material.

Analysis

35. To find out whether the impugned order passed by the Trial Court is right and justified, the Court deems fit to test the impugned order at the anvil of application of the legal provisions and legal principles as reiterated in the preceding paragraphs of this order.

36. The present revision petition is directed against the impugned order dated 05.02.2026, whereby the Trial Court observed and found that there exists sufficient material on record raising a grave suspicion, ordered the framing of charge against the petitioner for the offence punishable under Section 67B of the IT Act.

37. On a careful perusal of the Trial Court record and the impugned order, this Court observes that the Ld. CJM has passed a detailed speaking order. The Trial Court correctly noted that the investigation linked the Facebook ID “Neem Biswas” directly to the petitioner via the IP address, CAF details, and the explicit statement of the actual subscriber, Nand Kishor Shaha, who confirmed that the petitioner used his phone to create and operate the said ID.

38. The petitioner’s primary contention that the CyberTipline Report No. 125072813 is hearsay and inadmissible without the examination of a Facebook/NCMEC official is wholly misconceived at this stage. Following the mandate of ***Amit Kapoor v. Ramesh Chander (2012)***, the Trial Court is not permitted to conduct a roving inquiry into the admissibility, truthfulness, or ultimate evidentiary value of the documents at the stage of framing charges. The digital footprints provided by the prosecuting agency are more than sufficient

to raise a *grave suspicion* against the petitioner. Whether the electronic evidence satisfies the rigours of Section 65B of the Evidence Act (Section 63 of the BSA) is an issue to be tested during the trial.

39. Similarly, the petitioner's argument regarding the non-recovery of the mobile device and the alleged violation of Article 20(3) holds no water. In light of the doctrine of constructive possession elucidated in ***Just Rights for Children Alliance's case***,¹ the physical recovery of a mobile phone is not an absolute *sine qua non* for framing a charge when the digital trail, particularly, IP logs and subscriber data securely links the transmission to the accused's control over the social media account. The non-recovery of the device, allegedly thrown away by the petitioner, cannot be used to nip a legitimate prosecution in the bud.

40. *Lastly*, regarding the nature of the video, the Trial Court explicitly recorded that the video was perused and it *prima facie* contained sexually explicit content involving an adult and a child, depicting nudity and inappropriate touching. This subjective satisfaction aligns perfectly with the legal standard approved by the Apex Court in ***Just Rights for Children Alliance's case***². The petitioner's attempt to dispute the age or the gender of the depicted child at this stage is a matter of defence evidence to be led during the trial.

¹ 2024 INSC 716

² *ibid.*

41. The Court inter alia also finds that the Trial Court has passed a well-reasoned order, correctly applying the legal threshold of “grave suspicion”. The Trial Court left the complaint alive and rightly decided that the matter should proceed to trial in accordance with the law, as the defences raised by the petitioner require the appreciation of evidence and examination of witnesses.

Decision

42. On taking the holistic view, this Court is of the considered opinion that the impugned order dated 05.02.2026 passed by the Trial Court does not merit interference by exercise of the revisionary power vested in this Court under Section 438, 440 of Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS) :: Section 397(2) of the Code of Criminal Procedure, 1973 (CrPC), as the same does not suffer from any patent illegality, infirmity, perversity and/or jurisdictional error.

43. Accordingly, it is ordered that the impugned order dated 05.02.2026 passed by the Trial Court is affirmed and upheld. The Trial Court must proceed with the legal proceedings ***State v. Aditya Biswas – CR Case No. 2298/2024*** arising out of FIR No. 106/2022 in accordance with law.

44. Accordingly, the criminal revision petition titled as ***Aditya Biswas v. State NCT of Delhi – Cr. Rev. No. 80/2026*** preferred by the petitioner is dismissed. All interim applications (if any) are dismissed.

45. Parties to bear their own costs.

46. Any observation made here-in-above for the purpose of dealing with the contentions raised during the hearing of the present revision petition shall not be deemed to be an expression on the merits of the case.

47. Let the TCR along with the certified copy of this order be transmitted *forthwith* to the Trial Court as per rules, for information and compliance, if any. File be consigned to record room only after due compliance, necessary action as per applicable rules.

Pronounced in the open Court on July 27, 2026	(Hargurvarinder Singh Jaggi) Addl. Sessions Judge (FTC-01) South District Saket Courts, New Delhi
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Note: This order comprises [16] pages in total. The electronic signature certificate (digital signature) of the Presiding Officer has been appended on the last page of the electronic or digital copy (PDF) of this document.